



# Anti-money laundering and counter-terrorist financing measures

# Saint Lucia

## Mutual Evaluation Report

January 2021



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## *Executive Summary*

1. This report summarises the AML/CFT measures in place in Saint Lucia as at the date of the on-site visit during September 16<sup>th</sup> – 27<sup>th</sup>, 2019. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Saint Lucia’s AML/CFT system and provides recommendations on how the system could be strengthened.

### **Key Findings**

- a) Saint Lucia has completed its first ML/TF NRA (March 2019), displaying a fair understanding of its main risks as viewed by the country. The main predicate offences linked to ML are drugs trafficking, fraud, tax crimes, migrant smuggling and cash smuggling. The NRA recognised intelligence gaps relative to the extent, nature and value of the main proceeds generating crimes in Saint Lucia. Training needs of investigators and prosecutors, resource capacity and a lack of AML/CFT supervisory oversight were raised as vulnerabilities in the NRA. These factors prevented Saint Lucia from being able to have a more developed view of its ML/TF risks. Further analysis is therefore needed to ensure a more detailed view of its ML/TF risks.
- b) There is a low level of understanding of the ML/TF risks across the sectors. This includes understanding which sectors have the greatest exposure to ML/TF risk. The commercial banking sector was found to have the most established view of its ML/T risk.
- c) Saint Lucia has a low level of understanding of its TF risks, a finding also identified through the NRA, and no national strategy on TF. The low level of understanding of TF risk is due to limited resource capacity needed to consider the available information to make an informed TF risk assessment. The CIP programme which is promoted in jurisdictions with known terrorist activity, and vulnerabilities in the NGO sector, were not considered as part of the NRA and therefore translated into the low level of understanding of TF risk.
- d) Saint Lucia has made tangible progress to develop a National Action Plan following completion of the NRA. However, there is a lack of an agreement on the national strategy detailing Saint Lucia’s over-arching policy to combat ML, TF and PF. Therefore, appropriate allocation of resources and alignment of objectives and activities of the relevant competent authorities cannot be demonstrated.
- e) The FIA is the main AML/CFT authority in Saint Lucia with several core functions that span law enforcement (FIU, ML investigations), legislative (MLPA updates) and supervision of FIs and DNFBPs. Good progress has been made to investigate ML offences by working with domestic law enforcement partners and prosecution experts. However, its progress to effectively deliver all of its core functions is adversely impacted by inadequate resources and lack of strategic direction. This has had a negative cascading effect on Saint Lucia’s AML/CFT regime and is reflected across several of the core issues i.e. IO6, IO7, IO9, IO3, IO4. Due to resource constraints the FIA has not carried out AML/CFT inspections since 2014. The conviction-based forfeiture/confiscation results by the FIA are modest when compared to the overall ML assessment of Saint Lucia.

- f) Saint Lucia has experienced delays in satisfying MLA requests as several requests remain outstanding with some going as far back as 2015 and 2017. Lack of information in MLA requests and MLA requests being sent in a foreign language without being translated have contributed to the delay. Further, there are no MOUs or other formal arrangements in place between competent authorities specifically concerning the execution of MLA requests. There is also no formal tracking or monitoring system in place at most of the competent authorities that are responsible for executing MLA requests.
- g) There is limited use by competent authorities, particularly the FIA and RSLPF given their roles and functions, to seek MLA and other forms of international cooperation in relation to ML and the main proceeds generating predicate offences. This is particularly so in the context that the NRA identified Saint Lucia's location as being susceptible to being used as a transit for ML activities and that a significant amount of criminal proceeds generated from offences committed in foreign jurisdictions.
- h) The business activities listed in the Schedule 2 of the MLPA do not correspond to the relevant legislation defining those sectors. These anomalies can lead to unregulated sectors which relate to key FATF Recommendations. For example, businesses listed in Schedule 2 of the MLPA are inconsistent with their definition in the respective legislation. MSBs and some activities listed as "other business activity" e.g. securities, broking and underwriting, are in fact financial institutions.
- i) Saint Lucia has not identified those entities which meet the FATF definition of NPOs. As such, the country has not applied focused and proportionate measures to NPOs that are vulnerable to TF abuse. The NGO Council which is set up as the repository of information for NPOs has not been established. NGOs, which includes NPOs, are required to comply with AML/CFT legislation as they are listed in the Schedule 2 of the MLPA.
- j) Saint Lucia has not demonstrated that the requirement to keep and provide Beneficial Ownership (BO) information applies to all legal persons and arrangements other than companies incorporated under the Companies Act, IBCs, IPs and ITs. Domestic companies and non-profit companies incorporated under the Companies Act are only required to submit BO information to the Registry of Companies and Intellectual Property (ROCIP) at the time of incorporation and there is no requirement to notify the Registrar of changes in BO. While the IBC Act provides that an IBC shall give notice of changes to its BO, the requirement that this notice should be given within a "reasonable time" is too broad and subjective for the purpose of ensuring that the requirement for the information to be accurate and up-to-date is met.
- k) There are limited mechanisms in place to implement UNSCRs relating to TF. There are no mechanisms in place for Saint Lucia to identify persons or entities to propose to the 1267/1989 and 1988 Committee for designation under UNSCR 1267 or to identify targets for designation under UNSCR 1373. There is a lack of understanding of the purpose of the UNSCR 1267s sanctions lists as Saint Lucia does not designate persons/entities unless they are present in Saint Lucia at the time of the designation. There is no requirement in place to implement targeted financial sanctions without delay.
- l) Saint Lucia does not have any measures in place to ensure that persons and entities involved in the proliferation of weapons of mass destruction are identified, deprived of resources and prevented from raising, moving and using funds for the financing of proliferation.



## Risks and General Situation

2. Saint Lucia has a small economy which has benefitted from foreign direct investment in its small but active offshore financial sector<sup>1</sup> and the transshipment and tourism sectors. The economy is primarily dependent on tourism and banana production. Taxes on international trade and transactions represent the largest percentage of the country's GDP. The GDP is estimated at 1.712 billion USD with revenue rising in 2018 owing to growth in the non-tax sector derived mainly from the Citizen by Investment Programme<sup>2</sup>. Saint Lucia engages in company formation activities on behalf of clients from all over the world.

3. The two main domestic predicate offences linked to ML are illicit trafficking in narcotic drugs and psychotropic substances and fraud. Tax crimes, human trafficking, migrant smuggling and cash smuggling were also highlighted in the jurisdiction's National Risk Assessment. Saint Lucia's geographic location makes it susceptible to be used as a transit point for ML activities. International Banks (Class B), International Insurance, International Mutual Funds (Private), Non-Government Organisations and Lawyers were identified in Saint Lucia's National Risk Assessment as being High for ML.

4. A significant amount of the funds forfeited during the assessment period were proceeds from offences committed in other jurisdictions. Additionally, the National Risk Assessment recognised that laundered proceeds from organized criminal activity are sometimes used to fund domestic crimes. Both local and foreign nationals have been identified in organized criminal activity. Saint Lucia's assessment of its international ML/TF risk exposure was limited, with the National Risk Assessment recognising the existence of intelligence gaps in relation to the extent, nature and value of organised criminal activity arising from both foreign and domestic threats.

5. Whilst the National Risk Assessment assessed the overall TF threat as low, there is a concern that this assessment is not reflective of the jurisdiction's overall understanding of its TF risk. Saint Lucia is an international financial centre and has a reasonable number of International Business Companies (IBCs) (3762 active IBCs and 50 active international trusts) with beneficial owners (BOs) from across the world. This information was not considered in the National Risk Assessment from a TF perspective. Further, the CIP is mentioned in the National Risk Assessment Summary Report provided to Assessors and the ML vulnerability rating of Medium High was noted in the presentation delivered at the on-site. However, the TF risk posed by the CIP, as a niche offering in Saint Lucia, was not considered in the National Risk Assessment. CIP is promoted globally, including in jurisdictions with known terrorist activity. Authorities indicated CIP applicants are approved after a vigorous due diligence process.

## Overall Level of Compliance and Effectiveness

6. Since its third Round Mutual Evaluation, Saint Lucia has introduced several measures to strengthen its AML/CFT regime. Saint Lucia has enacted various pieces of key legislation including amendments to the Criminal Code, the Extradition Act, the Proceeds of Crime Act, the Anti-Terrorism Act, the Money Laundering (Prevention) Act and the Money Service Act, among others.

<sup>1</sup> The IMF's definition of small offshore financial centre 'OFC' (excluding major financial centres) is 'Jurisdictions that have relatively large numbers of financial institutions engaged primarily in business with non-residents and financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies'. IMF's report on financial centres notes that small countries with small domestic financial sectors may choose to develop offshore business and become an OFC for a number of reasons e.g. income generating activities and employment in the host economy, and government revenue through licensing fees.

<sup>2</sup> <http://stlucia-citizenship-investment.com/>



Notwithstanding, the issue of targeted financial sanctions in relation to terrorist financing and proliferation financing (PF) are yet to be adequately addressed and there is no reporting regime for FIs and DBFBPs in relation to PF. Technical deficiencies have also been found in the understanding of TF risks, with further deficiencies in both the TF reporting and SAR reporting regime. Overall, the technical compliance framework is still in need of significant improvements. The weaknesses identified in Saint Lucia's technical compliance have adversely impacted its ability to demonstrate effectiveness through the core issues.

7. Saint Lucia has implemented an AML/CFT system that has shown some level of effectiveness, particularly in the area of domestic co-operation among the law enforcement agencies. The results of this are evidenced in the successes the jurisdiction has had with its cash seizure and forfeiture efforts which have been fuelled by a strategic grouping of key officials into an Inter-Agency Intelligence Committee. Significant improvements are still needed however, to strengthen its risk-based approach and the implementation of preventive measures and supervision. The FIA, as the main operational element in the AML/CFT system, has allocated much of its limited resources to meet the demands of its investigations of ML. This has resulted in its core FIU functions becoming stymied and thus negatively impacting its ability to produce financial intelligence. A significant deficiency which remained outstanding from the previous mutual evaluation is the lack of resources for the FIA and its current structure.

***Assessment of risk, co-ordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)***

8. Saint Lucia completed its first National Risk Assessment in March 2019 and is still in the process of developing a full-bodied view of the risks particularly in relation to its assessment of TF. The National Risk Assessment exercise benefitted from the involvement of a broad range of private and public entities. Potential vulnerabilities in the NPO, CIP, legal persons and arrangements, gaming, real estate and TF were not adequately assessed. Considering Saint Lucia is an offshore banking jurisdiction and promoting its CIP to international investors, the extent to which the National Risk Assessment considered international ML/TF risk exposures and the possible TF threat posed by the flow-through of funds were not evident. Findings of the National Risk Assessment have been, and continue to be, in the process of being shared by NAMLOC and the private sector to ensure there is an appropriate level of awareness of the issues that affect them.

9. Saint Lucia's national AML/CFT co-ordination efforts are led by the NAMLOC. This is an established body, set-up initially to oversee the implementation measures to address Saint Lucia's 3rd round MEVAL deficiencies. Following completion of its first National Risk Assessment, NAMLOC has developed and agreed to a National Action Plan to respond to its findings. However, it is yet to finalise and agree to an over-arching national AML/CFT policy setting out its main priorities to ensure Saint Lucia effectively combats its ML, TF and PF risks. Therefore, the extent to which the objectives and activities of the competent authorities were consistent with national AML/CFT policies could not be demonstrated. The assessment team did not find evidence of any pre-existing national AML/CFT policies or strategies prior to the National Risk Assessment.

10. Operationally, the country has established and taken advantage of the Inter-Agency Intelligence Committee to co-ordinate targeted activities, foster co-operation and exchange information and intelligence where appropriate. The operational activities of the Inter-Agency Intelligence Committee are a very positive step and the LEAs have demonstrated that they are well-co-ordinated in bringing together their specific areas of expertise to the conduct ML investigations. There are examples of cases that have resulted in successful prosecutions and confiscations. The LEAs demonstrated an awareness of threats posed from neighbouring jurisdictions in relation to drugs trafficking, including where gateways led to the European markets for illicit activity. This

showed a capacity to identify and an awareness of ML/TF risks from operational activity for example, cash seizures at the ports.

11. Co-operation and co-ordination efforts on AML/CFT issues are not as well established among the four supervisors operating in Saint Lucia. The Financial Intelligence Authority as the main competent AML/CFT supervisory authority does not have established mechanisms to co-ordinate its supervisory efforts with the ECCB. This has an adverse effect on the supervisory oversight of the most active sector in Saint Lucia, the domestic banks. The Financial Services Regulatory Authority has mechanisms to work with the Financial Intelligence Authority and Eastern Caribbean Central Bank through MOUs, and demonstrated it uses these to fulfil its prudential supervisory activities.

12. There are no mechanisms in place to co-ordinate action to address TF risks and implement targeted financial sanctions for TF and PF.

***Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)***

*Use of financial intelligence (Immediate outcome 6)*

13. As a policy, the RSLPF does not request SAR information for all financial investigations. The RSLPF has noted this policy has resulted from an awareness of the resource limitations of the FIA and has therefore established filters that first assesses the solvability of the crime together with a monetary threshold before making such requests. There has never been a TF investigation and as such the RSLPF has not had the opportunity to use financial intelligence in such investigations.

14. The FIA makes disclosures either orally, or when there is a written request for information, written reports are disseminated to the Special Points-of-Contact of other domestic law enforcement agencies and to the members of the Inter-Agency Intelligence Committee. Financial Institutions (FIs) and the lone casino have consistently reported SARs, the majority of which are still pending within the Inter-Agency Intelligence Committee's SAR standard operating procedures (SOP) process. There is underreporting by some sectors of the Designated Non-Financial Businesses and Professions (DNFBPs) which limits the availability of financial intelligence to the FIA.

15. The Inter-Agency Intelligence Committee's financial analysis and dissemination mainly supports its own operational needs, and it has not established any mechanism by which it can determine the operational needs of the LEAs or whether the information it disseminates is fit for purpose. The Inter-Agency Intelligence Committee does not strictly track the SARs it disseminates. The FIA's SAR SOP speaks to having two analysts in the process, but the FIA has always had just one analyst who has functioned without analytical software. The FIA does not conduct strategic analysis however, it produces an annual report, which contains trends, strictly for the consumption of the AG.

16. Competent authorities generally co-operate and exchange information with each other to assist with developing evidence and tracing criminal proceeds related to ML. The IAIC is a good example of targeted co-operation at the operational level which has resulted in the use of financial intelligence and relevant information from other authorities in joint investigations, arrests and prosecutions of individuals. There is limited data, quantitative and qualitative, to assess the quality and extent of the financial intelligence produced and used by competent authorities. In particular, the IAIC should collect data on the information shared to further demonstrate its successes.

*ML offence (Immediate Outcome 7)*

17. Saint Lucia has a well-established technical framework to investigate ML and conduct prosecutions. Importantly, ML investigations are conducted by a small group of highly trained

financial investigators at the FIA, supported by the RSLPF and a grouping of LEAs that identify targets and funnels intelligence and related information to these financial investigators. The FIA mainly uses the access it has to a wide range of information to further its ML investigations but has not fully exploited the range of investigative techniques that is also available. The information available on predicate offences currently listed before the Courts, superimposed on the nature and number of requests for information made by the RSLPF suggest that the RSLPF, as a policy, has not been conducting parallel financial investigations to identify potential ML cases for referral to the FIA.

18. The ML cases investigated and prosecuted are generally consistent with the risk profile of the jurisdiction. Forty percent of the stand-alone ML investigations relate to drug trafficking, which is the predicate with the highest ML risk. However only 4% relate to fraud, which is rated as the predicate with the second highest ML risk. This points to some consistency with the risk profile.

19. The average custodial sentence imposed in Saint Lucia for ML is six (6) months whilst the average fines were Eastern Caribbean dollar (XCD) \$250,000 (USD92,505). These sanctions are not effective or dissuasive.

*Confiscation (Immediate Outcome 8)*

20. Saint Lucia has a comprehensive legal framework which provides for the confiscation of criminal proceeds, instrumentalities and property of equivalent value in both criminal and civil proceedings. Investigations with a view to confiscation are pursued by the Financial Intelligence Authority and cash seizures under the POCA are referred to the Financial Intelligence Authority from the Royal Saint Lucia Police Force and Customs and Excise Department. There have been 75 cash seizures since 2014 totalling XCD\$9,275,569.48 (USD3,432,154). To date, XCD\$5,844,689.92 (USD2,162,657) or 55% has been forfeited. Cash forfeiture proceedings and ML prosecutions are pursued at the same time.

21. The results in relation to conviction-based criminal confiscation are modest when compared to the results in civil confiscation and the overall ML assessment of Saint Lucia. There have been two (2) cases where the instrumentalities of crime were forfeited under the POCA. Even though confiscation orders in respect of the value of a person's benefit from criminal conduct were introduced in the POCA from 2010, only one (1) confiscation order has been made. This order was made in October 2016. The extent to which criminal confiscation matters is pursued is adversely affected by the delays in the High Court. Overall delays in the High Court and the limited resources of the FIA have contributed to these modest results. Saint Lucia has nevertheless demonstrated the pursuit of cases involving funds that had been transferred out of the jurisdiction and has also evidenced the restraint of funds in an international bank on behalf of a foreign country.

***Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)***

*TF offence (Immediate Outcome 9)*

22. There are concerns about the supporting details underpinning Saint Lucia's determination that its TF risk is medium. Fundamentally, as a country with active offshore financial services activities, the assessment did not consider the flow-throughs in that segment of the economy. Further, although the CIP is promoted in jurisdictions with known terrorist activity and persons from these countries were granted approvals, the TF risk of the CIP was not assessed. The associated TF vulnerabilities to the NPO sector were also not assessed. The assessment team identified two examples during the onsite where the risk of TF to Saint Lucia is not completely negligible, and there have also been international requests for assistance in relation to TF.

*Preventing terrorists from raising, moving and using funds (Immediate Outcome 10)*

23. There are fundamental weaknesses with Saint Lucia's legal framework for implementing TFS. Saint Lucia is not implementing TFS pursuant to UNSCR 1267, its successor resolutions or UNSCR 1373. Saint Lucia does not have mechanisms in place for identifying and proposing targets for designation pursuant to UNSCR 1267 and its successor resolutions or for identifying targets pursuant to UNSCR 1373. In relation to UNSCR 1267, Saint Lucia does not understand the requirements to make a designation as the country has indicated that it has not made a designation due to the fact that none of the persons/entities on the UNSCR's lists reside in the country. Saint Lucia has therefore imposed the requirement that the proposed person/entity must reside in the jurisdiction before it can make a designation; this however is not one of the requirements for making a designation. In any event, even if Saint Lucia did designate entities as specified entities, the legislation in place does not provide for the freezing of assets without delay.

*Proliferation financing (Immediate Outcome 11)*

24. At the time of conclusion of the on-site visit, Saint Lucia did not have any laws or measures in place to address the financing of proliferation of weapons of mass destruction. Saint Lucia has therefore not implemented TFS concerning the UNSCRs relating to the combatting of financing of proliferation of weapons of mass destruction. However, whilst FIs and DNFBPs have no legal obligation to implement TFS for PF some FIs and DNFBPs were aware of the international obligation and regularly referred to the United Nations Security Council Consolidated List as a matter of course when on-boarding new customers.

***Preventive measures (Chapter 5; IO.4; R.9–23)***

25. All entities performing activities covered by the FATF standards are required to apply preventive measures under the MLPA. Sharing the findings of the National Risk Assessment has encouraged a collective understanding of risks and obligations across the FI and DNFBP sectors. The extent to which regulated entities in Saint Lucia understand and effectively implement preventive measures is mixed depending on the sector and mainly procedural e.g. ensuring compliance resources and policies and procedures are in place. Established FIs such as commercial banks have the most developed understanding of risks.

26. The FIs sector complies with the MLPA requirements mainly through a procedural capacity by ensuring, for example, compliance resources and policies and procedures are in place. The extent to which the requirements in the MLPA are enforced was not evident and supervisors tended to view regulated sectors as being generally compliant.

27. The DNFBP sectors' understanding of risks and subsequent obligations to mitigate specific vulnerabilities were in the early stages of development. Based on the sample of DNFBPs interviewed, there were weaknesses with the EDD and record keeping measures.

28. Most FIs understand their reporting obligations, and the majority confirmed they had submitted SARs to the Financial Intelligence Authority. Most SARs received by the Financial Intelligence Authority came from FIs. Domestic Banks have filed 71% of the total number of SARs as of June 2019. SAR filings by entities in the DNFBP sectors has been negligible, apart from attorneys-at-law, casinos and registered agents.

***Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)***

29. There is an absence of formal arrangements which provide mechanisms for the Financial Intelligence Authority to work with the ECCB and ECSRC to co-operate and co-ordinate efforts on areas of AML/CFT supervision where there is joint responsibility. As part of licensing requirements, authorities did not consistently consider beneficial owner checks as part of their market entry and ongoing monitoring controls to ensure criminals and their associates are prevented from operating

in the financial system. There were no controls developed or implemented by the Financial Intelligence Authority to prevent criminals and their associates from being the beneficial owner or holding significant or controlling interest or holding a management function of entities performing the functions listed at Schedule 2 of the MLPA.

30. The Financial Intelligence Authority has neither carried out any onsite nor offsite AML/CFT inspections since 2014. Resource constraints at the Financial Intelligence Authority meant that the authority has prioritised its resource on ML investigations. Whilst the ECCB's remit was extended in April 2019 to include AML audits of the firms it supervises, implementation of this new role was the subject of ongoing discussions. Therefore, the assessment team did not find instances where the Financial Intelligence Authority required FIs or DNFBPs to take remedial action or applied sanctions to address deficiencies identified. These gaps in AML supervision leave Saint Lucia exposed to ML/TF vulnerabilities as AML/CFT weaknesses in significant sectors i.e. commercial banks are not appropriately monitored to ensure preventive measures are effective in identifying and reporting suspicious activity.

***Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)***

31. Saint Lucia has not conducted an assessment of the ML/TF vulnerabilities of the legal persons within its jurisdiction and the competent authorities did not demonstrate that they have sufficiently identified, assessed or understood the ML/TF risks that emanate through the use of all legal persons or legal arrangements that can be established in Saint Lucia.

32. The ROCIP maintains information on domestic companies, non-profit companies, member state companies and external companies, which the public can access either through the ROCIP's website or by visiting the agency. The information maintained includes articles of incorporation, by-laws and information on: addresses, directors, secretaries, shareholders and BOs. There is however no procedure to ensure that files are kept accurate and up-to-date.

33. As outlined in chapter 7, non-profit companies, domestic companies, member state companies and external companies under the Companies Act are required to file a notice of BOs at the time of incorporation, while member state companies and external companies are also required to notify the Registrar of any changes made to its BOs within 30 days after the change has been made. BO information does not however form part of the information that is required to be filed in a company's annual returns and there are no other mechanisms to ensure that accurate and up-to-date BO information is available. Further, even though member state companies and external companies are required to file notices of changes in BOs within 30 days of the change, this is not practiced. Instead, BO information for all companies under the Companies Act is only filed at the time of incorporation.

34. The Registry of IBCs, IPs and ITs contains basic information on IBCs and IPs such as incorporation documents, name of registered agent, tax status and whether the entity has filed its annual returns. Information on directors, shareholders and BOs are not maintained at the Registry and are instead maintained by the Registered Agents.

35. In relation to IBCs, they are required to keep a register of BO at the office of their Registered Agent and to provide BO information on an annual basis to their registered agent. They are also required to give notice of any changes to the register of beneficial ownership within a reasonable period.

36. In relation to IPs, the December 2018 amendment to the IP Act provided that the register of IPs maintained by the Registrar of IPs must include BO information. This is however not practiced. There is only one (1) IP registered in Saint Lucia.

37. Amendments introduced to BO information in December 2018 were extended to ITs with a requirement that the registered trustee keep BO information of ITs. However, the obligations of a registered trustee to keep the records of an IT confidential were only amended to allow the IRD the power to inspect the records.

***International co-operation (Chapter 8; IO.2; R.36–40)***

38. MLA that can be provided by Saint Lucia under the MACMA is limited to Commonwealth countries or countries with which Saint Lucia has entered into MLA treaties that have been incorporated under the MACMA. For non-Commonwealth countries or countries with which Saint Lucia does not have a treaty, assistance can be provided by way of Letters Rogatory. For assistance provided under MACMA, the absence of dual criminality will result in a mutual assistance request being refused; there is no discretion in this regard as the language imposed is mandatory.

39. Since 2014, Saint Lucia received 41 requests for MLA and has provided assistance in 17. 24 of these requests remain pending. Lack of information in MLA requests and MLA requests being sent in a foreign language without being translated have contributed to this delay. Further, there are no MOUs or other formal arrangements in place between competent authorities specifically concerning the execution of MLA requests. There is also no formal tracking or monitoring system in place at most of the competent authorities that are responsible for executing MLA requests.

40. Competent authorities are aware of and utilize the process of seeking MLA through the AG's Chambers for onward submission to foreign jurisdictions. A total of 50 MLA requests have been sent by Saint Lucia since 2014. MLA requests for obtaining evidence in ML investigations have also been sought including a MLA request which was sent in relation to a credit card fraud investigation that commenced from an SAR received by the FIA. However, there has been limited use by competent authorities to seek MLA and other forms of international cooperation in relation to ML and the main proceeds generating predicate offences such as drug trafficking and fraud, particularly in the context of Saint Lucia's geographic location being susceptible to be used as a transit for ML activities and that a significant amount of criminal proceeds generated from offences committed in foreign jurisdictions.

## Priority Actions

- a) Saint Lucia should address the intelligence gaps (extent, nature and scale of ML/TF related criminality) and vulnerabilities (resourcing, lack of AML/CFT supervisory oversight) raised in the NRA 2019. A more comprehensive view of its ML/TF risks should then be developed. This should reflect Saint Lucia's geographic location; position as an international financial centre; and factor in specific products/services it provides that could be exploited to facilitate ML/TF (e.g. CIP, trusts and company formation, non-residential market).
- b) NAMLOC should agree and finalise a short-term national AML/CFT strategy which sets out Saint Lucia's main policy and priorities to combat ML, TF and PF. This should be used to ensure objectives of the relevant competent authorities are in alignment and adequate resources (covering law enforcement, supervision and prosecution) are in place to deliver the national AML/CFT priorities.
- c) The functions of the FIA should be reviewed and its resources increased for it to effectively carry out its AML/CFT, supervisory, investigative and confiscation remits.
- d) The FIA's and RSLPF's remits in relation to TF should also be reviewed to ensure there is adequate technical expertise on TF to raise awareness of TF risks and SARs reporting by the regulated sector. This should include TF analysis and, when relevant, investigation.
- e) Provide clarity on the AML/CFT supervisory responsibilities of the FIA, FSRA and ECCB.
- f) Establish an AML/CFT policy function to address the deficiencies identified in Saint Lucia's technical compliance.
- g) In relation to TFS concerning terrorism and TF, competent authorities should develop a coordinated approach and mechanism to identify targets for designation to the UN Security Council under UNSCR 1267 and to identify targets for designation under UNSCR 1373 and Saint Lucia should also implement the obligations under the UNSCRs by designating entities that are listed as specified entities.
- h) Enact legislation that provides for the implementation of targeted financial sanctions against persons and entities involved in the proliferation of weapons of mass destruction. The legislation should make provision for the implementation of these targeted financial sanctions without delay. Further, the legislation should provide for effective enforcement of the targeted financial sanctions to include imposing responsibilities on supervisors to monitor FIs and DNFBPs and imposing proportionate and dissuasive penalties for breaches.
- i) Undertake an assessment of the ML/TF risks associated with each type of legal person and implement appropriate measures commensurate with the risks identified. These measures should ensure that accurate and up-to-date beneficial ownership information on legal persons and arrangements is available to a wide range of competent authorities.
- j) Identify the features and types of NGOs which by virtue of their activities or characteristics are likely to be at risk of TF abuse. Further, Saint Lucia should establish the NGO Council so that the activities of these NGOs can be monitored and investigated where appropriate.
- k) Issue guidance to requesting states on what is required for Saint Lucia to be able to execute MLA requests properly and expeditiously.
- l) Competent authorities, particularly the FIA, RSLPF and CED, should develop formal tracking or monitoring systems concerning the MLA requests that they are responsible for executing.



m) Competent authorities particularly the FIA and RSLPF, should increase the use of MLA and other forms of international cooperation in relation to ML and the main proceeds generating predicate offences in line with the countries highlighted risk.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings<sup>3</sup>

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
L	M	L	L	L	L	M	M	L	L	L

### Technical Compliance Ratings<sup>4</sup>

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
PC	PC	PC	LC	PC	NC	NC	NC	LC	PC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
LC	PC	LC	PC	PC	NC	PC	PC	NC	PC
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	PC	PC	PC	PC	NC	PC	PC	PC	LC
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
LC	LC	PC	PC	PC	LC	PC	PC	LC	PC

<sup>3</sup> Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

<sup>4</sup> Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non-compliant.

## *MUTUAL EVALUATION REPORT*

### **Preface**

41. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.
42. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by Saint Lucia and information obtained by the evaluation team during its on-site visit to the country from September 16th – 27th, 2019.
43. The evaluation was conducted by an assessment team consisting of:
- Alethia Whyte, Jamaica Constabulary Force, Legal Affairs Division, Jamaica (Legal Expert);
  - Bhumii Bhatt, Financial Conduct Authority, United Kingdom, (Financial Expert);
  - Avelon Perry, Compliance & Outreach Division, Financial Intelligence Unit, Trinidad and Tobago, (Financial Expert);
  - Joris Rozemeijer, Public Prosecutions Office, Curacao, (Law Enforcement Expert).
  - Jefferson Clarke, Law Enforcement Advisor, CFATF Secretariat (Mission Leader) Joanne Hamid, Financial Advisor, CFATF Secretariat (Co-Mission Leader), and Sunita Ramsumair, Legal Advisor, CFATF Secretariat (Co-Mission Leader).
44. The report was reviewed by Ms. Crina Ebanks, Office of Terrorist Financing and Financial Crimes, U.S. Department of Treasury, Mrs. Sharlene Jones, FIU Belize and the FATF Secretariat.
45. Saint Lucia previously underwent a FATF Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The February 4th – 15th, 2008 evaluation and May 27th, 2010 to November 22nd, 2013 follow-up reports have been published and are available at <https://cfatf-gafic.org/member-countries/saint-lucia>
46. That Mutual Evaluation concluded that the country was largely compliant with four (4) Recommendations; partially compliant with 14; and non-compliant with 32. Saint Lucia was rated partially compliant or non-compliant with all 16 Core and Key Recommendations. Saint Lucia was placed in enhanced follow-up in November 2009 and removed from follow-up in October 2013.

## 1. ML/TF RISKS AND CONTEXT

47. Saint Lucia is an English-speaking sovereign nation within the Eastern Caribbean. At 238 square miles (617 km<sup>2</sup>) Saint Lucia boasts a population of 173,700 as per the 2010 Census. Having gained independence from the United Kingdom (UK) on February 22, 1979, Queen Elizabeth II is represented on the island by a Governor General. As an independent state, Saint Lucia is a two-party parliamentary democracy with a bicameral legislature consisting of the House of Assembly and the Senate. The Prime Minister is the Head of Government and the leader of the party commanding the support of the majority of the members of the House of Assembly. The House of Assembly has 17 elected members whilst the Senate has 11 appointed members. There are three (3) branches of government: i) the Executive; ii) the Legislature and iii) the Judiciary. Legislative power is vested in both the House of Assembly and the Senate. The Judiciary is independent of the Executive and the Legislature.

48. The real GDP of 1.922 billion USD is estimated to have increased by 0.9% in 2018 compared with a GDP of 1.817 billion USD and a growth rate of 2.67% in 2017. In 2017 a solid expansion in the tourism industry provided much of the impetus for this positive outturn, alongside continued growth in the construction, wholesale and retail and manufacturing, with positive spill-over effects on other sectors. The services sector accounted for 82.8% of GDP, followed by industry and agriculture at 14.2% and 2.9%, respectively.

49. The local currency in Saint Lucia is the Eastern Caribbean dollar (XCD) which is also the currency of exchange for several neighbouring islands. The Eastern Caribbean Central Bank (ECCB) is the Central Bank of Saint Lucia. The ECCB has maintained an exchange rate of 1 USD to XCD 2.70 since 1976.

50. Saint Lucia maintains friendly relations with the larger countries with activities in the Caribbean, including the United States of America (USA) the UK, Canada and France.

### 1.1. ML/TF Risks and Scoping of Higher Risk Issues

#### 1.1.1. Overview of ML/TF Risks

51. Saint Lucia faces significant external risk for ML owing to its geographic location and relative proximity to the northern Caribbean region and to Latin America and North America. The known sources of criminal proceeds are illicit trafficking in narcotic drugs and psychotropic substances, fraud, tax crimes, human trafficking, migrant smuggling and cash smuggling. Saint Lucia has estimated that proceeds from these crimes exceeded USD 4.3 million between 2013 to 2017. Of this amount 18% represented offences committed in Saint Lucia.

52. Saint Lucia's geographic location makes it susceptible to use as a transit point for ML activities (e.g. cash smuggling) and a significant amount of forfeited proceeds represented offences committed in other jurisdictions. Additionally, there has been evidence that domestic crimes have been funded by laundered proceeds from organized criminal activity. Both locals and foreigners have been identified as being involved in organized criminal activity.

53. The NRA concluded that Saint Lucia is not exposed to domestic or international terrorist threats. There are no domestic or international terrorist organizations, groups or individuals, operating within the island. In addition, no funds have been identified as either raised in or transmitted via Saint Lucia in support of terrorist operations.

### *1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues*

#### *Saint Lucia risk assessment*

54. In March 2019, Saint Lucia completed its NRA using the World Bank Risk Assessment Tool (“tool”). It concluded that the risk of ML occurring in Saint Lucia is Medium-High. The process for the NRA involved using modules developed by the World Bank ‘tool’ to garner information which would guide Saint Lucia in assessing its ML/TF risks, with a view to helping the country use the information gained to design a more effective, risk-based AML/CFT regime. The process was national in scope and was led by the NAMLOC. It consisted of six (6) teams of public and private sector professionals to drive the process. Table 1.1 shows the summary of sector ratings from the NRA.

Table 1.1 Summary of ratings from the NRA<sup>5</sup>

SECTOR		RISK CLASSIFICATION
	<b>National Ranking</b>	<b>Medium High</b>
1.	Accountants	Medium
2.	Car Dealers	Medium
3.	Casinos	Medium
4.	Credit Unions	Medium
5.	Domestic Banking Sector	Medium
6.	General Insurance Sector	Medium Low
7.	International Banks (Class A)	Medium High
8.	International Banks (Class B)	High
9.	International Insurance	High
10.	International Mutual Funds (Private)	High
11.	International Mutual Funds (Public)	Medium
12.	Lawyers	High
13.	Life Insurance Sector	Medium Low
14.	Money Lending	Medium Low
15.	Money Services Business — Remittances	Medium High
16.	Non-Government Organisations	High
17.	Real Estate Agents	Medium High
18.	Registered Agents & Trustees	Medium High
19.	Securities Sector	Medium Low

<sup>5</sup> Saint Lucia's Summary NRA Report, March 2019

55. Whilst the NRA exercise included a range of participants, it was not clear the extent to which the Citizenship by Investment Programme (CIP) Unit, Gaming Authority and real estate sectors were involved in the development and analysis of the NRA. The NRA was a fair and honest view of Saint Lucia's assessment of its main ML/TF risks, recognising that intelligence gaps exist about the extent, nature and scale of criminality linked to ML/TF. There are concerns that the main predicate threats identified at the national level, which generate the main ML proceeds (drugs trafficking and fraud), were not assessed to the extent to identify which of the regulated sectors are most at risk of being exploited.

56. Vulnerabilities were also identified in relation to resourcing within the competent authorities to analyse and investigate ML/TF offences. In addition, the lack of AML/CFT oversight of the sectors was also identified as a key vulnerability. These factors impact Saint Lucia's ability to have a comprehensive understanding of its ML/TF risks at the country and sectoral level.

*Scoping of issues of increased focus*

57. The assessment team identified those areas which required an increased focus through an analysis of information provided by the authorities, including the NRA Summary Report, and by consulting various open sources.

*The NRA – Threats and Vulnerabilities*

58. The NRA concluded that the overall threat of ML occurring within Saint Lucia was Medium High while Saint Lucia's vulnerability to ML was assessed to be Medium. Five (5) sectors were assessed as High risk for ML namely: international banks (Class B), international insurance, private mutual funds, non-profit organisations (NPO), and lawyers. Four (4) sectors were assessed as being Medium High for ML, namely: remittances, international banks (Class A), registered agents and trustees and real estate. The TF threat was assessed as Low with an overall vulnerability as Medium High. The assessment team evaluated the mitigating measures used to control the risk in these sectors.

*i. Drug trafficking & fraud*

59. Saint Lucia has indicated in its NRA that illicit trafficking in narcotic drugs and psychotropic substances and fraud were identified as the main known sources of illicit proceeds generating crimes in the country. Of these crimes, drug smuggling was identified as the most common activity generating criminal proceeds. The percentage of detected proceeds from illicit trafficking in narcotic drugs and psychotropic substances and fraud, as a proportion of SARs filed with the FIA, were estimated to be 26.6% and 19.7% respectively. Focus was therefore placed on the ability and effectiveness of LEAs to trace, seize/restrain and forfeit proceeds from these offences.

*ii. International banks*

60. The Class B international banks are restricted to conducting business with a "specific group of persons" and are not required to establish a physical presence in Saint Lucia. These banks are open to customers who are high net-worth foreign nationals. There is a concern about Saint Lucia's interpretation of physical presence to ensure shell banks are prohibited from operating and about the adequacy of the measures in place to manage and mitigate the risks associated with politically exposed and high net-worth foreign nationals. For example, one of these banks reportedly has no restrictions in opening accounts for PEPs. The assessment team gave particular attention to the supervision of the international banking sectors and the implementation of

preventive measures within the sector<sup>6</sup>. There is a concern that the off-site supervision of these banks could represent a major vulnerability for Saint Lucia's AML/CFT regime.

iii. *CIP*

61. Though the CIP is not a regulated sector, Assessors found the programme to be vulnerable to TF. The programme commenced in 2016 and the NAMLOC stated in a presentation to Assessors that the CIP was rated medium/high for ML vulnerability. The NAMLOC also stated that recommendations had been made for the inclusion of the Authorised Agents for the CIP into the AML legislation. In March 2018, citizenship was revoked for six (6) persons based on Saint Lucia's inability to confirm identity, suspicion on ML, refusal on visa applications by the US or UK and financial or banking fraud. The extent of due diligence required for this programme for both applicants, agents and promoters as well as the jurisdictions targeted by Saint Lucia were the focus of the assessment team.

iii. *International Private mutual funds*

62. There are concerns about the capacity of regulatory authorities to supervise private mutual funds which are registered and not licenced in Saint Lucia and therefore are not mandated by law to submit an Offering Document or Prospectus to any authority in Saint Lucia. Nevertheless, the Financial Services Regulatory Authority (FSRA) has issued guidelines requesting the submission of the Offering Document to allow for enhanced monitoring of private mutual funds thus bringing them to a similar level of supervision as public mutual funds. The inherent risk of the products offered by these private mutual funds exposes Saint Lucia to potential abuse by criminals and the assessment team therefore examined the robustness of the application process, due diligence measures and the extent to which AML/CFT matters are considered.

iv. *FIA*

63. The FIA's is governed by a Board of Directors and administers its own budget which, according to the NRA, is inadequate (human and financial). The assessment team examined the extent to which the lack of resources impacts the effective discharge of the FIA's mandate (FIU, financial crime investigations and supervisory responsibilities<sup>7</sup>).

v. *DNFBPs*

64. The DNFBPs sector in Saint Lucia is defined as 'other business activity' which includes accountants, jewellers, courier services, car dealers, real estate agents and lawyers. Lawyers represent the most significant DNFBP sub-sector in terms of ML/TF risks due to the nature of the services and products they offer which include the maintenance of clients' accounts, some of which involve cross-border activities. In addition, of over 200 lawyers within Saint Lucia, only 65 are members of the Saint Lucia Bar Association and there is a lack of AML/CFT compliance systems and an absence of administrative sanctions for non-compliance with AML/CFT obligations. Due to the limited understanding of ML/TF exposure and ML/TF risks throughout the DNFBPs sector, as noted in the NRA, the Assessors examined the preventive measures as well as the effectiveness of the supervisory framework for lawyers, accountants, real estate and registered agents.

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<sup>6</sup> Prior to the onsite, the assessment team identified international Class B Banks as a sector requiring particular focus following review of Saint Lucia's Summary NRA. However, the team were subsequently advised by Saint Lucia of a factual error in the NRA and that politically exposed persons were not customers of Class B international banks. Reference to PEPs features in this chapter are to ensure consistency with the scoping note provided to Saint Lucia and the reviewers prior to the onsite.

<sup>7</sup> Saint Lucia's Summary NRA Report, March 2019

vi. *Terrorism financing*

65. There is no explicit requirement for FIs and DNFBPs to report suspicious transactions related to TF in the Money Laundering Prevention Act (MLPA) or the Anti-Terrorism Act (ATA). In addition, due to serious concerns regarding Saint Lucia's identification and understanding of TF risks, which resulted from the lack of assessment of TF independently of terrorism and a lack of relevant information used to assess TF risks (see 4.2.1), the assessment team identified this as an area of focus. In addition to examining the reasonableness of the methodology used to assess the TF threat in Saint Lucia, the possible cascading effect of the resource implications of the FIA on the country's ability to identify TF was also examined to determine whether the available information and data justified the assessment of the TF risk as low.

Low Risks

vii. *Terrorism*

66. There has not been either domestic or international terrorism threats. Saint Lucia has never experienced a terrorist attack and no terrorist organisation, group or individuals, whether of domestic or international origin, have been identified as operating within the island. Consequently, there was reduced focus on terrorism.

## 1.2. Materiality

67. Saint Lucia's economy depends primarily on revenue from tourism and banana production, with some contribution from small-scale manufacturing. Total revenue and grants increased by 4.6% to USD419.3 million or 20.8% of GDP in 2017/18. Of this, capital grants rose 32.8% to USD23.7 million while current revenue rose at a decelerated rate of 3.3% to USD395.6 in 2017/2018. The growth in current revenue was primarily driven by increased taxes received from international trade and transactions, stemming from notable improvements in airport tax, excise tax collection, particularly on fuel imports and in import duties. Additionally, current revenue was boosted by strong growth in non-tax revenue, owing to increased CIP receipts and to a lesser extent from higher receipts of in-transit fees associated with increased cruise passenger visitors.

68. Saint Lucia is a small offshore financial centre (OFC) which actively engages in companies formation and registration for non-residents. The IMF's report on [Offshore Financial Centres \(2000\)](#)<sup>8</sup> features Saint Lucia as an OFC. Saint Lucia is ranked by the Financial Stability Forum at #22 of 42 jurisdictions that are considered to have significant offshore activities. According to data provided by Saint Lucia, there is one (1) international partnership registered in Saint Lucia and 100 international trusts that have been registered since 2000 of which 50 are currently active. Of the 8,000 international business companies registered since the year 2000, 4,000 are currently active.

## 1.3. Structural Elements

69. The structural elements needed to support an effective AML/CFT system are generally present in Saint Lucia. The country exhibits political stability with mature and accountable regulatory authorities. Investigative bodies such as the FIA and the RSLPF together with the independent DPP are accountable for their activities. The rule of law pervades and the Attorney

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<sup>8</sup> This is the most frequently referenced report on offshore financial centres (OFCs), available through open source research conducted by an established international organisation.



General, together with the independent Eastern Caribbean Supreme Court support a robust framework.

#### 1.4. Background and Other Contextual Factors

70. The FIA is the central operational entity in Saint Lucia's AML/CFT infrastructure and has three (3) core functions which cover: i) FIU responsibilities; ii) sole agency responsible for investigating ML; and iii) the competent authority with designated AML/CFT supervisory responsibility for both FIs and DNFBPs. Concerns surrounding the structure of the FIA were flagged in the 3<sup>rd</sup> MER and concerns around resourcing remain in this report. There are resource constraints across the FIA's three (3) core functions and this has had a deleterious effect in Saint Lucia's implementation of the related AML/CFT components.

##### 1.4.1. AML/CFT strategy

71. Saint Lucia's AML/CFT strategy is spearheaded by the NAMLOC which was appointed to oversee the country's AML/CFT regimes. This entity is made up of representatives from the Attorney General's Chambers, FIA, FSRA, CED, RSLPF and IRD. The NAMLOC's composition was approved on March 18, 2019, however this entity had been in existence prior to then when it was previously named the CFATF Oversight Committee and had been established to manage the implementation of reforms following the publication of Saint Lucia's 3<sup>rd</sup> round MER. The main AML/CFT initiative strategy implemented by the NAMLOC is the NRA which was finalised in March 2019. A national AML/CFT policy setting out Saint Lucia's strategy for combatting ML, TF and PF risks at the time of the onsite was in draft form and is therefore yet to be agreed by NAMLOC.

##### 1.4.2. Legal & institutional framework

72. The main laws relevant to Saint Lucia's AML/CFT system are the following:

- **Proceeds of Crime Act Cap. 3.04 (POCA) of 2010:** Provides for the forfeiture or confiscation of the proceeds of certain crimes.
- **Money Laundering (Prevention) Act Cap. 12.20 (MLPA) enforceable from 2010; updated 2016:** Provides the legal basis for the supervision of, and detailed AML/CFT obligations for FIs and persons engaged in relevant business activity (DNFBPs). Provides for the continuation of the FIA and establishes the FIA as an independent agency to receive reports of suspicious transactions from FIs and DNFBs.
- **Anti-Terrorism Act (ATA) 31 December 2008:** Provides for the implementation of the United Nations International Convention for the Suppression of the Financing of Terrorism, creates terrorism and TF offences and provides appropriate measures to deal with those offences.
- **Companies Act Cap. 13.01 of 1996:** Make provisions for beneficial owners of companies. Provides for the registration of non-profit companies.

73. The institutional framework comprises of the following ministries and agencies responsible for formulating and implementing the government's AML/CFT and proliferation financing policies:

- **The Attorney General's Chambers (AGC):** The AG is appointed by the Governor General in accordance with s.72 of the Constitution, to be the principal legal adviser to the Government. The AG is responsible for drafting legislation. Representatives from the AGC leads the NAMLOC co-ordination efforts for AML/CFT and is also responsible for the processing and

handling of Mutual Legal Assistance (MLA) matters and applicable conventions. External requests and orders are also processed by the AGC. The AG is also the civil recovery authority.

- **Financial Intelligence Authority (FIA):** The FIA is the central operational entity in Saint Lucia's AML/CFT infrastructure. The FIA is the central agency responsible for receiving, analysing, obtaining, investigating and disseminating information which relates to or may relate to the proceeds of criminal conduct.
- **Royal Saint Lucia Police Force (RSLPF):** The RSLPF is responsible for maintaining law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime, the enforcement of all laws and regulations with which it is charged and the apprehension of offenders. The RSLPF takes the lead in investigating predicate offences and TF.
- **Inland Revenue Department (IRD):** The IRD is responsible for undertaking 'non-criminal' investigations into tax evasion offences.
- **Customs and Excise Division (CED):** The CED is mandated to facilitate legitimate trade and travel, effective border management and revenue collection. It manages Saint Lucia's cross border declaration system whereby currency and bearer negotiable over USD10,000.00 or the equivalent must be declared.
- **Director of Public Prosecutions (DPP):** The DPP is responsible for prosecuting and disposing all criminal matters on behalf of the Crown through the process of sufficiency hearings, case management, arraignment, trial and sentencing. The DPP also reviews RSLPF investigation files for all criminal matters and provides advice and guidance. The DPP works with the AG to handle extradition requests.
- **Gaming, Racing and Betting Authority (GRBA):** The GRBA grants gaming operator licences to applicants for the operation of games.

### *1.4.3. Financial sector and DNFBPs*

74. This section gives general information on the size and make-up<sup>9</sup> of the financial and DNFBP sectors in Saint Lucia. The Assessors ranked the relevant sectors operating in Saint Lucia on the basis of their relative importance given their materiality and level of ML/TF risks. The Assessors have used these rankings to inform their conclusions throughout this report, weighting positive and negative implementation issues more heavily for important sectors than for less important sectors. This approach applies throughout the report, but is most evident in Chapter 5 on IO4 and Chapter 6 on IO3:

#### *Most important weighting*

Domestic banks and international banks have a combined asset of USD 2.851 billion and together represent 6.81% of the GDP.

- a. **Domestic banks** (includes commercial banks): While this sector was rated as medium risk for ML in the NRA, given Saint Lucia is a cash-based society and drugs trafficking and fraud are the prominent ML predicate offences, Assessors assigned greater weighting to this sector which offers mainstream<sup>10</sup> financial services to the mass market. Saint Lucia's financial sector is dominated by deposit taking institutions made

<sup>9</sup> This is drawn from Saint Lucia's NRA and additional risk, materiality and context information provided during the onsite.

<sup>10</sup> Examples of mainstream financial services include current accounts, savings accounts, loans, mortgages, cash withdrawals, domestic and international transfers.

up of five (5) domestic banks and three (3) businesses of a financial nature that have a total asset size of USD 2.284 billion and 5.9% of Saint Lucia's GDP. The domestic banking sector was rated as having a Medium Low risk for ML. Only one (1) domestic bank in Saint Lucia provides banking services for the CIP. Challenges with the supervision of this sector further increases the ML/TF risks relative to activities of this sector.

- b. **International banks:** There are 14 International banks operating in Saint Lucia which are classed as either, Class A, ten (10) or Class B, four (4). These international banks have an assets size of USD567,376,769 and accounts for 0.91% of Saint Lucia's GDP. The ten (10) Class A banks are actively engaged in transactional accounts (wire transfers) providing corporate loans and trade financing to non-residents of Saint Lucia. Three (3) of the Class B banks are affiliates or subsidiaries of commercial banks operating in the Caribbean region. Class B banks provide loans to their parent company/affiliate companies and as a result, most of the transactions are intercompany transactions. Class A and Class B banks were rated as having a Medium High and High risk, respectively, for ML risk.
- c. **International mutual funds<sup>11</sup>:** Saint Lucia's mutual funds partake primarily in debt and equity securities, real estate and investments in foreign exchange and typically cater for high net worth individuals and engage in cross-border transactions. There are 11 mutual funds operated by three (3) funds managers in Saint Lucia with total assets of USD267,372,027. This sector is considered high to medium high risk for ML risk in Saint Lucia's NRA (differentiated by private or public mutual funds), representing 10% of the GDP.
- d. **MSBs:** Assessors considered the ML and TF risks associated with this sector globally, which can be classified as high. MSB flows represent 3.79% of GDP, with three (3) MSBs currently operating in Saint Lucia engaging in micro-lending and/or money transmission. Total incoming remittances to Saint Lucia in 2017 amounted to USD40 625 756.85 whilst outgoing transmissions amounted to USD8 437 959.93. The transactions were mainly occasional, of low value provided in-person to residents and tourists. The MSB sector was rated as medium high for ML risk in the NRA. The Assessors considered these factors as well as the involvement of cash and movement of cross-border funds. MSBs facilitate as high-risk features that could be abused for the purposes of both ML and TF risk.
 

*MSBs are considered most important weighting owing to their significant GDP (3.79%), the context of Saint Lucia being a cash-based society and MSBs involve cash transactions, and the inherent high risk features of MSBs that can be abused for the purposes of both ML and TF risk as featured in FATF guidance.*
- e. **International insurance:** The international insurance sector in Saint Lucia is comprised of general insurance business and long-term insurance business. There are 48 companies registered, the majority of which are captive entities. In 2017, international insurance companies had an assets size of USD373 714 584. Captive insurance companies are not required to have a physical presence in Saint Lucia. General insurance companies, however, operate through their Registered Agents. International insurance companies were rated as having a High risk for ML in the NRA.

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<sup>11</sup> No GDP percentage was available.

*Moderately important*

- a. **Securities:** There are two (2) securities companies in Saint Lucia which contributed 10% of the GDP in 2017. Though significant, the products and services offered by these two (2) companies are neither complex nor diverse and are limited to home investments, retirements products, repurchase agreements, and brokerage services. 93%<sup>12</sup> of the client base is institutional and many of which are regulated financial institutions from within the Eastern Caribbean Currency Union. The securities sector was rated as having a medium low risk for ML in the NRA. Assessors assigned a greater weighting to this sector due to the supervisory challenges in overseeing this sector.
- b. **Credit unions:** There are 17 credit unions operating in Saint Lucia representing 1.48% GDP as per the Summary NRA report. Credit unions provide similar services to domestic commercial banks but with the client-base being restricted only to their members. The NRA rated this sector medium for ML risk.
- c. **Domestic life insurance:** There are six (6) domestic life insurance companies operating in Saint Lucia. This sector is considered medium risk for ML in the NRA, which is in line with the view of the Assessors.

*Less important*

- d. **Micro-finance lenders:** There are five (5) micro-lending entities in Saint Lucia providing loans to a maximum of USD18 500. These entities cater for individuals who need financial relief but cannot obtain such relief from the mainstream banking sector. Micro-lenders have carved-out a niche among salaried individuals whereby most loans are secured by salary deductions. The average loan size disbursed by micro-lenders during 2017 was USD1 386. 1% of the loans disbursed exceeded USD11 100. The NRA considered this sector to pose a medium low ML risk.
- e. The six (6) **domestic general insurance companies** and one (1) **Development bank** in Saint Lucia were considered of less importance by the Assessors, in line with the view of ML risk in the NRA.

75. The type, number and importance weight of FIs in the Sant Lucia are as follows:

Table 1.2: **Type number and importance weight of FIs and DNFBPs in Saint Lucia**

Sector	Number of regulated entities in sector	Importance Weighting
Domestic Banks	8	Most significant
Development Bank	1	Less significant
International Insurance	48	Significant
Domestic general insurance	16	Less significant
Domestic long-term insurance	7	Less significant
International banks	14	Most significant
Credit unions	17	Significant
MSBs	4	Most significant

<sup>12</sup> Saint Lucia's materiality submission

Micro-lenders	7	Significant
Mutual funds <sup>13</sup>	14	Most significant
Securities	2	Significant
Casinos	1	Less significant
Realtors	120	Most significant
Dealers in precious metals and stones	4	Less significant
Lawyers	200	Significant
Accountants	11	Less significant
Registered agents and trustees	24	Significant
Car dealers	11	Less significant

76. The NRA rated sectors such as real estate, attorney-at-law, accountants, car dealerships as Medium and High. There are no systems to determine the actual number of entities operating in the real estate sector because it is un-regulated and the industry is relatively cash intensive particularly with regard to lease/rent arrangements, which are mostly utilized by foreign clients.

#### 1.4.4. Preventive measures

77. The MLPA is the main legal basis of AML/CFT obligations on the FIs and DNFBPs. The preventive measures apply to all FIs and DNFBPs and require them to: i) apply CDD measures; ii) keep records and iii) report SARs to the FIA. AML/CFT guidelines are issued under the MLPA by the FIA and these impose more detailed requirements on FIs and DNFBPs. Other than car dealerships, there are no additional sectors outside the scope of the FATF Recommendation upon which AML/CFT measures are applied in Saint Lucia.

#### 1.4.5. Legal persons and arrangements

78. The following legal persons have been identified in the Saint Lucia: a) domestic companies, non-profit companies, member state companies and external companies under the Companies Act (b) international business companies under the International Business Companies Act (c) international general partnership and international limited partnership under the International Partnership Act (d) Domestic partnerships under the Commercial Code (e) Co-operative Societies under the Co-operative Societies Act (f) Non-governmental organisations under the Non-Governmental Organisation Act. International trusts under the International Trusts Act and domestic trusts under the Civil Code are the two (2) types of legal arrangements that can be established in Saint Lucia.

79. International business companies account for the largest category of legal persons, with a total of 3,762. They are established using registered agents who are located in Saint Lucia and who act as the gatekeepers and record keepers for their respective international business companies. They are governed by the Registered Agents and Trustees Act and are regulated by the FSRA. They are also categorized as DNFBPs under the MLPA and therefore have AML obligations. However, the records kept by registered agents are not open to the public and the only competent authorities that are statutorily empowered to access these records are the FIA and IRD. In relation to CFT, international business companies are captured by the general CFT obligations under the ATA to disclose information on terrorist acts, terrorist property and transactions in respect of terrorist property to the police and FIA respectively.

<sup>13</sup> No GDP percentage was available

Table 1.3: **Type and number of registered legal persons**<sup>14</sup>

Type of Legal Persons/Arrangements	No. Registered (where available)
<b>International Business Company</b>	3762 active
<b>Domestic Company</b>	1649
<b>International Trust</b>	50 active
<b>Domestic Trust</b>	Unknown
<b>International Partnerships</b>	1
<b>Domestic Partnerships</b>	Unknown
<b>Member state companied</b>	8 (as of 2018)
<b>External companies</b>	24 (as of May 2019)
<b>Non-profit companies</b>	44

80. Pursuant to section 28 (1A) of the IBC Act, an international business company is always required to keep a Register of beneficial owner containing details of its beneficial owner. International Partnerships are registered in the Register of International Partnerships in which each memorandum submitted pursuant to the International Partnerships Act and all certificates and advertisements required by the Act are registered.

81. For international trusts, a trustee as covered in the MLPA is limited to a trustee licensed under the International Trusts Act, trustees licensed under the Registered Agent and Trustee Licensing Act and to a trust company declared by the Minister. Section 7(1)(b)(4) of the IT Act includes beneficial ownership information as information which should be kept confidential by a registered trustee of an international trust. Section 16(7) of the MLPA require trustees to keep records for a period of seven (7) years after the day on which the transaction recorded takes place.

82. The non-profit sector was identified in the NRA as being high risk in relation to ML. Non-profit companies under the Companies Act and non-governmental organisations under the Non-Governmental Organisations Act are part of the non-profit sector. The AG must first grant approval before a non-profit company is registered under the Companies Act. Since 2014, 44 non-profit companies were registered under the Companies Act. In relation to non-governmental organisations, the Non-Governmental Organisations Act allows for the creation of a Non-Governmental Organisations Council to monitor and investigate the activities of non-governmental organisations. This Council has not yet been established.

#### ***1.4.6. Supervisory arrangements***

83. The basic powers of supervisors are set out below (and are analysed in more detail in R.26 - R.28):

- a. The **FIA** is the primary competent authority with designated AML/CFT supervisory responsibility for overseeing compliance with the MLPA for both FIs and DNFBPs.

<sup>14</sup> Saint Lucia's effectiveness submission and further information provided by Saint Lucia on March 10, 2020

- b. The **ECCB** is a prudential supervisor operating in the Caribbean region and has responsibility for the licensing arrangements of relevant sectors, deriving its powers through the Banking Act, No. 3 of 2015. The ECCB received additional powers in April 2019 to conduct AML audits and provide training through legislative changes to the MLPA for FIs licensed under the Banking Act e.g. commercial banks. However, at the time of the onsite supervisory arrangements to implement these changes were still pending clarification among the relevant authorities.

84. The FSRA is a prudential supervisor in Saint Lucia and grants licenses to FIs covering both the domestic and international sectors (e.g. banks, insurance and mutual funds.), as well as money service businesses. The FSRA is responsible for registering agents and trustees. The FSRA plays a prominent role in Saint Lucia's AML/CFT regime through representation at NAMLOC and the FIA Board, as well as the issuance of prudential AML/CFT guidelines. However, its formal AML/CFT supervisory function is not clear.

#### ***1.4.7. International co-operation***

85. Saint Lucia has a legislative framework for the provision of MLA in the form of the MACMA which allows for MLA to be provided to Commonwealth countries and countries with which Saint Lucia has bilateral treaties that have been incorporated under the MACMA. The AGC is the Central Authority for MLA and is responsible for receiving MLA requests from foreign jurisdictions and sending MLA requests to foreign jurisdictions. Saint Lucia also provides MLA to countries that are not part of the Commonwealth and countries with which it has no bilateral treaty through the use of Letters Rogatory. These are channelled through the Ministry of External Affairs and then to the AGC.



## 2. NATIONAL AML/CFT POLICIES AND CO-ORDINATION

### 2.1. Key Findings and Recommended Actions

#### Key Findings

- a) Saint Lucia has completed its first ML/TF NRA (March 2019), displaying some degree of a fair, honest, and transparent understanding of its view of the main ML risks. The NRA recognises intelligence gaps exist about the extent, nature and value of the main proceeds generating crimes in Saint Lucia. Resource capacity and training needs of investigators and prosecutors, and a lack of AML/CFT supervisory oversight were raised as vulnerabilities in the NRA. These factors prevent Saint Lucia from being able to have a more developed view of its ML/TF risks.
- b) The lack of adequate AML/CFT supervisory oversight has impacted the country's ML/TF risks assessment across the sectors, resulting in a limited understanding of ML/TF risks per sector. This includes connecting the national view of the main ML/TF risks to the sectors, including where the greatest exposure exists in relation to drugs trafficking and fraud. The commercial banking sector, which is the most active sector in Saint Lucia's cash-based economy, was found to have the most established view of its ML/TF risks.
- c) Saint Lucia displayed a strong will and commitment towards addressing its AML/CFT risks and made good progress to develop and agree a National Action Plan following completion of the NRA. However, there is a lack of an agreed overarching national strategy driven by its main ML/TF risks i.e. drugs trafficking and fraud.
- d) Saint Lucia needs to develop a national strategy on TF, a finding also identified through the NRA. The understanding of TF risk is lessened due to limited resourcing capacity to consider the available information to make an informed assessment of the TF risk to Saint Lucia. The CIP programme promoted in jurisdictions with known terrorist activity and vulnerabilities in the NGO sector was not considered as part of the NRA.
- e) National AML/CFT co-ordination and co-operation efforts are most established among law enforcement agencies relative to the investigations of ML activities and have led to successful outcomes.
- f) There is a gap in relation to co-ordination and co-operation efforts to enhance and enforce Saint Lucia's legal and regulatory AML/CFT framework through its supervisory arrangements. Resource constraints across law enforcement and supervision were identified as adversely impacting the extent to which co-ordination and co-operation efforts could adequately respond to the highest ML/TF risks to which that Saint Lucia is exposed.
- g) Whilst the NAMLOC is the overarching body in Saint Lucia responsible for ensuring AML/CFT co-operation and co-operation at a national level, not all key competent authorities responsible for key functions within Saint Lucia's AML/CFT framework are adequately represented e.g. DPP and ECCB.
- h) The country has made an effort, through the NRA exercise, to raise awareness of its AML risks among competent authorities and the private sector. However, the extent to which the findings of the NRA were provided to all relevant stakeholders was not clearly demonstrated. The awareness of Saint Lucia's exposure to TF risk was not evident.

#### Recommended Actions

- a) Saint Lucia should address the intelligence gaps (extent, nature and scale of ML/TF related criminality) and vulnerabilities (resourcing, lack of AML/CFT supervisory oversight) raised in the NRA 2019. This should:
  - i. Include a more comprehensive view of its ML/TF risks through the inclusion of a broader range of stakeholders and include data from the CIP.
  - ii. Reflect Saint Lucia's geographic location; position as an international financial centre and factor in specific products/services it provides that could be exploited to facilitate ML/TF (e.g. CIP, trusts and company formation, non-residential market).
  - iii. Include an assessment of the ML/TF risks associated with each type of legal person.
  - iv. Include strategic threat assessments and risk typologies based on SARs and other law enforcement intelligence.
- b) The NRA findings should be regularly and comprehensively disseminated to all competent authorities and the private sector in order to ensure a consistent understanding of the ML/TF risks.
- c) NAMLOC should:
  - i. Agree and finalise a short-term national AML/CFT strategy which sets out Saint Lucia's main policy and priorities to combat ML, TF and PF.
  - ii. Ensure the AML/CFT objectives of the relevant competent authorities are in alignment and adequate resources (covering law enforcement, supervision and prosecution) are in place to deliver the national AML/CFT priorities.
  - iii. Update the national AML/CFT strategy regularly to ensure it reflects the most prevalent and current ML/TF risks to Saint Lucia.
  - iv. Ensure progress to deliver its agreed AML/CFT strategy is regularly monitored and should be supported by the routine collection of AML/CFT data and statistics reflective of the activities of the relevant competent authorities.
- d) The functions of the FIA should be reviewed to ensure it is feasible for the Authority to deliver its objectives effectively and the FIA should be resourced accordingly. The FIA's and RSLPF's remit in relation to TF risk should also be reviewed to ensure there is technical expertise to raise awareness of TF risks and SARs reporting by the regulated sector. This should include TF analysis and, when relevant, investigation.
- e) To address the deficiencies identified in Saint Lucia technical compliance, consideration should be given to establish an AML/CFT policy function to develop an approval process for sector specific guidance on AML/CTF obligations produced by supervisors, ensuring consistency across sectors and in interpretation of the legislation. In addition, the unit should also notify supervisors when guidance updates are required due to legislative changes arising from international developments to the AML/CFT policy framework.

86. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

## **2.2. Immediate Outcome 1 (Risk, Policy and Co-ordination)**

87. Saint Lucia has some characteristics of an effective system in place to ensure its ML/TF risks are understood and domestic co-ordination mechanisms encourage collaborative action to mitigate these. Enhancements are however required to ensure a more comprehensive view of its ML/TF risk is developed. There remains a lack of an overarching national AML/CFT policy which sets the government's strategy for addressing its priority ML/TF risks. This includes clear alignment to the objectives and activities of the relevant authorities and appropriate allocation of AML/CFT resources to ensure these can be delivered.

88. Significant concerns were identified about the concentration of AML/CFT functions and activities assigned to the FIA and the effectiveness of its structure, i.e. strategic leadership and resources, to be able to successfully carry out these functions and activities.

### **2.2.1. Country's understanding of its ML/TF risks**

89. Saint Lucia has established a general view of its ML risks through the development of its first National Risk Assessment (NRA) completed in March 2019. This requires further development, including a more detailed assessment of Saint Lucia's TF risk.

#### ***Creation of the NRA***

90. Saint Lucia has made some progress in developing a national view of its ML/TF risks through the creation of its first ML/TF NRA which was completed and finalised in March 2019. Therefore, it's understanding of its ML/TF risk is at an early stage of development.

91. The National Anti-Money Laundering Committee (NAMLOC) co-ordinated the NRA exercise using the World Bank methodology. Questionnaires were developed by specific NRA teams and used to collect information, covering the period 2013 – 2018, from a range of public officials including supervisors and law enforcement, as well as private sector representatives.

92. The NRA displays a fair, honest and transparent understanding of Saint Lucia's view of its main risks which include threats and vulnerabilities. Assessors were provided with a Summary Report dated March 2019 and a presentation during the onsite, summarising the NRA's methodology and key findings which were the main outputs from the NRA. The Assessors are concerned that both documents are not in-depth due to the level of detail and analysis included in the NRA supporting the assessment of risk at the domestic and sector level. The alignment between the main predicate offences and how these affect the sectors were also not clear. Further, strategic analysis from the Financial Intelligence Agency's (FIA) perspective did not form a basis for the NRA, due to insufficient analysis to demonstrate the types of ML/TF risks affecting the country and the regulated sectors. While the FIA's analysis identified trends through SARs and formed part of the working documents for the NRA exercise, there was insufficient strategic analysis to inform the risk analysis and ratings assigned to the regulated sectors.

93. Assessors found concerns about the extent to which supervisory overlay could be applied to either corroborate or challenge the responses provided by the private sector relevant to each sector due to the lack of AML/CFT supervision conducted by competent authorities. For example, commercial banks have not been subject to AML/CFT supervisory inspections since 2013-2014. This may result in current threats and vulnerabilities not being highlighted and that individual firms will not be sighted on through a sectorial lens, e.g. abuse of corporate structures, use of money mules and risks associated with cash intensive businesses. There was also a lack of appropriate detail in the NRA about specific

products, services, customer base or geographic location which give rise to scenarios that may require greater levels of risk mitigation measures. The lack of appropriate AML/CFT supervisory oversight was also identified as a vulnerability in the NRA impacting Saint Lucia's ML/TF risks.

94. More generally, Assessors did not find evidence of any pre-existing risk assessments or risk typologies, in addition to the NRA, that could have been used as corroborating assessments to confirm the main ML/TF risks to which Saint Lucia is exposed. The extent to which Saint Lucia regularly reviews and updates its understanding of ML/TF risk since 2014 could therefore not be demonstrated. For example, risk reports focusing on themes identified through SARs e.g. cash smuggling or courier fraud which may be prevalent in a cash-intensive society. This is because of a deficiency in adequate use of financial intelligence to develop strategic analysis (refer to IO6 and R29).

#### *Understanding of ML/TF risks*

95. Law enforcement officials have demonstrated a general understanding of ML risks to Saint Lucia. This understanding/awareness of risks is mostly derived from their specific areas of expertise and from information gathered during their operational activities. For examples, cash seizures at the ports and activities from neighbouring jurisdictions in relation to drugs trafficking, including where gateways led to the European markets for illicit activity are viewed as threats to the jurisdiction.

96. The understanding of ML/TF risks by the supervisors is mixed and generally lower compared to law enforcement officials. The FIA has a general understanding of the ML risks facing FI sectors developed through its FIU and investigations activities, as well as through the training and historic supervision conducted. Its understanding of the ML/TF risks relevant to DNFBPs is limited. The Financial Services Regulatory Authority (FSRA), through its joint inspections with the FIA, has a fair understanding of the ML risks to the sectors for which it is responsible. The Eastern Caribbean Central Bank (ECCB) and the Eastern Caribbean Securities Regulatory Commission (ECSRC) do not have a fair understanding of the ML/TF risks relevant to Saint Lucia or their sectors and were both led by the findings of the NRA. Supervisors, except for the FIA, demonstrated a limited understanding of TF risk.

97. Overall, outside of Law Enforcement Agencies (LEAs), who have a general understanding of risk, competent authorities in Saint Lucia have a limited understanding of ML/TF risk that affects the jurisdiction.

#### *Saint Lucia's main ML/TF risks*

98. Saint Lucia has a cash-intensive economy and its main sources of proceeds of crime predominately relate to drugs trafficking and fraud. Additional known sources of money laundering include tax crimes, human trafficking, migrant smuggling and cash smuggling. Saint Lucia has estimated that proceeds from these crimes exceeded USD 4.3 million between 2013 to 2017, of which, 18% represented offences committed in Saint Lucia. Each of these offences was not threat rated individually as high or medium ML risk, however the assessment team agree that drugs trafficking is the main predicate offence in Saint Lucia as supported by case studies provided.

99. Law enforcement authorities corroborated this by highlighting that XCD12.5m<sup>15</sup> of proceeds of crime relating to the offences noted above were seized by the authorities during 2013 to 2017. Additionally, data from SARs received by the FIA identified drugs trafficking and fraud as the main predicate offences linked to ML with an estimate of 26.6% and 19.7% of total SARs received, respectively, reflecting these offences. There was no further analysis of the SARs for these offences,

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<sup>15</sup> The NRA highlights that these seizures do not relate to ML prosecutions. During the period under review (2013-2017), XCD 6.5 USD2.41) million was seized during ML investigations; XCD 4.4 (USD1.63) million of that seized figure was forfeited. These seizures predominantly relate to drug trafficking with smaller amounts relating to theft and fraud.

including which of the sectors reported them to reflect where the possible greatest exposure to risk exists.

100. Saint Lucia is an international financial centre providing services to non-residents, international investors and actively engages in company formation and registration. In addition, Saint Lucia promotes its Citizens by Investment Program (CIP) to international clients and investors. However, the extent to which Saint Lucia's assessment of its ML/TF risk considers the country's international exposure (including those that may arise through its CIP) is limited, including a lack of trends identified in the cross-border flow of funds and links to international ML/TF risks. The NRA recognised that intelligence gaps exist in relation to the extent, nature, value of the main proceeds-generating crimes. This includes understanding the extent to which the ML/TF threats arise from foreign or domestic threats.

101. Factors that impact the extent to which Saint Lucia is exposed to ML risk were raised in the NRA. These include Saint Lucia's geographical location and proximity to regions of high risk, thereby making the jurisdiction susceptible to be used as a transit point for ML activities and large-scale criminal activities of organised crime groups. There was no further supporting analysis provided to expand on these risks including which sectors were most impacted and how.

#### *Sector risks/vulnerabilities*

102. In addition to the overview of Saint Lucia's main domestic ML risks, the NRA included an assessment of sector specific risks. The NRA identified that there was inadequate AML/CFT supervision oversight across most of the sectors and recognised this as a vulnerability affecting the Saint Lucia's ML risk. The highest risk sectors for ML risk include: international banks (Class B), international insurance, international private mutual funds, non-government organisations and lawyers. A link between the main predicate offences to these sectors was not included in the sector specific risk assessments.

103. Sectors that are cash-intensive, e.g. domestic banking sector and MSBs, were considered as medium to medium high risk. This finding raised some concerns among the Assessors about the assessment of risk, particularly given that Saint Lucia is a cash-based society where the risk of drugs trafficking and fraud have been identified as high risk/threats for ML. The Assessors therefore reflected this in the weighting assigned to sectors relevant to the analysis in chapters 5 and 6.

#### *CIP*

104. Data extrapolated from the information provided showed that, as at June 2019, a total 180 applications were approved. The CIP Unit indicated there has been a growing interest in the programme. Authorized agents licensed by the CIP Board are responsible for processing applications. The process includes, conducting due diligence procedures and submission of all required documents (including health related documents; police certificates of character; bankers' reference and details of proposed qualifying investment) for the review and consideration by the Board. Authorized agents who are licensed by the Board are not included in the list of entities required to comply with AML/CFT obligations in the MLPA and ATA. There are 24 authorized agents licensed by the Board. The assessment team found that the agents interviewed were aware of some of the possible ML risks associated with the programme. However, the possible ML/TF risks were not identified or assessed during the NRA nor are agents required to comply with the MLPA.

105. Applicants for the CIP are first interviewed by authorized agents and licensed promoters, where all identification information is obtained. Extensive background checks are then conducted on applicants forwarded to the Criminal Investigations Unit (CIU) of the Royal Saint Lucia Police Force (RSLPF) and JRCC to determine whether the applicant is or has been involved in criminal activity or is a designated individual or entity. The CIU has conducted checks on a total of 855 applicants as at

October 10, 2019. Of the applicants subsequently approved, the majority are nationals of jurisdictions such as China, Russia and Pakistan.

### ***Terrorist Financing***

106. Saint Lucia has a very limited view of its TF risk and rated it as low threat, medium high vulnerability and medium overall risk to the country. The NRA refers to ‘data collected’ but this was not further analysed in the risk assessment. Saint Lucia has a CIP program which is promoted in jurisdictions that are at risk for terrorism activities, geographically located next to countries that are at risk for terrorism and have been subjected to acts of terrorism. The ‘data collected’ should include data which shows the extent to which there are linkages with jurisdictions with active terrorist organizations. There is also an absence of TF risk considered within the country’s sector ML/TF risk assessment. The NRA identifies lack of appropriate resources as its main vulnerability affecting its understanding of this risk and includes a recommendation to develop a national strategy on terrorism and TF. This is in line with the findings of the assessment team.

#### ***2.2.2. National policies to address identified ML/TF risks***

107. Saint Lucia authorities have displayed a strong will and commitment to address its AML/CFT risks by putting in place a national policy to address deficiencies identified in the 2008 CFATF Mutual Evaluation Report (MER). This included legislative changes through the introduction of the Anti-Terrorism Act. Nevertheless, further progress is needed to establish a more formal national policy to ensure its activities can be prioritised to address its current ML/TF risks.

108. Saint Lucia has made good progress to develop and agree a National Action Plan following completion of the NRA in March 2019 and begun to draft a national AML/CFT strategy at the time of the onsite. The assessment team found there was a gap in an agreed national strategy being in place which sets out Saint Lucia’s approach to respond to its main risks i.e. for ML related to drugs trafficking and fraud. There is a further gap in Saint Lucia’s strategy to combat TF and PF.

109. The main recommendations identified in the NRA include:

- a. Additional resources to the FIA, FSRA and other key agencies.
- b. Prosecutorial resources to be increased in relation to human resources, IT tools and AML/CFT training.
- c. Develop a national strategy for TF and terrorism, including training to FIA and law enforcement agencies covering police officers, customs officers, FIs and prosecutors.
- d. FIA and FSRA to continue collaborating on joint onsite inspections of the non-bank financial sector.
- e. Establish clear supervisory framework for micro-lenders, MVTs.
- f. Amend ICAEC Agreement Act for accountancy sector to comply with MLPA.
- g. Amend MLPA to include CIP authorised agents as reporting entities.
- h. Amend the CIP Act to mandate authorised agents to comply with MLPA.
- i. Amend the Legal Professional Act to include mandatory AML/CFT compliance

110. Following completion of the NRA, the NAMLOC developed a National Action Plan (hereinafter referred to as “the Plan”) for the period 2019-2020. The Plan was approved by the Cabinet of Ministers in August 2019. Saint Lucia proposes to achieve all the objectives of the Plan within a two-year period, this is ambitious as there are 31 objectives to be delivered by the end of 2020. The Plan considers most of the recommendations above, however in the absence of a national AML/CFT

policy aligned with Saint Lucia's priority ML/TF risks, it is difficult to determine whether and how the 31 objectives in the Plan are prioritised. It is also difficult to assess the feasibility of Saint Lucia's ability to deliver all 31 objectives in the two-year timeframe.

111. Some of the objectives of the Plan includes: update legislation; develop national policy to guide policy makers and technocrats; consult with stakeholders and provide information pertinent to their duties; training and outreach to the judiciary to keep abreast of AML/CFT policies; all public sectors to maintain statistics etc. The need for greater resources at the FIA, FSRA, Director of Public Prosecutions (DPP) is included. However, the objectives do not include co-operation/co-ordination efforts with the ECCB on AML/CFT supervisory matters nor is there any reference about establishing a national TF strategy.

112. Saint Lucia needs to put in place a formal AML/CFT policy which sets out its objectives for combating ML, TF and where relevant PF. This should include setting an achievable timeframe within which relevant authorities can deliver priority actions to make the necessary enhancements to Saint Lucia's AML/CFT system. The formal AML/CFT policy setting out what Saint Lucia wants to achieve should then correspond with the Plan.

113. Progress has been made in delivering some of the objectives in the Plan, such as seeking Cabinet approval. However, at the time of the onsite there had not been enough time to show how many of the 31 objectives had been delivered or were progressing to be delivered.

### ***2.2.3. Exemptions, enhanced and simplified measures***

114. Saint Lucia applies enhanced measures for higher risk scenarios exemptions and simplified measures for lower risk scenarios as set out in the MLPA. The Money Laundering (Prevention) (Guidance Notes) Regulations (MLPGN) are issued by the FIA and require FIs and DNFBPs to identify and assess the ML/TF risks and implement mitigating measures. However, these guidance notes have not been updated since the completion of the NRA, or based on any other risk assessments conducted, to justify enhanced or simplified measures or exemptions.

115. The NRA requires detailed information and analysis whereby higher risk scenarios are identified where necessary and requiring enhanced measures. The same applies to the identification of lower risk scenarios or exemptions. Therefore, there have been no changes made to the MLPA or any other legislation relevant to AML and CFT, where the findings of the risk assessment were used to justify exemptions, require application of enhanced measures for higher risk scenarios or simplified measures for lower risk scenarios. The assessment team did not find any other instances, separate to the NRA, where there has been occasion for Saint Lucia to apply enhanced or simplified measures, including consideration of exemptions to activities considered by the FATF.

### ***2.2.4. Objectives and activities of competent authorities***

116. There is a general lack of clear roles and responsibilities among the main AML/CFT authorities, which has created an absence of established objectives and activities to effectively combat ML/TF risk. Seven (7) entities which met the FATF definition of competent authority were identified by the Assessors. These included: i. the Attorney General's Chambers (AGC); ii. FIA; iii. RSLPF iv. Inland Revenue Department (IRD); v. Customs and Exercise Department (CED), vi. DPP and vii. ECCB.

117. The functions of the FIA in the context of Saint Lucia's AML/CFT system are significant in comparison to the other competent authorities. The FIA functions as the FIU, is the lead for ML investigations and has AML/CFT supervisory responsibility for all the FIs and DNFBP sectors operating in Saint Lucia. It is also involved in developing policy changes to the MLPA and MLPA Guidance. Given the extensive remit of the FIA, there are concerns that the Board level commitment

and current resourcing at the FIA did not demonstrate that the authority can successfully achieve all these functions effectively.

118. The activities and objectives of the FIA, RSLPF, IRD, CED and DPP broadly reflect the ML/TF risks findings identified in the NRA. As highlighted above, there are resource constraints affecting many of these authorities that affect the extent to which these agencies objectives and activities effectively respond to the evolving ML/TF risks impacting Saint Lucia.

119. The assessment team was informed, and the data provided by the authorities confirmed, that there has never been a SAR relating to TF filed in Saint Lucia. Irrespective of the absence of TF filings, there is unclarity about the objectives and activities of competent authorities, regarding TF and TF investigations, to ensure that were a TF related issue arise, there is an adequate process in place to respond in Saint Lucia. The FIA has the responsibility for receiving SARs related to TF (as mandated under the ATA). However, the RSLPF has responsibility for investigating TF. The extent to which either the FIA or RSLPF are involved in TF related objectives and activities was not demonstrated and found to be a key gap together with the lack of a clear response framework for TF.

### *Supervisors*

120. There is a lack of clarity in the AML/CFT supervisory oversight roles and responsibilities of the four (4) supervisors that have a regulatory remit in Saint Lucia – FIA, FSRA, ECCB and Eastern Caribbean Securities Regulatory Commission (ESCRC). The Board-level commitment and current resourcing at the FIA did not demonstrate that this entity can successfully achieve its supervisory functions effectively.

121. Whilst the MLPA sets out an AML supervisory mandate for the FIA’s Board, the FIA has not carried out any AML/CFT supervisory inspections of the FIs and DNFBPs since 2014, owing to resource constraints. The FIA has therefore been unable to fulfil its supervisory functions.

122. The ECCB received new powers through amendments to the MLPA in April 2019 to conduct AML audits and provide training, however it advised the assessment team that it did not have an AML mandate.

123. The FSRA has not been designated by Saint Lucia as a supervisory authority for AML/CFT, however, it plays a prominent role in Saint Lucia’s AML & CFT regime. This prominent role is demonstrated through for example, its representation at NAMLOC, being a member of the FIA Board and having FSRA AML guidelines and has provided training to the entities it supervised. Therefore, its formal AML role should be clarified through national policies.

124. A clear AML/CFT supervisory framework needs to be put in place setting out which supervisory authorities have a designated AML/CFT supervisory oversight responsibility. This should include the requirement to ensure the relevant sector for which they have supervisory oversight, comply with their AML/CFT obligations, and where they identify weaknesses or breaches, these should be addressed.

125. The objectives and activities of the Equities Department in relation to NPOs and the work of the NPO Committee was not clear and co-ordinated based on discussions with the authorities, with a lack of clarity driven in some circumstances due to ongoing structural changes resulting in legacy issues.



### ***2.2.5. National co-ordination and co-operation***

#### ***Strategy & Policy***

126. Saint Lucia's national AML/CFT co-ordination efforts are led by the NAMLOC that was renamed in February 2019. This is an established body set-up initially to oversee the implementation of measures to cure the deficiencies identified in the 3rd round mutual evaluation report.

127. The core membership of NAMLOC includes the following five (5) out of the seven (7) recognised competent authorities: the AGO, FIA, RSLPF, CED and IRD. In addition, the FSRA is also a core member of NAMLOC. The DPP and the ECCB are the other competent authorities and were not members of NAMLOC. The authorities nevertheless advised that the DPP and the ECCB were consulted and attended meetings of the NAMLOC. However, given the key role played by the DPP and ECCB within the AML/CFT framework, the basis on which they were not included as members of the NAMLOC is unclear.

128. The NAMLOC has primarily focussed on preparing for Saint Lucia's fourth-round mutual evaluation which included preparing the country's first ML/TF NRA and raising awareness of the FATF's Recommendations. A Plan has been introduced by the NAMLOC, however, work on the country's AML and CFT strategy remains in progress.

#### ***Operational / Law enforcement***

129. The Inter Agency Intelligence Committee (IAIC), established in 2010, is another key co-ordination mechanism focusing on operational activities through joint investigations. The NAMLOC advised that while some of its members sit on this intelligence committee, there are no links between the two committees.

130. Operationally, the country has taken advantage of a pre-existing MOU between LEAs and established the IAIC to co-ordinate targeted activities, foster co-operation and exchange information and intelligence where appropriate. The operational activities of the IAIC are very positive, and the LEAs have demonstrated that they are well-co-ordinated in bringing together their specific areas of expertise to conduct ML investigations. There are examples of cases that have resulted in successful prosecutions and confiscations. The LEAs demonstrated an awareness of the threats posed from neighbouring jurisdictions in relation to drugs trafficking, including where gateways led to the European markets for illicit activity. This showed that LEA had the capacity to identify and be aware of ML from operational activities, for example cash seizures at the ports.

#### ***Supervision***

131. Co-operation and co-ordination efforts on AML/CFT issues are not as well established among the four (4) supervisors operating in Saint Lucia. The FIA as the main AML/CFT supervisory authority does not have mechanisms to co-ordinate its supervisory efforts with the ECCB and the Eastern Caribbean Securities Regulatory Commission (ECSRC). This is an area of vulnerability highlighted in the NRA. This has an adverse effect on the supervisory oversight of the most active sector in Saint Lucia, the domestic banks.

132. There is also a concern that the ECCB was given additional powers, in May 2019, to undertake AML audits of domestic banks including Commercial Banks. However, the ECCB raised grey areas in the way the amendments had been made to the MLPA to grant it the additional powers and informed the Assessors that further clarification is being sought on its role. This did not demonstrate that the ECCB had been consulted, when the changes had been made, through appropriate co-ordination between the relevant supervisors.

133. The FSRA has mechanisms, in the form of MOUs, to work with the FIA and ECCB and it has demonstrated that it uses these to fulfil its prudential supervisory activities.

### *Other mechanisms*

134. There were no co-ordination mechanism(s) identified in place to facilitate taking action to address TF risks or to implement targeted financial sanctions for TF and PF.

#### **2.2.6. Private sector's awareness of risks**

135. FIs have a fair understanding of their ML/TF risks and compliance obligations, however the level of understanding is varied across the different financial sectors. The commercial banks have the most established view of ML/TF risks specific to their sector. The remaining sectors generally accepted the findings of the NRA and were not able to provide insights into their understanding of the ML/TF risks based on their own experience. The understanding of risks by the private sector is focussed on the procedural aspects of the AML/CFT obligations rather than why they are important or necessary. The DNFBP sectors understanding of risks and subsequent obligations to mitigate specific vulnerabilities is nascent.

136. Discussions with the associations representing both the FI and DNFBP sectors confirmed that they did not have a collective awareness of the ML/TF risks affecting their sectors. Trade bodies highlighted that ML/TF risk and compliance with the AML/CFT obligations has generally not been a priority area of focus for them, however some of them have begun to consider AML/CFT risks as a result of their participation in the NRA.

137. The findings of the NRA have been, and continued to be, in the process of being shared by NAMLOC and the private sector to ensure there is an appropriate level of awareness of the issues that affect them. These have been communicated to representatives via email and during caucus meetings therefore the Assessors cannot confirm whether all FIs and DNFBPs have access to the findings of the NRA.

138. The NAMLOC has played a key role in raising awareness of the FATF standards through the work conducted to develop the NRA. This has included participation from public and private sector representatives. Interviews with the private sector highlighted, in most instances, that the recent NRA exercise was the first time they had been engaged with the work of the NAMLOC. Representatives from those DNFBP sectors that were not aware of their risks noted that the work on the NRA had the effect of raising their awareness of the ML risks to which they were exposed.

139. While public awareness is not a specific requirement of the FATF standards, national activities have also ensured that there was focus on sensitising the public about ML and TF risks.

#### *Overall conclusions on IO.1*

140. **Saint Lucia is rated as having a low level of effectiveness for IO.1.**

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### 3.1. Key Findings and Recommended Actions

##### Key Findings

##### **Immediate Outcome 6**

- a) Saint Lucia has demonstrated that it uses financial intelligence for investigations, to develop evidence and to trace criminal proceeds related to ML. This has been facilitated by an Inter-Agency Intelligence Committee that demonstrated the positive results that can be derived from the sharing of financial intelligence, analyses, relevant information and conducting joint investigations.
- b) The FIA lacks the necessary resources to perform its functions to a greater level of effectiveness. Lack of resources at the FIA resulted in lost possibilities to better the system of gathering, analysing and using financial intelligence.
- c) The FIA is serviced by a pool of officials from the competent authorities (RSLPF, CED and IRD) through which it accesses information. As it is not necessary for these officials to be directly assigned to the FIA only officials from the RSLPF have been seconded. Whilst this has resulted in the FIA having direct access to the information held by the RSLPF, the absence of representatives from IRD and CED can have the effect of stymieing access to related information.
- d) The FIA does not conduct strategic analyses and the operational analyses conducted are limited to prioritising the SARs received. There were no samples of the FIA's disseminations available for an independent assessment of the quality of the analytical product to be carried out.
- e) The RSLPF is not a regular user of financial intelligence from the FIA because, as a policy, it does not request SAR information in all proceeds generating predicate offences investigations. The CED and IRD are accessing and utilising financial intelligence to limited extent.
- f) The FIA has no records or system in place for providing feedback to FIs and DNFBPs and receiving feedback from competent authorities that use the FIA's financial intelligence.

##### **Immediate Outcome 7**

- a) Saint Lucia is successfully identifying potential ML cases primarily from information on cash seizures supplied by the RSLPF and the CED. The FIA is the sole law enforcement agency investigating ML cases. Although the results of the FIA's ML investigations are good, from a country perspective, the number of ML investigations is low.

- b) The thresholds for referring cases to the FIA and the factors used to prioritize potential ML investigations are not the same for the relevant competent authorities and are not guided by the country's risk profile.
- c) Different types of ML cases are prosecuted to a very limited extent and prosecutions have mostly been for stand-alone ML.

#### **Immediate Outcome 8**

- a) There are some characteristics of a functioning system which results in the confiscation of proceeds of crime, instrumentalities and property of equivalent value. However, the majority of confiscated property is cash which has been confiscated through civil cash forfeiture proceedings. While there has been some confiscation of other property through the confiscation regime, these results are relatively modest and are not consistently with the country's ML risk profile.
- b) The police do not pursue confiscation investigations; instead, this aspect is referred to the FIA. Given the limited resources of the FIA coupled with the extensive responsibilities that they are obligated to perform, leaving the conduct of confiscation investigations solely to the FIA has a limiting effect on the number and range of these investigations.
- c) The pursuit of criminal confiscation is adversely affected by the backlog that obtains in the Criminal Division of the High Court.
- d) Civil cash forfeiture proceedings are conducted parallel to ML prosecutions and are pursued even if the ML prosecution is unsuccessful. Therefore, even where criminal confiscation cannot be obtained due to the absence of a conviction, confiscation of criminal proceeds and property can still be obtained through civil cash forfeiture proceedings. However, these proceedings are limited to the confiscation of cash only and do not extend to other types of property.
- e) The Crown Prosecution Service utilizes police prosecutors to conduct cash forfeiture proceedings which demonstrates an efficient use of their human resources and enhances the development of competencies within the Crown Prosecution Service.
- f) Confiscation of undeclared or falsely declared cross border movements of currency and BNIs is vigorously pursued by the Customs and Excise Department. A declaration system has been adopted for incoming cross border movements while a disclosure system has been adopted for outgoing cross border movements.
- g) However, there is no systematic approach to detecting outgoing cross border movements. Further, the legislation is silent on the threshold for outgoing cross border movements.
- h) Forfeited assets are not managed so that the proceeds can be realised.

#### **Recommended Actions**

##### **Immediate Outcome 6**

- a) Prioritise and increase the financial, technical and human resources of the FIA so that it can better carry out its core FIU functions, including conducting analyses.
- b) Officials from the Customs and Excise Department and Inland Revenue Department should be identified and assigned directly to the FIA. Immediately following the assignment of these officials,

a manpower and skills audit should be carried out to determine the analytical skillset required, in order to either assign additional officials and or have persons from the private sector with suitable qualifications and experience hired, to serve as analysts.

- c) Undertake a review of the analytical process and develop an applicable methodology involving process augmentation, skilled human resources, data and technology for conducting strategic and operational analyses which directly meets the operational needs of the FIA's financial investigators, the RSLPF and other relevant competent authorities. Strategic and operational analyses should be conducted in a timely manner in line with the resulting methodology.
- d) The Major Crime Unit of the Royal Saint Lucia Police Force should make greater use of financial intelligence by establishing SOPs on utilising the investigative tools, leveraging the financial intelligence and related information held in SARs from the FIA, leveraging related information held by competent authorities, to assist it in identifying predicate offences where proceeds may be recoverable.
- e) The FIA should develop and implement a system for providing feedback to reporting entities and competent authorities on the accuracy of the SARs reported and the usefulness of the financial intelligence disseminated.
- f) Collect data on the financial intelligence and related information shared between the FIA and the Inter Agency Intelligence Committee.
- g) Address the legislative lacunae regarding the structure and composition of the FIA and the functions of the Board vis a vis the functions of the Secretariat to the Board. This should be achieved by:
  - i. Establishing the Board of the FIA in legislation and setting out clear and distinct administrative functions that are separate and apart from the current FIU and law enforcement functions of the Authority;
  - ii. Clarifying the relationship between the Director and the Board;
  - iii. Setting out the functions for the Director of the Authority;
  - iv. Ensure the composition of the Board actually reflects the legislation under which it is established.

#### **Immediate Outcome 7**

- a) Increase the number of financial investigators dedicated to ML investigations.
- b) Co-ordinate and set thresholds for referring cases to the FIA and factors for identifying and prioritising ML investigations with all competent authorities.
- c) Combine the thresholds and factors for identifying and prioritising cases in line with Saint Lucia risk profile with a focus on different types of ML and with a focus on identifying cases involving legal persons.
- d) The Major Crime Unit should be mandated to conduct parallel financial investigations on predicates with a view towards identifying potential ML cases.

#### **Immediate Outcome 8**

- a) The police, particularly the Drug Squad, Criminal Investigations Unit and Major Crime Unit, should be trained and given the necessary powers or tools to conduct confiscation investigations in order to increase the number and range of these investigations.
- b) Increased resources should be allotted to the Criminal Division of the High Court to reduce the backlog which acts as a deterrent to the pursuit of criminal confiscation.
- c) The Royal Saint Lucia Police Force, Financial Intelligence Authority and the Director of Public Prosecutions should consider implementing a policy that the recovery of the proceeds and instrumentalities of crime and instrumentalities and property of equivalent value should be considered from the onset of an investigation or prosecution in all relevant matters. This would facilitate the early identification of appropriate matters which would enable authorities to take the appropriate steps for these matters to be pursued.
- d) The Customs and Excise Department should develop a standardized policy that governs the detection of outgoing cross border movements.
- e) The responsibility to manage and where necessary realise the value of restrained, forfeited/confiscated property should be assigned to a specific entity or particular personnel.

141. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

### **3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)**

#### ***3.2.1. Use of financial intelligence and other information***

142. Saint Lucia's competent authorities do not make extensive or regular use of financial intelligence and other relevant information to identify investigative leads, develop evidence in support of investigations and trace criminal proceeds related to ML, TF and associated predicate offences. This conclusion is based on the information Saint Lucia produced in support of its effectiveness submission, statistics, including statistics on SARs and other information obtained by the assessment team throughout interaction with Law Enforcement Agencies (LEAs) and other officials during the onsite visit.

143. The Financial Intelligence Authority (FIA) is the designated agency with the responsibility for investigating the proceeds of criminal conduct (ML, the associated predicate offences and TF), whilst the Major Crime Unit (MCU) of the Royal Saint Lucia Police Force (RSLPF) has similar responsibilities in relation to financial crimes and TF. The Inland Revenue Department (IRD) is charged with the investigations of tax evasion offences. In practice however, the IRD has limited its remit to non-criminal tax evasion offences.

144. The FIA is an autonomous hybrid type FIU, established in 2003, under section 4 of the Money Laundering Prevention Act (MLPA). It is the central agency in Saint Lucia responsible for operationalising the country AML/CFT infrastructure. As a competent authority, the FIA has investigative and supervisory roles. Its functions include the receipt and analysis of suspicious transactions relating to ML filed by FIs and persons engaged in other business activities (DNFBPs). Embedded within the FIA is a law enforcement department which is staffed by officers from the RSLPF.

The law enforcement department's functions include the investigation of ML in Saint Lucia. The FIA disseminates information, including to its own law enforcement department, relating to criminal conduct.

145. The FIA is comprised of five (5) persons, appointed for a two-year term by Saint Lucia's Cabinet. These appointees are: the Chairman; a representative from the Financial Services Regulatory Authority (FSRA); a representative from the Attorney General's (AG) Chambers; a law enforcement expert and an accounting expert. The five (5) individuals are representatives from key competent authorities and this results in an inter-agency connection at the management level of the FIA. The FIA itself is serviced by a Secretariat. That Secretariat is comprised of the Director (who is the CEO of the FIA) and other staff. The MLPA makes no provision for a representative from the FSRA to be appointed as a member of the Authority. In fact, whilst section 4 (2) (b) of the MLPA refers to the FIA consisting of a representative of the Financial Sector Supervision Unit (FSSU) the legislation is unclear whether the FSSU is the FSRA.

146. In reality, the structure of the FIA, referred to as "the Authority" in the MLPA, that was implemented, is different from the legislative structure prescribed at sections 4 of the said MLPA because the Secretariat, with the Director as the CEO, has been carrying out the functions of the Authority contrary to section 4 (3) of the MLPA which requires the Secretariat to service the Authority. Additionally, the functions that are bestowed on the Authority under section 5 of the MLPA, including the receiving of SARs, are being carried out by the Secretariat and not the Authority.

147. The functional structure of the FIA during the onsite comprised of the Board of Directors and the Executive Director forming the management of the FIA. The law enforcement department of the FIA's Secretariat was comprised of a deputy director, an analyst (vacant) and three (3) financial investigators. The supervision department is comprised of two (2) regulators who started in June 2019 after a four-year absence of any regulator within the FIA. The administration department is comprised of an executive officer, a secretary and an office assistant.

148. The provisioning of resources for the Authority is insufficient and not prioritized, given the central role of the Authority in Saint Lucia's AML/CFT infrastructure. This can have a deleterious effect on the country's implementation efforts as evidenced, in part, in the Authority's inability to conduct analyses on the majority of SARs it receives (see table 3.4 below). The current Chairman was appointed in March 2019 thereby filling the substantive position for the first time in three (3) years. Prior to his appointment, the post was held by an acting Chairman. During the financial year 2016/2017 there was no Authority (Board of Directors) in place owing to a lack of appointments brought about by the change of Government.

149. Section 4 (3) of the MLPA provides for the FIA to be serviced by a secretariat comprised of officials from the RSLPF, Customs and Excise Department (CED) and the IRD serving as financial investigators. During the onsite, the RSLPF officials were directly assigned to the FIA through secondment. The CED official, who was also previously directly assigned to the FIA, had recently retired and the CED was actively seeking to replace that official. The IRD's position at the FIA has been vacant for five (5) years. All these officials retain their substantive powers whilst servicing the Secretariat.

150. The current Director of the Secretariat has been in the position since 2003, on an initial two-year Contract, which is renewed every two years, by the AG, on the advice of the Chairman of the Authority. This Contract is in keeping with the contractual arrangement for professionals in Saint

Lucia's public service. Sections 4 and 5 of the MLPA makes no provisions for procedures or other arrangements regarding the appointment and Contract renewal of the Director leaving this at the sole discretion of the Chairman. The dismissal of the Director is accounted for in his Contract.

151. The insufficiency of resources at the FIA is mentioned a few times in this MER. Also, Saint Lucia's National Risk Assessment (NRA) has identified the insufficiency of resources as a serious issue. At the onsite, Saint Lucia provided information on the 'proposed budget' vs the 'allocated budget' since 2014. The gap between the proposed budget and the allocated budget was small or zero. Still, for several years there was no regulator or IRD official at the FIA, and recently one (1) of the four (4) financial investigators became the FIA analyst which resulted in the strength of the remaining financial investigators being reduced to three (3). Because of the above the Assessors are of the opinion that the budget is not related to the FIA mandate and is likely to be formed bearing in mind the chance and/or expected possibilities of a higher allocated budget.

152. The primary source of financial intelligence for the FIA are the SARs contained in its own database. The FIA, however, also has access to financial intelligence and other records held by FIs and DNFBPs which it can access by utilizing Director's Letters. In this regard, during 2016 and 2017 the FIA made 940 and 957 requests for additional information, respectively to FIs and DNFBPs utilizing Director's letters. No statistics on requests made prior to 2016 or for 2018 were made available. The FIA can and did utilize search warrants, compulsory production orders and its broad powers under section 5 (a) of the MLPA to access financial intelligence and information. During the review period 40 search warrants were executed. The FIA has direct access to financial intelligence and relevant information from the databases of the Transport Board and the National Insurance Corporation (NIC) but was unable to demonstrate that it has used such access to carry out its functions.

153. Contextually, because section 4 (4) of the MLPA provides for RSPLF, CED and IRD officials to retain their powers when servicing the FIA, vicariously the FIA has direct access to the databases of the RSLPF, CED and IRD. Since there are no CED and IRD officers currently assigned to the FIA, only indirect access is available. This results in more formal requests from FIA to IRD and CED (see table 3.1). The continued presence of RSLPF officers within the FIA and their direct access to RSLPF databases results in a low number of formal requests from the FIA to the RSLPF. The FIA can also access relevant information from Social Security, Registry of Companies and Intellectual Property (ROCIP), the Courts, Land Registry, and the Electoral Department, through formal requests.

154. The FIA made 80 requests for financial intelligence and related information to competent authorities during the period 2013 – 2018, in order to carry out its functions and conduct ML investigations. Two (2) prosecutions were initiated as a result of financial intelligence and relevant information discerned from two (2) SARs submitted by FIs and this resulted in the prosecution of one (1) ML and one (1) fraud case. Additionally, there were 15 ML investigations, 14 of which utilized financial intelligence and relevant information to trace and eventually seize the related assets. The work of the FIA and the use of financial intelligence and relevant information contributed to 13 persons being convicted for ten (10) ML offences, see box 3.6 for an example.



Table 3.1. FIA's formal requests for financial intelligence and related information

AGENCY	2013	2014	2015	2016	2017	2018	TOTAL
RSLPF	0	0	0	1	0	0	1
IRD	1	6	9	10	19	22	67
FSRA	0	0	0	0	2	0	2
CED	1	0	1	2	2	4	10
<b>TOTAL</b>	<b>2</b>	<b>6</b>	<b>10</b>	<b>13</b>	<b>23</b>	<b>26</b>	<b>80</b>

155. Table 3.1 reflects the number of requests from 2013 to 2018 for financial intelligence and related information made by the FIA to competent authorities. The information requested by the FIA is mostly related to tracing of assets, identification of Ultimate Beneficial Owners (UBOs), bank information, immigration information and criminal records. Included in the requests to the CED were three (3) formal interactions where the FIA requested financial intelligence and relevant information relative to import and export duties paid by individuals under investigation. During the same period, 1045 SARs were received but only 199 were analyzed. The information gathered pursuant to the requests in table 3.1 was in relation to financial intelligence and relevant information required to advance both the analytical process and the 15 ML investigations done by the FIA. There is no clear split between the information accessed for analytical purposes and for investigation purposes.

156. From the RSLPF perspective, the MCU takes the lead in investigating predicate offences and TF. Financial intelligence can be obtained by the LEAs from the FIs and DNFBPs using investigative tools, e.g. production orders. The RSLPF was unable to demonstrate to what extent these powers have been used. During the period 2013 - 2017 the RSLPF made 11 requests for financial intelligence from the FIA. The RSLPF also made 40 "AML and other requests" to competent authorities related to ML investigations from outside their jurisdiction. For the same period there were 1,461 (table 3.2) proceeds generating predicate offences listed before the Courts. The groups 'fraud' and 'drugs' are high-risk predicate offences for ML according to the NRA and represent 559 of the 1,461 cases. The data provided and referenced in the previous sentences in this paragraph shows that the RSLPF made negligible use of financial intelligence and related information in its operations and investigation of predicate offences, even when a comparison is made with the high-risk predicate offences. There has never been a TF investigation so the RSLPF has not had the opportunity to use financial intelligence in such investigations (see IO9).

Table 3.2. The Number of Persons Convicted of Predicate Crimes &amp; requests for financial intelligence made by the RSLPF

YEAR	2013	2014	2015	2016	2017	TOTAL
<b>Robbery</b>	79	35	35	271	48	<b>468</b>
<b>Fraud</b>	9	7	21	120	78	<b>235</b>
<b>Drugs</b>	14	39	30	214	27	<b>324</b>
<b>Stealing</b>	18	33	24	175	41	<b>291</b>
<b>Burglary</b>	9	6	8	72	14	<b>109</b>
<b>Forgery</b>	1	0	6	24	3	<b>34</b>
<b>TOTAL</b>	<b>130</b>	<b>120</b>	<b>124</b>	<b>876</b>	<b>211</b>	<b>1,461</b>
<b>REQUESTS</b>	0	3	5	2	1	<b>11</b>

157. The IRD, though designated with investigative authority for tax evasion offences under section 23, 99, and 141 of the Income Tax Act Cap. 15:02, reported that they do not conduct criminal tax evasions investigations. As such they are not a consumer of financial intelligence.

158. During the period 2013 to 2018 the CED made three (3) requests for financial intelligence from the FIA. One of the requests was related to a cash seizure and this spawned several spontaneous disclosures. The resulting feedback from the FIA led to the CED making a formal request from its foreign counterparts where evidence of under invoicing was discerned. The FSRA made just two (2) requests for financial intelligence from the FIA.

159. In 2010 Saint Lucia established the Inter-Agency Intelligence Committee (IAIC) made up of the FIA, Central Intelligence Unit (CIU)/RSLPF and CED. The scope of the IAIC is to enhance intelligence and information sharing amongst law enforcement agencies and to use information to support and to facilitate individual or joint agency investigations, operations and prosecutions of criminal conduct. The data in the tables 3.1 and 3.2 do not include spontaneous and informal sharing of information in the IAIC. The IAIC could not evidence this with data on the amount of information shared within the Committee. The IAIC's SOP has a provision for quarterly reports that should include data on the information shared in the IAIC. This SOP was signed just prior to the onsite. The IRD is part of the SOP and is the only authority that has not yet signed the SOP. During the onsite the first report of the IAIC still had to be produced.

**Box 3.1 Case: Example of co-operation between the FIA and competent authorities to use financial intelligence.**

The FIA received SARs relating to fraudulent activity involving the use of stolen financial information. As a result of joint investigations and operations involving FIA, RSLPF and CED officers, in addition to financial information obtained through MLA, enough evidence was obtained which resulted in arrests and the disruption of an organized crime network.

160. There was no data available to the Assessors on the use of financial intelligence outside of that which is produced by the FIA. Qualitative and quantitative data play an important role in demonstrating the strength, weakness and level of effectiveness of the AML/CFT system. Therefore, an appropriate method of capturing the use of financial intelligence is necessary. The recently signed IAIC SOP represents a good initiative on gathering statistics. Therefore, executing this SOP and finalizing the quarterly reports is a good start but will not cover all the weaknesses discerned in this paragraph.

161. Data and information provided by Saint Lucia and gleaned from discussions with the competent authorities during the onsite has evidenced that the RSLPF, CED and the FSRA requested financial intelligence from the FIA to an insignificant extent. Added to this, a request for financial intelligence and relevant information from the FIA is not made in every proceed generating predicate offence, including predicate offences that are deemed to be of a ML risk. All the foregoing information supports the conclusion that competent authorities are not fully utilizing the FIA to obtain financial intelligence and relevant information to conduct their functions.

162. Officers from IRD, RSLPF, CED and the FIA are trained in the use of financial intelligence. The FIA also provides training to new police officers on ML investigations, cash seizures and the use of financial intelligence.

### 3.2.2. SARs received and requested by competent authorities

163. The FIA receives all SARs submitted by FIs and DNFBPs and is the only agency authorised to do such. Information provided by the FIA demonstrate that SARs contain relevant and valuable information and the FIA has used them to advance its functions. Table 3.3 shows that the FIA receives SARs from a cross section of reporting entities. The information also shows that the reporting level, by these entities, has been consistent since 2014.

164. The FIA has a SOP dealing with the handling and processing of SARs. The SARs are submitted in prescribed forms and hand delivered through designated points of contact. On receipt of a SAR by the FIA, it is entered into a database and subsequently analysed. It is expected that in the near future, FIs and DNFBPs will be able to submit SARs electronically through secured means with encryption mechanisms. Digital filing of SARs might also increase the quality and quantity of SARs filed and help to more efficiently use the limited human resources at the FIA.

165. There is a concern however that the FIA has not been able to glean fulsome financial intelligence either from the information it receives or potentially from information that it can access because: some entities have not been reporting SARs; the FIA's opinion on the quality of the SARs it receives; and the FIA's inability to massage the SARs it receives through analyses. This opinion is bolstered by the fact that for the years 2016 and 2017 the FIA made a total of 1,897 requests to FIs using its Director's letters, indicative of a blanket approach whereby generic information was requested from all sources as opposed to a targeted approach driven by analyses, intelligence and risk. Table 3.3 shows the shows the number of SARs received by the FIA:

Table 3.3: Numbers of SARs received by the FIA from reporting entities

REPORTING ENTITIES	2013	2014	2015	2016	2017	2018	TOTAL
<b>Domestic banks</b>	108	151	81	148	149	120	<b>757</b>
<b>Casinos</b>	27	32	8	19	13	14	<b>113</b>
<b>International Offshore Banks</b>	6	13	19	36	7	13	<b>94</b>
<b>Money Remitters</b>	0	0	0	19	16	7	<b>42</b>
<b>Credit Unions</b>	3	5	5	5	5	11	<b>34</b>
<b>Lending Agencies</b>	0	1	0	0	0	9	<b>10</b>
<b>Attorneys</b>	3	2	0	0	0	1	<b>6</b>
<b>Insurance</b>	0	0	2	0	1	2	<b>5</b>
<b>Registered Agents</b>	0	0	0	0	0	1	<b>1</b>
<b>Total</b>	<b>147</b>	<b>204</b>	<b>115</b>	<b>227</b>	<b>191</b>	<b>178</b>	<b>1062</b>

166. Schedule 2 part A of the MLPA contains a list of all the FIs which have a duty to report SARs to the FIA. Notwithstanding, licensed trust, licensed dealer or investment adviser and postal courier services have not been reporting SARs.

167. Schedule 2 part B of the MLPA contains a list DNFBPs which have a duty to report SARs to the FIA. The information on effectiveness provided by the Authorities shows that, for the DNFBPs sector, only casinos, registered agents and attorneys have reported SARs to the FIA. It therefore suggests that a large part of the DNFBP sector is not reporting SARs to the FIA. Some of the entities which are not reporting SARs include: real estate businesses (NRA medium high risk), car dealerships (NRA medium risk), jewellery businesses (not assessed in NRA) and (firms) accountants (NRA medium risk). The lack of reporting in this sector may be due to several factors including not being properly supervised for AML/CFT purposes.

168. The Assessors were informed by the FIA that in general the quality of the SARs received from the FIs is reasonable, however in a few cases there is room for improvement in their quality. In a few cases, the FIA received SARs with missing information which necessitated the sending of follow-up questions to the reporting FI to complete the SAR. Despite this fact, the Assessors are of the opinion that the provision of feedback from the FIA to the FIs and DNFBPs has not been consistent or formalised nor are there records to support this. Feedback was provided during training sessions conducted by the FIA.

169. There are obstacles against achieving better quality and increased reporting of SARs by FIs and DNFBPs. The Assessors were informed that two (2) Court rulings on the unconstitutionality of administrative fines made it impossible for the FIA to levy fines against FIs and DNFBPs for not filing SARs with the FIA.<sup>16</sup> Next to training, guidance, feedback on SARs and onsite inspections of FIs and DNFBPs, in order to motivate them to file SARs with the FIA, it is necessary to have sanctions in place to address the non-reporting SARs.

170. As a policy, the MCU of the RSLPF does not request SAR/financial information from the FIA in all proceeds generating predicate offences investigations. This was discerned during the onsite whereby the RSLPF advised that they were minded of the limited capacity of the FIA and as such would look at the solvability of the investigations, the value of the proceeds and other priorities when considering whether to request SAR information.

171. The sharing of cross-border cash and BNIs declarations information is the subject of a generic MMOU between the FIA and CED. Consequently, the FIA is not automatically informed about suspicious cross-border transportation occurrences and does not currently have direct access to any such data. Instead, the meetings of the IAIC and special points-of-contacts are used to share such reports. There is no data available on the reports that have been shared. CED gathers other relevant information using scanners and sophisticated equipment.

172. The FIA has been given powers under the MLPA (section 16.1.L) which they have not employed, such as the power to request FIs and DNFBPs to report cash transactions above ECD 25,000. This is especially useful given that the assessment team was informed that most of the proceeds generating crimes are cash-based and 20% of the collected rent is in cash and 80% in cheques. Also, the NRA indicates that cash smuggling is one of the main sources of proceeds generating crimes in Saint Lucia. Used car dealers are in general also cash intensive businesses, bearing in mind that cars are in general a popular destination of criminal fund, this might be a risk for ML.

173. Table 3.3 shows that 1062 SARs were received by the FIA whilst the next table (3.4) shows the number of SARs analysed by the FIA.

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<sup>16</sup> ECSC, High Court of Justice, Saint Vincent and The Grenadines, claim no. svghcv2018/0056, &, Court of Appeal, Dominica, civil appeal no. 5 of 1997

Table 3.4: Numbers of SARs analysed by the FIA

Analyzed	2013	2014	2015	2016	2017	2018	Total
SARs	40	91	21	17	30	Unknown	199

199 SARs were analysed, this represents 19% of the SARs received. The following factors would influence the need to further investigate SAR information provided: adequacy of information; defensive filing, which is based on a reaction on information received. For analysing SARs, the FIA has a checklist for gathering financial intelligence using the access to data as described previously.

174. The following table (3.5) shows statistics on ML and predicate offences investigations which were either started with or were assisted by FIA financial intelligence extracted from SARs.

Table 3.5: Numbers of investigations started/supported by SARs:

# of assisting SARs	2014	2015	2016	2017	2018	2019	Total
SARs	6	2	4	8	6	3	29

The criminal cases investigated were related to the predicate offences of fraud, tax evasion, human trafficking, stealing, drug trafficking, possession of fraudulent document and false cash declarations. Five (5) ML investigations were started as a result of information obtained from SARs.

175. An example of an investigation started from information obtained from a SAR:

**Box 3.2 Case: False Declaration on Source of funds (MLPA section 21)**

A SAR was submitted in January 2019. The SAR involved currency exchange of €13,000, an equivalent of XCD37,498.11 which was credited to the account of the customer. When questioned by the bank during the transaction, the customer stated that the funds were from the sale of a vehicle and he completed a source of funds declaration form. Supporting documents were requested but he could not provide them and promised to return. The customer returned with a copy of the alleged buyer's driver's licence and a signed copy of a receipt. The customer subsequently returned to the bank to deposit €6,000 and stated that the cash was from the balance on the sale of the vehicle and brokerage fees from a client. He gave the bank supporting customs documents.

This matter was assigned to a FIA financial investigator, the investigation revealed that the alleged buyer never purchased a vehicle from the customer. The vehicle was still in the possession of the customer and the vehicle is still registered in the customer's name. The name of the alleged buyer of the motor vehicle was detailed on the customs documents as importer. Enquiries revealed that the alleged buyer never imported anything. This matter is active and prosecution is expected.

176. The FIA provides training and during meetings sensitises the relevant LEAs on the use of financial intelligence. Within the relevant LEA the FIA has established Point-of-Contacts for disseminating intelligence reports. The IAIC is also an important platform for distributing financial intelligence extracted from SARs. However, the RSLPF is not asking for financial intelligence in all money generating predicate offences from the SARs received by the FIA. There is also no policy on this. Further there is no SOP for all law enforcement officers and other users of FIA intelligence on how to access and request SARs information from the FIA.

### ***3.2.3. Operational needs supported by FIU analysis and dissemination***

177. The FIA's financial analysis and dissemination supports its own operational needs and those of relevant LEA to a limited extent. This includes the investigations of ML, associated predicate offences

and the identification, tracing and confiscation of assets. Although a recently appointed FIA analyst attended Egmont training on analysis, the FIA has insufficient human resource and information technology to fully perform its operational and strategic analysis functions. By way of a case example, the Assessors were provided with information to show that financial intelligence has been analysed and disseminated to successfully investigate ML and identify new targets and assets identification. See box 3.3 for an example of such case.

178. Saint Lucia analytical process was updated in the September 2019 FIA SOP for managing SARs. SARs are delivered to the Secretariat of the FIA under confidential cover. At the FIA they are opened, no later than the following day, by the Secretary to the Director who also logs them and assigns a sequential registration number before passing the SAR to the Director who decides whether any urgent action is required by the FIA. The SAR is then passed to the senior analyst who searches the FIA's SARs database and other external databases before either allocating the SAR to an analyst for initial inquiries and assessment or directing that the SAR be incorporated with an existing case. The SOP provides for five (5) possible outcomes from the FIA's analysis i.e. i) No further action (NFA) Closed; ii) Inconclusive, File closed; iii) Further analysis required; iv) Matter selected for internal law enforcement investigation; v) Disseminate to relevant agencies which may include the Joint Intelligence Committee.

179. There is one (1) analyst in the FIA who is responsible for conducting both operational and strategic analysis. Whenever possible the Director assists and advises the analyst. This reflects the limited resources that exist with the FIA. The analyst has received training on strategic analysis; however, the FIA makes limited use of software tools to aid the analytical process. Whilst the assessment team is aware that there is no mandatory requirement to employ the use of technology in analysis, the assessment team believes that more extensive use of such technology will complement the limited resources that already exist within the FIA and also enhance the quality of the analysis.

180. Between 2013 and 2018, 199 of the 1,062 SARs received by the FIA were analysed thereby leaving 863<sup>17</sup> in abeyance within the FIA's SAR SOP process. 29 of the SARs that were analysed and disseminated either positively contributed to or started criminal investigations. The RSLPF and CED both complimented the FIA for the timeliness and quality of the information the agency provided following their requests. The SOP does not in any way speak to the way the FIA disseminates the products of its analyses. In practice however, disclosures are either made orally, or when there is a written request for information, written reports are disseminated to the Special Points-of-Contact of other domestic law enforcement agencies and to the members of the IAIC. Consequently, there were no samples of the FIA's disseminations available nor any opportunity for the assessment team to independently assess the quality of the product of the FIA's analyses. Additionally, the dissemination of financial intelligence analysis by the FIA has not been consistent or formalised nor are there records on the extent to which dissemination occurs.

181. The FIA produces annual reports that are submitted to the AG. Whilst the MLPA, in appendix A, identified general and sector specific indicators that may point to a suspicious transaction, the FIA also identifies suspicious indicators from their own experiences which they present in the annual reports. The FIA reported that the annual reports contain typologies which are the product of strategic analyses.

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<sup>17</sup> On August 19<sup>th</sup>, 2020, the assessment team received information from Saint Lucia indicating that more SARs are analysed. After reviewing all the data it was still not clear how many SARs are analysed, it will be somewhere between the 199 SARs and 100% of the SARs.

However, upon review of the reports the Assessors observed that the ‘typologies’ that were referenced are actually cases of interest which are highlighted and presented as such. Because the reports are only disseminated to the AG, competent authorities and the private sector cannot benefit from the information they contain. The FIA did not demonstrate that it conducted strategic analysis. Strategic analysis is an important component to the AML/CFT framework as it provides insight for policy makers, competent authorities and other stakeholders on ML/TF risk, trends and methods. By conducting strategic analysis, the FIA among other things, would be able to support its law enforcement partners, policy makers, FIs and DNFBPs in identifying possible services and sectors in Saint Lucia which are vulnerable to ML. Further, with Saint Lucia recently conducting its NRA, there is no indication that strategic analysis from the FIA’s perspective formed a basis for the NRA. Lastly, strategic analysis might support the LEAs to move from a reactive to probative model of investigation of ML/TF.

182. The gaps in the NRA on assessing TF risks, as described in paragraph 4.2 (I.O. 9) of the MER, also points to the FIA not analysing potential TF. Not all relevant information sources on TF were used in the NRA, this information could also be possibly used as the input for a strategic analysis on TF by the FIA. The product of such analyses can be shared with the competent authorities and can be used for guiding and auditing FIs and DNFBPs.

#### ***3.2.4. Co-operation and exchange of information/financial intelligence***

183. The IAIC meets monthly and this is a platform for the FIA, RSLPF and CED to share intelligence and manage joint investigations. Intelligence/information can also be shared through special points of contacts of the various LEAs. Formerly, most of the functions of the IAIC were incorporated into the functions of the White-Collar Crime Task Force (WCCTF) (RSLPF, FIA, DPP, AGC, IRD & CED) which was established in November 2010. The WCCTF no longer exists but its functions were placed in the National Anti-Money Laundering Oversight Committee (NAMLOC) on policy level and the IAIC on the operational intelligence and investigation level. Just prior to the onsite the functions of the IAIC were formalized by a SOP.

184. The mandate of the IAIC is to promote and enhance intelligence and information sharing amongst law enforcement agencies and to use information to support and facilitate individual or joint agency investigations. The recently signed SOP provides for quarterly reports that show statistics on data shared in the committee. At the time of the onsite the first quarterly report was still outstanding. Prior to the SOP, when activities of the committee were conducted in an informal manner, no statistics were gathered and kept on the sharing of intelligence. There is a need for the committee to collect data on the information shared to further demonstrate the successes of the committee. This information is also needed to assess the effectiveness of co-operation and exchange of information among the competent authorities.

185. Within the context of the IAIC meetings, joint investigations have resulted in arrests and prosecutions of individuals. The secondment of officers from the RSLPF, CED and IRD to the FIA, ensures that the FIA is adequately equipped to deal with joint investigations. One such case involved an organised crime enterprise which utilized counterfeit credit cards and drug trafficking; a second major case involved suspicious credit cards transactions and a third case involved under invoicing, tax evasion, human trafficking and ML. These joint operations were conducted by officials from FIA, IRD, CED and the RSLPF. The case highlighted below shows co-operation and co-ordination among the agencies and the value of financial intelligence.

**Box 3.3: Joint Investigation after SARs analysed**

An analysis of five (5) SARs concerning persons from a certain ethnic community in Saint Lucia showed a pattern of unusual cash deposits over the period 2010 to 2014. The analysis revealed that for the years 2013 – 2014, there were cash deposits of over XCD 5 million between the main targets. The frequency of the large deposits was inconsistent with the volume of business conducted.

This matter was tabled at an IAIC meeting. The Committee’s members were asked to gather further information. It was subsequently determined that this matter had elements of under invoicing, tax evasion, human trafficking and money laundering. The IRD was brought in and a search operation was organised for the purpose of gathering evidence to further the respective investigation lines.

A search operation was organised and executed at 11 businesses and two (2) residences. The operation involved members of CED, IRD, RSLPF and FIA. Approximately XCD 410,000 (USD 151,709) cash was found at the premises of one trading company. Documents were also seized from the business places and residence. After the operation it was decided that CED and IRD would collaborate to pursue customs and tax violations.

186. To facilitate information sharing, the FIA signed several bilateral MOUs with other competent authorities and the FSRA. These competent authorities are: IRD (dated July 2012), RSLPF (dated 2011) and CED (dated July 2014). The MOU with the FSRA signed in August 2019.

187. The FIA has a SOP on physical and IT security. The FIA is satisfied that the security protocol for the transmission of the intelligence reports is suitable. The SOP caters for the FIA to work with Points-of-Contact within the receiving authorities. Hardcopy confidential information is hand delivered in sealed envelopes. There is no SOP or protocol for security available to the Assessors from RSLPF, CED and IRD on securely receiving intelligence reports from the FIA.

188. Furthermore, the IAIC’s SOP has provisions for securing the information shared, one such provision is for the vetting of all staff that attends IAIC meetings, these vetting include bi-annual polygraph testing.

189. On the international level co-operation in sharing intelligence is sought through Egmont and MLA requests. A total of 54 MLA requests have been sent and 44 MLA requests have been received by Saint Lucia during the period under review. The assistance requested related to offences including ML and predicate offences such as fraud, robbery, drug offences and offences under the Customs Act. The FIA is part of the Egmont Group of Financial Intelligence Units and can request and share information with other members. During the period under review, the FIA made 38 requests for information to other members of Egmont and received 93 requests. This demonstrates that the authorities can access, collect and use a wide variety of relevant (international) information and intelligence to conduct investigations.

190. Analysing IO6 Assessors see that Saint Lucia has demonstrated some characteristics of an effective system in the use of information for investigations and the utilization of financial intelligence. The authorities can access, collect and use a wide variety of relevant (international) information and intelligence to conduct investigations. Information from SARs and other financial intelligence are used in investigations and in joint investigations. The IAIC plays an important role in sharing financial intelligence and managing joint investigations. The quantity of this information that is used in investigations is low. The limited statistics available to the Assessors makes it difficult to fully assess Saint Lucia’s effectiveness on I.O.6. There is a need for the IAIC to collect data on the information shared to further demonstrate the successes of the IAIC. Also, independent authorities like the RSLPF should be able to better demonstrate the use of financial intelligence if more statistics were available.



191. Analysing IO6 Assessors see that the FIA struggles with limited resource and doesn't fully comply with its mandate. For years there were no regulators within the FIA, in June 2019 two regulators started at the FIA. The SAR reporting by FIs is moderate and the reporting by DNFBBs is low. There is a lot of room to improve SAR reporting that will strengthen the intelligence position of the FIA.

192. Analysing IO6 Assessors see that the lack of resources at the FIA is further demonstrated by: The FIA has no records or system in place for providing feedback to FIs and DNFBBs and receiving feedback from competent authorities that use the FIA's intelligence; The FIA having no records or system in place for mapping the needs of the competent authorities on financial intelligence; There is no SOP for all law enforcement officers and other users of FIA intelligence on how to access and request such information from the FIA. Further, digital reporting of SARs and investing in analytical software will increase the effective use of human resources within the FIA and will create new opportunities in analysing SARs.

*Overall conclusions on IO.6*

193. **Saint Lucia is rated as having a low level of effectiveness for IO.6.**

**3.3. Immediate Outcome 7 (ML investigation and prosecution)**

194. Saint Lucia's system for identifying and investigating potential ML cases is centred on the FIA which has a small community of specially trained financial investigators responsible for conducting all ML investigations in the jurisdiction. Since 2014 the work of these officers has been bolstered by the level of interaction through the Points-of-Contact established to facilitate targeted information sharing for ML investigations. Owing to the size of the jurisdiction, co-operation and co-ordination between LEAs on ML identification and investigations has been largely informal. This practice has led to a targeted approach to investigations.

**3.3.1. ML identification and investigation**

195. All ML investigations in Saint Lucia are conducted by the three (3) law enforcement officers assigned to the FIA. One of the key deficiencies identified in this MER (and in the NRA) is the limited budget of the FIA, compared with its large mandate that also includes the identification and investigation of ML.

196. The FIA has a SOP on managing SARs and other investigations and on information sharing. This SOP creates a system for SARs received by the FIA which require immediate action i.e. the 'urgent matters'. The SOP also describes the possible outcomes of a SAR after the analysis (as described under IO6 above) which include disseminating to relevant agencies. The relevant agencies may include the IAIC. The SOP does not describe the factors or circumstances in which an internal law enforcement ML investigation should commence. The SOP also described the handling of cash cases by the FIA. As noted later in this section, two (2) ML investigations were triggered by SARs.

197. The RSLPF has nine (9) trained financial investigators in the MCU and six (6) trained AML/CFT investigators three (3) of which work within the MCU and three (3) within the CIU. The trained RSLPF staff's objective is to be able to identify and correctly refer cases to the FIA. In practice the RSLPF does not conduct ML investigations.

198. Based on the interactions with the RSLPF during the onsite, the Assessors confirmed that the MCU investigates predicate offences involving proceeds of XCD\$25,000 (USD9 250) and above but dependent on the circumstances of the offence, including the subject of the investigations, will pursue predicate offences involving smaller amounts. If the predicate offence is related to a tax offence it will be referred to the FIA. The RSLPF combats ML through the investigation of predicate offences. The SOP states: “*The RSLPF is committed to investigating and prosecuting all suspicious reports relating to money laundering and all predicate offences committed against the Money Laundering (Prevention) Act...*”. The MCU can conduct proactive investigations into ML but never did because, the RSLPF’s AML SOP mandates that “*All reports of a suspicious nature in relation to money laundering and cash seizures will be referred to the Financial Intelligence Authority*”.

199. The following threshold is set out in the SOP for referring cases from RSLPF to FIA: a) fraud and stealing matters of XCD\$25,000 (USD9 250) and above (values below this threshold are considered in exceptional circumstances). b) cash seizures of XCD\$3,000 (USD1 110) and above. The FIA’s threshold for parallel investigations are predicate offences involving funds and items valued XCD\$25,000 (USD9 250) and above. CED also refers to cash seizure cases along the RSLPF threshold to the FIA. With regard to the XCD\$3,000 (USD1 110) threshold for referring cash seizure cases to the FIA 75 such cases were handed over from the RSLPF and CED to the FIA with the majority referred from the RSLPF. This resulted in 25 ML investigations. Forfeiture proceedings were started for all referrals, including those cases where a ML investigation was not possible. The MCU also utilises a threshold of XCD\$25,000 (USD9 250) for fraud/financial cases. The Assessors are of the opinion that this threshold approach creates the potential for ML cases to slip through undetected. Whilst the possibility of this occurring can be mitigated by the existing approach whereby the actual circumstances can trigger an investigation irrespective of the threshold, the fact that there were no such cases in the system supports the Assessors’ opinion.

200. The IAIC plays a central role in sharing information and identifying and prioritising ML cases for investigations (see box 3.5 for an example). The considerations for prioritising targets and/or criminal operations include: i) Seriousness of the offence; ii) Level of risk to national security, iii) The degree of actionable intelligence or evidence, iv) Level of risk to potential victims, and v) Availability of resources. Although the IAIC has been operating since 2010 the SOP was signed just prior to the onsite and as a result no statistics were available on the use of these factors in the identification of ML cases.

201. The FIA, as the lead agency responsible for identifying ML cases for investigations utilises SARs as the main input, together with the referrals from other competent authorities. Most referrals came from the RSLPF. With regard to the XCD\$ 25,000 (USD9 250) threshold, the FIA conducted 25 ML investigations, ten (10) of which were stand-alone ML investigations. Five (5) of these ML investigations were connected to an identified predicate offence, four (4) were linked to drug trafficking and one (1) was linked to fraud/stealing. Of the 25 ML cases, two (2) originated from a SAR. All others were referred to the FIA. Most of the stand-alone ML cases had a nexus to drug trafficking. In 14 of the 15 ML cases, assets were seized. Since 2014 the work of the FIA contributed to 14 prosecutions with a total of 11 persons being convicted. Three (3) of the investigations were joint investigations. Seven (7) ML trials were pending in the Courts at the time of the onsite.

202. Box 3.4 below shows an example of a stand-alone case referred by the RSLPF to the FIA

**Box 3.4: Stand-Alone ML**

In December 2016 the RSLPF, acting on intelligence, observed a car with two male individuals parked in a restaurant parking lot. The officers decided to search the vehicle and the occupants. A large bag with a padlock across the zippers was recovered in the trunk of the vehicle. The bag was examined, and it was observed that the bag contained a large quantity of USD. The two individuals were escorted to the police station where they were subsequently charged for laundering the sum of USD 395 650 (approx. XCD 1,056,358)

203. There were three (3) joint investigations done on ML and/or predicate offences, the FIA is mostly in the lead of these investigations. Box 3.5 below is an example of a joint ML investigation.

**Box 3.5: Joint Investigation ML related to Drug Trafficking**

The case was tabled at the IAIC meeting. The FIA took a proactive approach to investigate and gather intelligence by coordinating operations with other LEAs to make the arrest.

In 2015 SARs were filed by two commercial banks which indicated that two individuals were making frequent large deposits of Euros, USD and XCD to their personal and business accounts. The transactions seemed irregular to the normal pattern of business based on their proposed business profile of the two individuals. During the same year intelligence reports received also indicated that one of the individuals was suspected to be a major player in the drug trafficking and ATM card skimming.

The SARs were analysed and assigned to financial investigators. Enquiries revealed that the individuals were directors. The individuals used shell companies purporting to be legitimate businesses to launder proceeds from drug trafficking and credit card fraud through financial institutions. They also used cash couriers and money remittance services to transfer money out of Saint Lucia to various jurisdictions. There is no physical location for any of the businesses. The businesses were not registered with the IRD. One of the individuals never filed income tax returns.

204. Joint ML investigations are generally done by the FIA, RSLPF, IRD, CED and sometimes involve other competent authorities. There are no law enforcement officers attached to the IRD, so it contributes to joint investigations by providing intelligence. Since the policing powers of CED is restricted to the offences in the Customs Act its involvement is limited to joint investigations on ML.

205. All the foregoing cases resulted in forfeiture proceedings being initiated. In the textbox below is an example of one (1) such case:

**Box 3.6: Example of a CED cash seizure developed into an FIA ML investigation**

Two foreign nationals were intercepted by the CED while preparing to board a flight out of Saint Lucia. The defendants when questioned by CED officials denied having any cash in their luggage. A search of their luggage revealed over € 25,000 and other foreign currencies concealed in baby diapers, sanitary napkins and other toiletries. CED referred the matter to the FIA and upon further investigation the foreign nationals were both arrested and charged for ML and the cash was seized under the POCA. The defendants were subsequently convicted and were fined over XCD 500,000 (USD185,010) in addition to receiving a prison sentence of six (6) months.

### ***3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies***

206. Since the NRA was only finalised in March 2019, and is the first such assessment, there has not been enough time to react with ML investigations that address the threats and risks that were discerned in the NRA. A good start should be to apply the RBA in the identification phase of ML cases. However, the thresholds and factors used in prioritizing ML investigations, as noted in the previous paragraph (3.3.1) do not include the NRA findings as a prioritizing system for a RBA. The National AML/CFT Policy was in draft at the time of the onsite.

207. The NRA highlighted known sources of the proceeds of crime as being: illicit trafficking in drugs; fraud; tax crimes; trafficking in human beings and cash smuggling. A breakdown of the SARs received from 2013 to 2018 shows that 16% of the SARs relate to drug trafficking, 10% relate to fraud and 74% relate to other predicate offences. The diversity in the range of predicate offences being committed in Saint Lucia is demonstrated in the predicate offences listed before Court since 2014. (See table 3.2). Most of Saint Lucia's ML investigations and prosecutions were related to cash-based ML.

208. Almost all ML investigations and prosecutions were related to drug trafficking and one case was related to fraud. Other predicate offences, like tax crimes, were not seen in ML investigations however financial intelligence from the IRD is used in investigations. Saint Lucia's ML investigations are marginally in line with its risks and threats.

209. The NRA states that there is a medium-high external threat of ML. Information provided by the Authorities has shown that Saint Lucia has made MLA requests for information in order to investigate ML. Saint Lucia has no international joint investigation on ML nor on predicate offences. With fraud being a high risk for ML and the fact that since Saint Lucia is an international financial centre (3762 active IBCs and 50 active international trusts) concerns are raised about the fact that Saint Lucia has never prosecuted a legal person for criminal offences.

210. Next to the RSLPF and FIA thresholds and the prioritising factors of the IAIC described in chapter 3.3.1. there is a SOP for the Crown Prosecution Service (CPS)/DPP that provides guidance on deciding whether to prosecute. Prosecutors apply two (2) tests, i.e. 1) The Evidential Test, and 2) The Public Interest Test. The SOP lists questions to scan for these two tests. The questions are often focused on crimes with violence. Some can also apply to financial or ML/TF crimes like: 1) The gravity of the offence; 2) Was the defendant in a position of authority or trust and 3) Was the defendant the mastermind of the crime or a main participant?; and 4) Whether defendant has been convicted for a similar offence. No monetary thresholds are mentioned.

211. The competent authorities, in prioritising ML investigations use different factors and thresholds. Co-ordination between FIA, RSLPF, CED and IRD is required to determine in what circumstances identified ML cases should be investigated. The IAIC looks like the best place to further evolve a system for referring and prioritising ML and other cases. However, since the DPP is not a member of the IAIC there is the possibility that ML cases will not make it to a prosecution because the factors for prioritising differ. The ongoing dialog between the DPP and the FIA was not formalised at the time of the onsite.

### ***3.3.3. Types of ML cases pursued***

212. Overall, Saint Lucia conducted stand-alone ML investigations and ML investigations involving both domestic and foreign predicate offences (in box 3.5 is an example of case with a foreign predicate

offence). No information was available on other types of ML, like third-party ML. Paragraph 3.3.1 of this MER describes what thresholds and factors which are used in prioritizing and referring ML investigations. None of the prioritizing and referring factors facilitate identifying, and thus pursuing, different types of ML investigations.

213. Saint Lucia has no conviction of legal persons for neither ML nor a predicate offence. The Assessors noted that there were also no ML investigations against legal persons.

214. Since 2014 there have been fifteen (15) prosecutions for stand-alone/self-laundering ML. That is an average of three (3) per year. Considering that there are just three (3) financial investigators at the FIA, this might be a proper result for Saint Lucia as a country. However, the Assessors are of the opinion that an increase in the number of financial investigators at the FIA will lead to an increase in its capacity to conduct investigations and this can then result in improvements in Saint Lucia's overall number of ML investigations and prosecutions.

#### ***3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions***

215. The penalties that are applicable for ML convictions are set by sections 28, 29 and 30 of the MLPA. These penalties range from a custodial sentence to a fine, or both. According to the MLPA custodial sentences should range from a term of imprisonment between 5-15 years whilst fines should range from XCD\$.5million to XCD\$2 million. Notwithstanding the applicable penalties set in the MLPA, the average custodial sentences imposed on the 11 persons convicted since 2014 was six (6) months or average fines of XCD\$250,000 (USD92 505). The number of convictions is 73% of the 15 cases prosecuted. The average sentences imposed were below the lower end of the penalty scale, but the Authorities have provided a case example<sup>18</sup> which highlighted two (2) instances where the penalties imposed were within that set by the MLPA. The sanctions are effective proportionate and dissuasive on an individual level, based on the case sample provided, systematically however, the sanctions being imposed are not. In textbox 3.7 below is an example of a successful prosecution where sanctions were imposed:

##### **Box 3.7: Case: Sanctions**

Two individuals were at the airport ready to depart. CED personnel, acting on intelligence, pulled them out and searched their suitcases. A thorough search was done of their personal items including sanitary napkins, make-up boxes, shoes, perfume boxes etc. Monies were found hidden in all of these items in the amount of €37,000; one individual had €33,000 and the other €4,000. They were both prosecuted and convicted for ML and the following penalties were attached. Funds of €33,000 attracted and fine of XCD 750,000 (USD277,516) or in default, 2 years imprisonment. The other individual convicted of ML of €4,000 was fined XCD500,000 (USD185,010) or in default to imprisonment for one year.

216. In the absence of any prosecution and conviction against legal persons for ML offences in Saint Lucia, no sanction was applied.

<sup>18</sup> Saint Lucia's effectiveness submission

### *3.3.5. Use of alternative measures*

217. As a policy, Saint Lucia has utilized its civil forfeiture regime in lieu of criminal prosecution for ML. In instances of cash seizures involving non-nationals transiting Saint Lucia or where there was insufficient evidence, civil proceedings were pursued.

218. Analysing IO7 Assessors see that Saint Lucia has a small community of three (3) specially trained financial investigators at the FIA responsible for conducting all ML investigations in the jurisdiction. Financial investigators at the FIA mainly rely on SARs and cases referred by the RSLPF and CED to identify potential cases of ML. The RSLPF has a larger community of nine (9) financial investigators who identify and then refer all reports of a suspicious nature relating to ML to the FIA. This has resulted in most of the ML cases investigated by the FIA being born out of referrals from either the RSLPF or the CED. The FIA has demonstrated many successes in the ML investigations they conduct. The results of the FIA's ML investigations are good but from a country perspective the number of investigations is low. One (1) of the reasons for the low number of ML investigations is attributed to the small number of financial investigators at the FIA. Increasing the number of financial investigators within the FIA, or even better, creating a ML LEA with sufficient staff, as suggested in the draft National AML/CFT Policy, will strengthen the effectiveness of I.O. 7.

219. Analysing IO7 Assessors see that Saint Lucia has not yet finalised its National AML/CFT Policy. The types of ML cases being investigated are marginally in line with the ML risk profile discerned in the NRA. Most of the investigations were related to stand-alone ML involving drug trafficking. There were no prosecutions for foreign predicates. Sanctions have been applied to natural persons following conviction for ML offences but overall, these have been below the lower end of the scale of sanctions applicable by the MLPA, bringing into question the effectiveness and dissuasiveness of such penalties. There has not been any opportunity to sanction legal persons.

#### *Overall conclusions on IO.7*

220. **Saint Lucia is rated as having a moderate level of effectiveness for IO.7.**

## **3.4. Immediate Outcome 8 (Confiscation)**

### ***3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective***

221. The POCA, MLPA and the Customs (Control and Management) Act provide a comprehensive legal framework for confiscation and have been utilized to confiscate criminal proceeds, instrumentalities and property of equivalent value. The POCA has also introduced a civil forfeiture regime where cash can be forfeited in civil proceedings without the need for a criminal prosecution or conviction. Saint Lucia has however mainly utilised the civil cash forfeiture regime as the majority of the property that has been confiscated is cash. There have only been a few instances where confiscation of other property has been pursued through the criminal confiscation regime under the POCA; these results are relatively modest and are not consistent with the country's ML risk profile.

222. Investigations with a view to confiscation are pursued by the FIA. Cash seizures under the POCA are referred to the FIA from the RSLPF and customs department. The FIA has an SOP in place which covers how cash seizure matters should be handled thereby fostering transparency and uniformity. The SOP requires that a financial investigator be on call to respond to cash seizures emanating from the



RSLPF and CED within 24 hours and details the procedure that should be adopted in compliance with the POCA. The SOP also requires that a determination be made within 72 hours as to whether a parallel ML investigation should be initiated.

223. The RSLPF has incorporated aspects of confiscation into its investigations through the use of target profiles which require investigators to identify the assets of targets to include properties, motor vehicles, investments and businesses. However, the RSLPF do not pursue confiscation, instead this aspect is referred to the FIA. Given the limited resources of the FIA coupled with the extensive responsibilities that they are obligated to perform, leaving the conduct of identifying, tracing and confiscating solely to the FIA has a limiting effect on the number and range of these investigations. In light of the fact that the NRA has identified drug and fraud crimes as generating the most criminal proceeds, the Drug Squad, CIU and the Major Crime Unit of the RSLPF should be trained and given the necessary powers or tools to conduct confiscation proceedings in order to increase the number and range of these investigations.

224. Cash forfeiture proceedings are conducted in the Magistrate's Court by police prosecutors who are attached to the Office of the DPP and form part of the CPS. There are 16 police prosecutors. This demonstrates that resources have been provided to deal with these types of matters which form the bulk of Saint Lucia's successful confiscations.

225. The Eastern Caribbean Supreme Court also plays a part in confiscation proceedings as applications for investigative orders, restraint orders, forfeiture orders and confiscation orders arising out of criminal proceedings are dealt with by this court. The authorities advised that these matters are flagged by the registry staff so that early hearing dates can be assigned and a timeline of between five (5) to seven (7) days is set for these matters to be heard. The authorities further advised that applications for investigative orders and restraint orders are generally dealt with on paper without the need for the applicant to attend. This fosters speed in the process and recognises the urgent nature of these applications to be able to trace and preserve assets for confiscation.

### ***3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad***

226. Saint Lucia has had notable success in the forfeiture of cash under the POCA. There were 78 cash seizures, since 2014, totalling XCD\$9,275,569.48 (USD3 432 155). To date, XCD\$5,844,689.92 (USD2 162 657) of this amount has been forfeited. Cash has been returned in some cases and in other cases the forfeiture proceedings are pending before the court. Below are tables illustrating the values of cash seizures and cash forfeitures.

**Table 3.6: Cash Seizures and Forfeitures** (All values are XCD\$)

Year	Number of Cash Seizures	Value of Cash Seizures	Number of Cash Forfeitures	Value of Cash Forfeitures
2014	5	\$460,479.89 (USD170 386)	3	\$349,376.43 (USD129 276)
2015	11	\$1,102,697.03 (USD408 021)	9	\$1,035,847.49 (USD383 285)
2016	10	\$1,493,752.44 (USD552 719)	6	\$1,445,408.78 (USD534 831)
2017	20	\$3,184,109.38 (USD1 178 187)	7	\$2,166,858.28 (USD801 782)
2018	23	\$1,318,776.13 (USD487 728)	7	\$779,833.94 (USD288 555)
2019	9	\$1,715,754.61 (USD634 865)	1	\$67,365.00 (USD24 926)
<b>Total</b>	<b>78</b>	<b>\$9,275,569.48 (USD3 432 155)</b>	<b>33</b>	<b>\$5,844,689.92 (USD2 162 657)</b>

227. Cash forfeiture proceedings and ML prosecutions are pursued at the same time. The authorities have advised that where a related ML conviction has been obtained, the subject generally does not contest the cash forfeiture proceedings. Even where a subject has been acquitted of an ML charge, the cash forfeiture proceedings are still pursued through the civil forfeiture regime.

228. There were two (2) constitutional challenges made to the cash forfeiture provisions under the POCA which threatened the legality of these proceedings. In both matters, it was argued that the power given to the Magistrates to forfeit cash was unconstitutional as it extended the jurisdiction of the Magistrates in a manner which gave them parallel jurisdiction to judges of the High Court. These matters were determined by the Court of Appeal which ruled that the cash forfeiture provisions under the POCA introduced a new species of civil asset forfeiture that never existed before and that was never vested in the High Court. The Court of Appeal decided in both cases that the cash forfeiture provisions were constitutional and increased the civil jurisdiction of Magistrates in relation to asset forfeiture. Even though these challenges were eventually dismissed, they had an adverse impact on other cash forfeiture applications which remained pending in the Magistrate's Court before the Court of Appeal decisions were handed down. For example, there was an instance where a Magistrate ordered the return of cash on the basis that he lacked jurisdiction.

229. The results in relation to conviction-based criminal confiscation are modest when compared to the results in civil confiscation and the overall ML risk assessment of Saint Lucia. There have been two (2) cases where the instrumentalities of crime were forfeited under the POCA. These forfeiture orders were obtained in respect of vessels on which drugs were found and were made in 2017 and 2019 respectively. The responsibility for managing assets that have been forfeited so that the proceeds of same can be realised to the benefit of the country has not been assigned to any entity or particular personnel. As such, no action has been taken to sell these vessels.

230. Even though confiscation orders in respect of the value of a person's benefit from criminal conduct were introduced in the POCA from 2010, only one (1) confiscation order has been made. This order was made in October 2016 in the amount of XCD\$242,180.00 (USD\$89 612). Below is a case summary of the matter:

**Box 3.8: Drug possession case which resulted in a confiscation order**

X was convicted of possession of cannabis and possession of cocaine with an estimated street value totalling XCD\$242,180.00 (USD\$89 612). The DPP applied for a confiscation order pursuant to the POCA on the basis that X had benefitted from the commission of the offences. The application was heard by the High Court which accepted that X had benefitted in the amount of the value of the drugs and identified realisable property of X which could be used to satisfy the order. The realisable property included four (4) real properties and 1 motor vehicle.

X's wife filed affidavits claiming an interest in the realisable property. She did not however testify at the hearing. The court found that the properties were purchased by X and that in any event, the wife's remedy did not lie at the confiscation stage but at the enforcement stage of the proceedings. Accordingly, the High Court made a confiscation order in the amount of XCD\$242,180.00 (USD\$89 612). and ordered that X pay this amount to the High Court.

X thereafter appealed to the Court of Appeal. The Court of Appeal however dismissed X's appeal and affirmed the confiscation order.



231. The extent to which criminal confiscation matters is pursued is adversely affected by the delay that obtains in the High Court. The jurisdiction to hear criminal confiscation matters under the POCA and MLPA is vested in the High Court. The High Court has experienced backlog and delay in the trial of matters due to issues with the premises on which it was located. In 2015, the High Court stopped operations due to issues with the building it occupied. A new building was not secured for the High Court until 2017. While the High Court had ad hoc sittings between 2015 and 2017 at other locations, these sittings did not include trials and trials had to be adjourned. In April 2018, security and infrastructure issues arose in the new building that the Criminal Division of the High Court was housed. These issues were not resolved until February 2019. During this period, the Criminal Division of the High Court had sittings at correctional facilities for only urgent matters such as bail hearings. No trials were accommodated during this time. The High Court deems matters with an average length of two (2) years or greater to have fallen into backlog. Currently there are more than 600 cases in backlog in the Criminal Division of the High Court.

232. Due to the backlog in the High Court, there is a preference to pursue matters in the Magistrate's Court as the matters are resolved more quickly. Accordingly, cash forfeiture matters in the Magistrate's Court are more robustly pursued than criminal confiscation matters in High Court.

233. The jurisdiction to hear restraint applications is also vested in the High Court; these applications are heard in the Civil Division of the High Court. Since 2014, the High Court received ten (10) applications for restraint orders; the average time within which these applications were heard was one (1) week. Included in this was an application to restrain Euro €1,412,884.42 in a bank account. This application concerned a foreign predicate offence and was made pursuant to an MLA request by the United States. The said sums were the subject of a United States forfeiture order which was eventually registered in Saint Lucia resulting in the sums being forfeited.

234. The authorities advised of two (2) cases in which they requested MLA to freeze funds that had been transferred out of Saint Lucia. In one (1) of the cases, a defendant had been charged for the predicate offence of stealing by reason of employment. A financial investigation revealed that the stolen funds had been transferred to Trinidad and the defendant was subsequently charged for ML. Pursuant to a MLA request, the Trinidadian authorities were able to restrain the funds. In the second case, the defendant was an employee of a financial institution who fraudulently obtained monies from customer accounts. The defendant remitted these monies to the United States using a money transmission business. A request was made to the United States authorities to restrain the monies; however, the monies had already been collected.

235. In addition to confiscation and restraint of criminal proceeds, restitution has also been made in a matter where the criminal charges were eventually dismissed. The case summary of this matter is below detailed in box 3.7 below:

**Box 3.9: Case Summary of Restitution Matter**

In February and June 2015, the defendants were arrested and charged with the offences of: Human Trafficking, Obtaining Property by Deception and Money Laundering. The allegations were that the complainants, who were students from Nepal and India, were lured to a school operated by one of the defendants on the false premise that they would receive training and employment. The complainants paid this defendant fees for the training that they were to have received.

The ML charges were eventually dismissed on the ground that the hearing of the matter had not commenced within 180 days contrary to the Criminal Procedure Rules. Most of the Human Trafficking charges were withdrawn as the complainants had returned to their home countries. The remaining Human Trafficking charges were dismissed for want of prosecution.

The Obtaining Property by Deception charges were however settled at mediation on the 20<sup>th</sup> of January 2017, where the defendant paid one million dollars to the students as restitution for fees paid. These sums were paid out of bank accounts which had been frozen after the Defendants' arrest.

236. Accordingly, even though no convictions were obtained, the defendant was deprived of the proceeds of crime by virtue of the restitution paid to the victims.

237. Applications for production orders are also heard in the Civil Division of the High Court. Since 2014, the High Court received nine (9) applications for production orders all of which were heard within five (5) days.

***3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI***

238. The CED is responsible for enforcing the Customs (Control and Management) Act (CCMA) which requires that a declaration be made for all incoming cross-border transportation of currency/BNIs over US\$10,000.00. Customs officers do not conduct cash seizure proceedings under the POCA. However, there are many instances where a customs officer will seize cash on suspicion that same is related to ML then hand over the cash to the FIA; the matter is then pursued by the FIA under the POCA.

239. The CED identified 34 cases of false/ undeclared incoming currency/BNIs since 2014. Seizures were effected in 33 of these cases with a value of XCD\$1,660,206.34 (USD614 310). The majority of these seizures were referred to the FIA, while others were dealt with administratively, and restoration fees imposed. Three (3) of the cases resulted in forfeiture proceedings being initiated and granted under the CCMA. A total of XCD\$299 754 (USD110 915) was forfeited in these proceedings and fines totalling XCD\$1,268,000 (USD469 186) were imposed.

240. CCMA imposes a requirement on persons to answer questions by CED officers. This is used as a disclosure system when it comes to outgoing cross-border transportation of currency/BNIs. CED officers stop outgoing passengers and question them in relation to the sums that they are carrying. They then require the passenger to present the cash and, if not satisfied, they conduct a search of the passenger. The authorities advised that the determination of which passenger to check is driven by intelligence. For the period under review, ten (10) cases of false/ undeclared outgoing currency/BNIs were identified. Seizures were made in nine (9) of these cases with a value of \$620,428.74. Confiscation was made in two (2) of these cases with a value of \$118,584.00.

241. Methods used by the CED to detect false/undeclared currency/BNIs include intelligence, passenger profiling and physical examination. The authorities previously utilised a drug detection

canine but no longer have this resource to assist in their duties. The authorities are now seeking to obtain a cash detection canine and a drug detection canine.

#### ***3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities***

242. Saint Lucia's NRA found that its geographic location made it susceptible to being used as a transit point for ML activities and observed that a significant amount of criminal proceeds was generated from offences committed in other jurisdictions. In this regard, it is noted that the two (2) forfeiture orders that were obtained under the POCA were in relation to vessels on which drugs were found in the territorial waters of Saint Lucia and that restraint orders were made by Saint Lucia and requested by Saint Lucia in relation to a foreign predicate offence and proceeds that had been transferred out of Saint Lucia to a foreign jurisdiction. Further, a portion of the cash forfeiture matters were initially seized by CED officials at the ports and therefore had a transnational element. The confiscation results are accordingly consistent with Saint Lucia's vulnerability to transnational crime.

243. The NRA also identified drug trafficking as the main crime which generated proceeds in Saint Lucia. While the two (2) forfeiture orders and the confiscation order obtained under the POCA emanated from drug trafficking offences, these results are minimal when compared to the 324 drug cases that were before the court, as highlighted in IO6. Fraud was also identified as another significant proceeds generating crime. However, none of the criminal confiscation results related to fraud although there were 235 fraud cases before the Court, as highlighted in IO6. No information was available on the extent to which the civil confiscation results were related to fraud.

244. The overall threat of ML occurring within Saint Lucia was assessed as Medium High. Given this assessment, the criminal confiscation results are modest with only two (2) vessels being forfeited and one (1) confiscation order made in the sum of \$242,180.00. As previously indicated however, the delay in the High Court has contributed to these modest results.

#### *Overall conclusions on IO.8*

245. **Saint Lucia is rated as having a moderate level of effectiveness for IO.8.**

## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### 4.1. Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 9

- a) Saint Lucia does not fully understand its TF risks. Not all the relevant data is included in the NRA.
- b) There is no national strategy on CFT.
- c) There is a fair amount of training given by the FIA to the FIs and DNFBPs that resulted in a fair amount of awareness by the FIs and DNFBPs on reporting SARs on TF to the FIA.
- d) The competent authorities (FIA, RSLPF and DPP) have a weak organization structure on identifying and investigating TF.

##### Immediate Outcome 10

- a) There is no statutory requirement or other enforceable means in place to implement targeted financial sanctions without delay in accordance with the requirements of UNSCR 1267 and UNSCR 1373.
- b) There is no co-ordinated mechanism in place between competent authorities to identify targets for designation to the UN Security Council under UNSCR 1267 or to identify targets for designation under UNSCR 1373.
- c) There is a lack of understanding of the requirements of the UNSCRs as persons/entities are not designated unless they are identified as already being present in Saint Lucia.
- d) Legislative deficiencies at Recommendation 8 of this report have had a cascading effect on the Saint Lucia's ability to have oversight of at risk NPOs. There are no mechanisms to identify NPOs that are vulnerable to terrorist financing and apply proportionate measures to mitigate risks.
- e) Faith Based Organisations were not included under Saint Lucia's AML/CFT supervision regime.

##### Immediate Outcome 11

- a) Saint Lucia does not have any measures in place to ensure that persons and entities involved in the proliferation of weapons of mass destruction are identified, deprived of resources and prevented from raising, moving and using funds for the financing of proliferation.

#### Recommended Actions

##### Immediate Outcome 9

- a) Update the NRA on TF which should include relevant data on CIP and IBCs.
- b) Develop a (risk based) national strategy on CFT.
- c) Clarify legislative requirements to report TF to FIA and educate the obligated the entities about the requirements.

- d) Strengthen the organization structure of the competent authorities (FIA, RSLPF and DPP) on collection of TF data, identifying TF and investigating TF.

**Immediate Outcome 10**

- a) Saint Lucia should implement legislative or other enforceable means to freeze the assets without delay of an entity that has been designated in accordance with all requirements of UNSCR 1267 and UNSCR 1373.
- b) Competent authorities should develop a co-ordinated approach and mechanism to identify targets for designation to the UN Security Council under UNSCR 1267 and to identify targets for designation under UNSCR 1373.
- c) Saint Lucia should implement the obligations under the UNSCRs by designating entities that are listed as specified entities, once satisfied that the relevant requirements are met, regardless of whether the entity is found to be present in Saint Lucia at the material time.
- d) Saint Lucia should assess the NPO sector and identify those that are vulnerable to TF and develop appropriate risk based measures for monitoring and supervision.
- e) Saint Lucia should address the technical deficiencies at Recommendation 8 of this report so they can effectively monitor all NPOs and take a target approach to TF awareness.

**Immediate Outcome 11**

- a) Saint Lucia should enact legislation that provides for the implementation of targeted financial sanctions against persons and entities involved in the proliferation of weapons of mass destruction. The legislation should make provision for the implementation of these targeted financial sanctions without delay. Further, the legislation should provide for effective enforcement of the targeted financial sanctions to include imposing responsibilities on supervisors to monitor FIs and DNFBPs and imposing proportionate and dissuasive penalties for breaches.

246. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39.

**4.2. Immediate Outcome 9 (TF investigation and prosecution)**

247. The criminalisation of terrorist financing (TF) is covered under the provisions of the Anti-Terrorism Act (ATA). The Financial Intelligence Authority (FIA) is responsible for receiving and analysing Suspicious Activity Reports (SARs) related to TF from the financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). The Royal Saint Lucia Police Force (RSLPF) and Director of Public Prosecutions (DPP) are responsible for investigating and prosecuting TF cases.

#### ***4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile***

248. According to the NRA, Saint Lucia determined that the risk of TF is medium because there has been no domestic or internal terrorism threats to Saint Lucia and there is no evidence of TF. Saint Lucia has never experienced a terrorist attack nor has there been any threat of terrorism to the island. In addition to the above, no terrorist organisations, groups or individuals, whether of domestic or international origin, have been identified as operating within the island, nor have any funds been identified as either raised in or transmitted via Saint Lucia in furtherance of terrorist operations. The NRA consequently concluded that Saint Lucia's TF risk is essentially external.

249. Whilst the Assessors agree with the overall TF risk rating of medium, they are nevertheless concerned about the supporting data used to arrive at this conclusion. The NRA indicates that Saint Lucia's TF threat is essentially external, and that Saint Lucia never experienced a terrorist attack and/or terrorist financing however in the year 2000 there was a violent incident of which court procedures are still pending during the onsite<sup>19</sup>. A Saint Lucia official expressed the view that in retrospect this case might be addressed as (domestic) terrorism. Assessors agree with that view. This case isn't included in the NRA.

250. Information provided during the onsite shows that the Citizen by Investment Programme (CIP) is promoted in jurisdictions with known terrorist activity and that CIP applications are granted to people from these jurisdictions. Also, the FIA's annual reports show multiple STRs the subjects of which are nationals of a country with known terrorist activity. Information that shows the extent of linkages with jurisdictions with active terrorist organizations are not included in the NRA. Further there have been five (5) Egmont requests in the period 2014, 2016 and 2017 to 2018 related to terrorist activity and TF which are not included in the NRA. Lastly, since Saint Lucia is an international financial centre and has 3762 active international business companies with ultimate beneficial owners all over the world and 50 active international trusts this information should ideally be assessed in the NRA from a TF perspective.<sup>20</sup> The NRA on TF shows serious gaps in Saint Lucia's overall understanding of TF risk/threat/vulnerability to the jurisdiction and therefore, greater attention should be given to the assessment of TF.

251. Saint Lucia has no prosecutions or convictions on TF. Since there was limited scope on TF in the NRA it cannot be said that not having the prosecutions or convictions is consistent with the country's risk-profile.

#### ***4.2.2. TF identification and investigation***

252. The authorities indicated that there are no TF SARs and no TF investigations are ongoing *however* during the onsite a bank indicated that they were in the process of reporting a SAR to the FIA, of which the bank believes it is on TF<sup>21</sup>.

253. Based on the onsite interviews, the Assessors are of the view that most of the FIs and DNFBPs are aware of their obligation to report SARs to the FIA, where there is a suspicion of TF, although the

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<sup>19</sup> <https://www.nydailynews.com/news/world/men-plead-guilty-fatal-st-lucia-church-attack-article-1.1255922>

<sup>20</sup> See good practices in collecting TF intelligence in the FATF Terrorist Financing Risk Assessment Guidance, paragraph 40.

<sup>21</sup> On August 19<sup>th</sup>, 2020, Saint Lucia provided additional information indicating that the SAR on TF was received by the FIA on October 9<sup>th</sup> 2019 and that analysis and investigation by the FIA revealed no evidence of TF.

reporting obligations under the MLPA<sup>22</sup> are unclear<sup>23</sup>. The FIA provided TF training to a fair number of FIs and DNFBPs. During the onsite a few compliance manuals were presented that included elements of CFT.

254. Section 4.2.1 of this MER described the limited scope of the NRA on TF which is also relevant to this paragraph when it comes to the use of intelligence to identify TF. The data that should have been used in the NRA on TF should also be available to the FIA for identifying TF. The inadequacy of resources (human and financial) constitutes the greatest driver to Saint Lucia's vulnerability to TF. Limited resources of the FIA (See chapter 3) have a cascading effect on executing its CFT mandate including the inability to properly analyse SARs that may have a TF link.

255. During the period of absence of FIA regulators, the FIA Director did fulfil some of the tasks of the FIA as a regulator by conducting training and holding compliance meetings on TF. Staff of the FIA, RSLPF and DPP have received training on CFT. The RSLPF has six (6) trained staff. Should there be a TF event these RSLPF officers would be re-assigned from their departments to manage the situation. Saint Lucia has no instance of TF, so the jurisdiction is unable to demonstrate whether or not it has the ability to successfully investigate, prosecute and convict persons for TF offences. The RSLPF indicated that it is not fully equipped with the necessary skills to undertake a TF investigation.

256. The CIU of the RSLPF and the FIA work in tandem to ensure that if the need arises, instances of TF activities will be identified, communicated to the relevant competent authorities and intelligence is investigated. Saint Lucia has contacted the USA, Canada, the UK and France, through Interpol, in order to find out if there are links in their terrorism or TF cases to Saint Lucia, no links were found. Saint Lucia also indicated that they use CARICOM and domestic sources of information to identify TF, but the country could not provide data to evidence this to the assessment team.

257. The IAIC (RSLPF, CED and FIA) targets all crimes including TF. The MOU of the IAIC, dated September 9th, 2019, also provides for gathering statistical data on the work of the committee. The IAIC has reported that statistics are not available in relation to TF because there are no TF related activities in Saint Lucia.

258. To be effective in controlling Saint Lucia's borders CED creates profiles of people entering and exiting the (air)ports of Saint Lucia, these profiles also include terrorism and TF.

259. Saint Lucia does not identify TF cases adequately:

a. *Status of identified and investigated cases:* The country has no instances of TF, so the assessment team was unable to assess whether the country possesses the ability to successfully investigate, prosecute and convict persons for TF offences. Nonetheless, the RSLPF and the FIA state they work in tandem to ensure that any instances of TF activities are identified, communicated and investigated.

b. *Reporting:* Most FIs and DNFBPs are aware of their duty to report SARs on TF to the FIA, but the legislation on reporting SARs on TF to the FIA is not clear, which may be hindering the ability of reporting entities to submit SARs on TF to the FIA.

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<sup>22</sup> Please see the analysis at R.20.1

<sup>23</sup> After the closing date for adding information (September 27<sup>th</sup>, 2019) legislation was enacted to improve the 'unclear' legislation; ATA Amendment gazetted on October 8<sup>th</sup> 2019, see amended section 32 c.

c. *Training*: A fair number of FIs and DNFBPs received training from the FIA on CFT. The FIA, RSLPF and DPP have trained staff on CFT. The RSLPF has six (6) staff trained, so that should there be a TF event these officers would be re-assigned from their departments to manage the situation.

d. *Internal controls*: During the onsite, compliance manuals presented to the assessment team included elements of CFT. This may also increase the ability of reporting entities to detect and submit SARs related to TF, to the FIA.

e. *Resources*: The FIA has limited resources for analysing TF related information, and the RSLPF indicated that it is not fully equipped to undertake a TF investigation.

f. *International co-operation*: Saint Lucia contacted USA, Canada, the UK and France through their Interpol NCB in order to find out if there are links in their terrorism or TF cases to Saint Lucia. The country also indicated that they use CARICOM and domestic sources of information in order to identify TF but data to evidence this is not available to the assessment team. Notwithstanding, these international co-operation efforts are positive actions by Saint Lucia.

g. *Border controls*: The CED creates profiles of people entering and exiting the (air)ports of Saint Lucia, these profiles also include terrorism and TF. These profiles would benefit from an updated NRA on TF.

260. Taking into consideration the above, there are challenges in identifying TF. It is unclear whether measures by Saint Lucia will be a success in countering TF as these efforts are still in their initial state. Therefore, the effectiveness of these efforts cannot be tested and determined.

#### ***4.2.3. TF investigation integrated with –and supportive of- national strategies***

261. At the time of the onsite there was no national strategies on TF, there are only SOPs at the level of the competent authorities. The RSLPF has an Anti-Terrorism SOP that includes TF. TF isn't mentioned in the RSLPF policing plan 2018-2025. Further the RSLPF indicated that it is guided by the CARICOM CT strategy and is currently working on developing a national crime and securities strategy. The FIA has a SOP on managing SARs that includes SARs on TF. The NRA recommended a national strategy for terrorism and TF, NAMLOC provided a draft National AML/CFT policy 2019-2024. The presented draft National AML/CFT policy does not include strategies on identifying and investigating TF cases. The FIA presented an undated circular (#12) of the Government of Saint Lucia on the FIA response to a terrorist attack. There is a FIA SOP on managing SARs that addresses all SARs on TF as an 'urgent matter'.

262. Saint Lucia has no investigations on TF. Also, the measures available to identify TF cases are limited, see paragraph 4.2.2. Saint Lucia has no national strategies on TF so on both ends it is not possible to investigate TF integrated with and/or supportive of national strategies.

#### ***4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions***

263. Since 2014 there has been no TF prosecutions or convictions therefore the Assessors could not assess the effectiveness proportionality and dissuasiveness of the sanctions applied.



#### ***4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)***

264. There has never been an investigation or prosecution for TF, therefore there has been no opportunity to measure the effectiveness of alternative measures should a conviction not be possible. The authorities have not disclosed any alternative/disruption measures for TF.

265. Analysing IO9 Assessors see that the competent authorities (FIA, RSLPF and DPP) have some major steps to take in order to strengthen the structure for identifying and investigating TF. The RSLPF indicated that it is not fully equipped to undertake a TF investigation and the limited resources of the FIA are major factors. There is only a draft National Strategy on CFT<sup>24</sup>. The main evidenced activities are the trainings on AML/CFT given by the FIA to the FIs and DNFBPs. Most of the FIs and DNFBPs seem to be aware of their duty to report a SAR on TF to the FIA.

#### *Overall conclusions on IO.9*

266. **Saint Lucia is rated as having a low level of effectiveness for IO.9.**

### **4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)**

#### ***4.3.1. Implementation of targeted financial sanctions for TF without delay***

267. Saint Lucia has numerous gaps in the implementation of targeted financial sanctions for TF. Saint Lucia has not designated a competent authority or a court as having responsibility for proposing persons or entities for designation to the UN Security Council pursuant to UNSCR 1267 and its successor resolutions and has never submitted targets for designation. In relation to UNSCR 1373, while the ATA empowers the AG to designate persons or entities, Saint Lucia has never identified targets for designation or made designations pursuant to UNSCR 1373. The authorities advise that they have never had any reason to submit targets for designation to the UN Security Council pursuant to UNSCR 1267 and its successor resolutions or to make designations according to the UNSCR 1373 however, given the concerns raised about the procedures to detect and investigate TF as outlined in IO 9, there are doubts as to whether this assessment is correct. In any event, there is no co-ordinated mechanism in place among competent authorities to identify targets for designation. It is noted that a proposed procedure was outlined by Saint Lucia, but this procedure was not known by most of the competent authorities who are designated with responsibilities to play a part in the process.<sup>25</sup> Further, it was found that most competent authorities were not aware of any responsibility to identify targets for designation pursuant to UNSCR 1267 or UNSCR 1373.

268. In relation to UNSCR 1267, the Ministry of External Affairs receives the UNSCR1267 from its permanent mission in New York City, which is then sent to the AG's Chambers, the FIA and the RSLPF. The FIA and the RSLPF conduct check against their database to ascertain whether any of the persons or entities on the list are in Saint Lucia. The FIA also posts the UNSCR1267 sanctions lists on its website. There is no direct communication to the FIs and DNFBPs on the existence or changes to the list. Further, there is no guidance provided to FIs and DNFBPs on their obligations. Nonetheless, FIs

<sup>24</sup> NAMLOC's "National Anti-Money Laundering/Counter Financing of Terrorism/Counter Proliferation Financing (AML/CFT/CPF) Policy - Saint Lucia 2019-2022" was approved by Cabinet on August 17, 2020.

<sup>25</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made addressed some of the deficiencies that have been identified.

and DNFPBs indicated that they regularly referred to the lists published on the FIA's website in their CDD screening process of customers.

269. There has never been a match on the databases within Saint Lucia and therefore Saint Lucia has never had a situation where a person or entity on the UNSCR1267 sanctions lists resides in Saint Lucia. Saint Lucia advises that, because of this, it has never made a designation. The country has therefore imposed a requirement that a person or entity on the list must be present in Saint Lucia before it can be designated; this however is not a requirement for designation. The approach adopted by Saint Lucia does not guard against possible future events of persons or entities on the sanctions lists subsequently entering Saint Lucia. If a person or entity on the sanctions lists subsequently enters Saint Lucia, the freezing of its assets without delay could not occur as the person or entity would not have been designated. In fact, the Assessors were advised of an instance where an individual who was on the sanctions list entered Saint Lucia through a cruise ship for the day and then departed. This demonstrates the real risk of failing to designate an entity or person because it is not present in Saint Lucia at the time that Saint Lucia receives the lists or request for designation.

270. In any event, even if Saint Lucia did designate entities as specified entities, the ATA does not provide for freezing without delay. The authorities indicated that in order to freeze the property of a specified entity, the AG has to go further and apply to the High Court for a restraint order. The court then decides whether to grant this application based on the criterion set out in the ATA<sup>26</sup>.

#### ***4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations***

271. Saint Lucia has not conducted an assessment of the sector to identify that subset of NGOs that fall under the FATF definition of an NPO or to assess those NGOs that may be at greater risk for TF.

272. The AG's Chambers established a Non-Profit Oversight Committee in 2009 with responsibility for the scrutiny of applications for non-profit companies under the Companies Act and conducts due diligence on directors and provides AML/CFT awareness during the registration of a non-profit company. After this, applications are submitted for approval and certification of non-profit companies. The Registry of Companies and Intellectual Property (ROCIP) indicated there are 44 non-profit companies on the Register. Assessors were unable to verify to what extent the AML/CFT awareness provided by the Non-Profit Oversight Committee addressed the TF vulnerabilities of the non-profit company and provided information on measures to mitigate the vulnerabilities.

273. Faith Based Organisations, which are not captured under the NGO Act are registered by the Ministry of Equity, Social Justice, Local Government and Empowerment. Saint Lucia indicated this authority is according to Cabinet Conclusion #480 of June 10th, 2010, which was confirmed to the Assessors by letter dated June 23, 2020, from the Permanent Secretary Ministry of Equity, Social Justice, Local Government and Empowerment. Also, there was no evidence of monitoring or provisions for the AML/CFT supervision of these types of organisations. The Ministry provided a document titled "Guidelines to NPOs – Misuse of Non-Profit Organisations" as AML/CFT guidance issued to the sector. Though red flags were provided in the document, there was limited information on the identification, prevention and combatting of TF.

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<sup>26</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made addressed some of the deficiencies.

274. The definition stated in Saint Lucia's NGO Act excluded characteristics of an NPO as stated in the FATF Glossary. The definition of a non-profit company at section 328(2) of the Companies Act does not clearly state the purpose of such companies to be 'primarily engaged in raising or disbursing funds'. Saint Lucia did not provide Assessors with a policy document which clarified the nature of activities of such companies.

275. A major concern for Assessors is the reference to Non-Profit Companies and Non-Profit Organisations at Part B of Schedule 2 of the MLPA. Further, section 8 of the NGO Act requires all NGOs (once registered) to comply with the MLPA and the ATA. This suggests all non-profit companies registered under the Companies Act are required to comply with all obligations of the MLPA, which goes beyond the scope of the FATF standards. However, other than the 44 registered non-profit companies, the FIA is unable to confirm which NPOs are operating in Saint Lucia to determine the activities and risk to TF.

276. Saint Lucia has not demonstrated the application of a risk-based approach or proportionate measures to identify those non-profit organisations/non-profit companies vulnerable to terrorist financing.

#### ***4.3.3. Deprivation of TF assets and instrumentalities***

277. There has never been an investigation or prosecution for TF, therefore there has been no opportunity to deprive assets and/or instrumentalities related to TF. The FIA, CED and RSLPF have been cooperating effectively on cash seizure cases that's why Saint Lucia appears to be capable of deprivation of TF assets and instrumentalities if such cases occur. However, the RSLPF indicated that it is not fully equipped with the necessary skills to undertake a TF investigation should the need arise.

278. One FI indicated a suspicion of TF arising after a compliance investigation related to the opening of a bank account for a company in Saint Lucia. The FI was during the onsite in the process of reporting an SAR to the FIA. The FI stopped a possible instrumentality from being active by not opening the bank account.<sup>27</sup>

#### ***4.3.4. Consistency of measures with overall TF risk profile***

279. Given that Saint Lucia did not fully understand its TF risks, the Assessors could not determine whether the measures implemented, while very limited, were consistent with Saint Lucia's overall TF risk profile.

#### ***Overall conclusions on IO.10***

280. **Saint Lucia is rated as having a low level of effectiveness for IO.10.**

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<sup>27</sup> On August 19<sup>th</sup> 2020, Saint Lucia provided additional information indicating that the SAR on TF was received by the FIA on October 9<sup>th</sup> 2019 and that analysis and investigation by the FIA revealed no evidence of TF.

#### 4.4. Immediate Outcome 11 (PF financial sanctions)

##### *4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay*

281. Saint Lucia has not implemented TFS concerning the UNSCRs relating to PF since at the time of the conclusion of the on-site visit, the country did not have any laws or measures in place to address IO 11.<sup>28</sup>

##### *4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions*

282. No funds or other assets of designated persons and entities have been identified as there are no obligations in place to do so.<sup>29</sup>

##### *4.4.3. FIs and DNFBPs' understanding of and compliance with obligations*

283. FIs and DNFBPs in Saint Lucia have no legal obligation to implement TFS relating to PF.<sup>30</sup> However, some FIs and DNFBPs were aware of the international obligation and regularly referred to the United Nations Security Council Consolidated List as a matter of course when on-boarding new customers. The reference to the Consolidated List however was not necessarily as a result of an understanding of any obligation to implement TFS but was more so seen as a standard route to adopt during the CDD process. Apart from this, FIs and DNFBPs did not pursue any additional measures to address PF.

##### *4.4.4. Competent authorities ensuring and monitoring compliance*

284. While the FIA has incorporated FP in some of its presentations on ML/TF, there is no monitoring of compliance by FIs and DNFBPs in the area of FP as FIs and DNFBPs have no obligations in the area.

##### *Overall conclusions on IO.11*

285. **Saint Lucia is rated as having a low level of effectiveness for IO.11.**

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<sup>28</sup> Saint Lucia subsequently enacted the United Nations Sanctions (Counter-Proliferation Financing) Act which came into force on October 14, 2019.

<sup>29</sup> Saint Lucia subsequently enacted the United Nations Sanctions (Counter-Proliferation Financing) Act which came into force on October 14, 2019.

<sup>30</sup> Saint Lucia subsequently enacted the United Nations Sanctions (Counter-Proliferation Financing) Act which came into force on October 14, 2019.

## 5. PREVENTIVE MEASURES

### 5.1 Key Findings and Recommended Actions

#### **Key Findings**

##### *Financial institutions*

- a) Understanding of ML/TF risks and compliance with the obligations was evident but to a varying degree based on the specific financial sector interviewed. The effect of more developed compliance systems by certain sectors e.g. commercial banks, is reflected in the awareness of MT/TF risks and consistency in SARs reported over the years. Conversely, credit unions and MSBs demonstrated a fair understanding of their ML/TF risks.
- b) All regulated entities are required to comply with the AML/CFT preventive measures set out in the MLPA. The FI sectors complies with these requirements on a procedural basis, for example, ensuring AML/CFT policies and procedures and compliance resources are in place. There was also a concern that FIs follow an overly cautious approach to customer due diligence information even for standard risk customers, which may not align to the application of a risk-based approach to applying countermeasures. The extent to which the requirements in the MLPA are enforced was not evident and the FIA and FSRA tend to view the regulated sectors as being generally compliant.
- c) The AML/CFT measures and requirements set out in the MLPA and the procedures of the relevant supervisory authorities were at times not in alignment with the FATF requirements e.g. record keeping, PEPs, high risk countries and reliance on third parties.
- d) The trends in SARs reported by FIs are not consistent with the ML/TF sector risk profiles. The number of SARs reported was low for sectors where cash and movement of financial flows is involved e.g. credit unions and MSBs. When SARs are submitted, feedback is not provided to the reporting entity on the quality and usefulness of the information reported to the FIA.
- e) International FIs (banks, private mutual funds and life insurers highlighted that reliance is sometimes placed on other FIs to conduct CDD rather than demonstrating accountability for conducting the appropriate level of due diligence for their own clients. This raised concern, particularly as Saint Lucia offers offshore financial services, about whether ultimate responsibility remains with the FI relying on third parties (as required under R17) and potentially having an adverse impact on the effectiveness of the CDD measures being applied by international FIs.

##### *DNFBPs*

- f) There was no evidence of the application of risk mitigating measures by the DNFBP sectors.
- g) While registered agents, attorneys-at-law and the casino have submitted SARs, there was generally a low level of SAR reporting by the DNFBP.
- h) The FIA has not implemented measures to assess the level of understanding of AML/CFT risk or the implementation of risk mitigating measures by those sectors rated medium and high risk in the NRA. As a result, there was no assessment of CDD or EDD measures applied or understanding of risk by vulnerable DNFBP sectors.

### Recommended Actions

#### *Financial institutions*

- a) Saint Lucia should conduct a comprehensive review of the current ML/TF preventive measures set-out in the MLPA for FIs and DNFBPs to ensure they adequately meet the FATF Recommendations. Refer to TC analysis for R9-23 for details of technical deficiencies identified.
- b) Supervisors should ensure the requirements in the MLPA are enforced, through their supervisory framework to inspect how well FIS, both domestic and international, comply with the AML/CFT obligations to test the quality of compliance. As core, this should include enforcing measures specific to CDD, PEPs, wire transfers and STRs.
- c) Supervisors should immediately test the AML/CFT preventive measures applied by FIs and sector specific guidance to i.) raise awareness of ML/TF risks and ii.) highlight common areas of deficiencies identified. This should include guidance on SARs.
- d) Supervisors should ensure all FIs have a better understand of the ML/TF risks and vulnerabilities specific to each sector. This will encourage awareness and compliance of the AML/CFT obligations and ensure FIs' preventive measures are risk based and effective.
- e) Saint Lucia should clarify the requirements for FIs, when they there is reliance on third parties (including other FIs) to conduct CDD, to ensure accountability is clear.

#### *DNFBPs*

- f) Enhance the scope of AML/CFT training for the DNFBP sectors and increase the frequency in which these are conducted to improve the understanding and implementation of AML/CFT obligations.
- g) Saint Lucia should immediately implement measures to test the understanding of risks and implementation of AML/CFT measures of the vulnerable sectors in accordance with the legislation. Following this assessment, sector specific guidance should be developed to provide best practices and guidance on identification and submission of SARs, with a view to strengthening and improving the preventative measures applied by DNFBPs.

286. The relevant Immediate Outcome considered and assessed in this chapter is IO.4<sup>31</sup>. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

## 5.2 Immediate Outcome 4 (Preventive Measures)<sup>32</sup>

287. The extent to which regulated entities in Saint Lucia understand and effectively implement preventive measures is mixed depending on the sector and mainly procedural e.g. ensuring compliance resources and policies and procedures are in place. It was difficult to assess the extent

<sup>31</sup> When assessing effectiveness under Immediate Outcome 4, Assessors took into consideration the risk, context and materiality of Saint Lucia.

<sup>32</sup> The initial paragraphs give a short summary of what relative importance Assessors have given to the different types of financial institutions and designated non-financial businesses and professions, taking into account the risk, context and materiality of the country being assessed.

to which preventive measures were effective in practice, beyond meeting the procedural requirements, due to a lack of appropriate testing by supervisors.

288. For the reasons of their relative materiality and risk in the Saint Lucia context, implementation issues were weighted most heavily for the international sectors (banks, mutual funds and insurers), commercial banks and MSBs. Securities, credit unions, and micro finance lenders, and domestic life insurers were weighted as moderately important. Domestic general insurance and the development bank were weighted as less important. This rationale for this is explained in chapter 1 (under structural elements) and summarised below.

a) ***Most important weighted***

- **Domestic banks** (commercial banks): This sector was rated as medium risk for ML in the NRA, however given Saint Lucia is a cash-based society, Assessors assigned greater weighting to this sector which offers mainstream<sup>33</sup> financial services to the mass market. The assessment team found concerns about a lack of appropriate AML/CFT supervisory oversight for this sector due to lack of clarity in supervisory arrangements between the FIA and ECCB.
- **International banks:** This sector of banks operating in Saint Lucia, categorised as either Class A or Class B, were rated as having a Medium High and High risk, respectively, for ML risk in the NRA. The FSRA is the prudential supervisor for this sector and AML/CFT oversight is a joint FIA/FSRA responsibility.
- **International mutual funds:** This sector is considered high to medium high risk for ML risk in Saint Lucia's NRA (differentiated by private or public mutual funds). The FSRA is the prudential supervisor for this sector, and AML/CFT oversight is a joint FIA/FSRA responsibility.
- **MSBs:** Assessors considered the global ML and TF risk associated with this sector which can be classified as high. Saint Lucia's NRA rated this sector as medium high risk for ML. The FSRA is the prudential supervisor for this sector and AML/CFT oversight is a joint FIA/FSRA responsibility.
- **International insurance:** There are 48 companies registered, the majority of which are captive entities. Captive insurance companies are not required to have a physical presence in Saint Lucia. General insurance companies, however, operate through their Registered Agents. International insurance companies were rated as having a High risk for ML in the NRA. The FSRA is the prudential supervisor for this sector, and AML/CFT oversight is a joint FIA/FSRA responsibility.
- **Attorneys:** This sector is supervised by the FIA and assessed as high risk for money laundering in the NRA.
- **Registered Agents and Trustees:** This sector is supervised by the FIA and assessed as medium high risk for ML in the NRA.
- **Realtors:** This sector is supervised by the FIA and assessed as medium high risk for money laundering in the NRA.

b) ***Moderately important weighted***

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<sup>33</sup> Examples of mainstream financial services include current accounts, savings accounts, loans, mortgages, cash withdrawals, domestic and international transfers.

- a. **Securities:** The securities sector was rated as having a medium low risk for ML in the NRA, but Assessors assigned a greater weighting to this sector due to its contribution of 10% of GDP in 2017 and because of the gap in AML/CFT supervisory attention given by the FIA to the two securities brokers.
  - **Credit unions:** The NRA rated this sector medium for ML risk, however Assessors applied greater weighting as the 17 credit unions operating in Saint Lucia provide similar services as domestic commercial banks but with the client-base being restricted only to their members. The FSRA is the prudential supervisor for this sector, and AML/CFT oversight is a joint FIA/FSRA responsibility.
  - **Domestic life insurance:** This sector is considered medium risk for ML in the NRA, which is in line with the view of the Assessors. The FSRA is the prudential supervisor for this sector, and AML/CFT oversight is a joint FIA/FSRA responsibility.
- c) **Less important**
- **Micro-finance lenders:** There are five (5) micro-lending entities in Saint Lucia providing loans to a maximum of USD18 500. The NRA considered this sector to pose a medium low ML risk.
  - There six (6) domestic **general insurance companies** and one **Development Bank** in Saint Lucia were considered of less importance by the Assessors, in line with the view of ML risk in the NRA.

289. Assessors findings on Immediate Outcome 4 are based on interviews with a range of private sector representatives, input from supervisors and Saint Lucia's Effectiveness Report. The lack of AML/CFT supervisory inspections led by the FIA since 2014 meant there is an absence of available reports on sectorial trends identified by supervisors. Therefore, the analysis set out below should not be considered as representative of all the FI and DNFBPs sectors. Please refer to Chapter 6 for details of supervisory arrangements.

290. In the assessment of effectiveness of preventive measures implemented, the measures present in the financial sector (international insurance, money service business – remitters and Class B international banks), attorneys, realtors and registered agents and trustees were heavily weighted due to the high and medium-high risk ratings assigned to these sectors in the NRA. Information on asset size of the DNFBP sectors was not presented by Saint Lucia. According to table 1.2, there are 347 entities operating as DNFBPs in Saint Lucia (casino, attorney-at-law, accounting firm, jewellery, real estate agents and car dealership). The FIA does not have the required resources to effectively supervise the sectors given its extensive mandate.

### 5.2.1 Understanding of ML/TF risks and AML/CFT obligations

291. FIs have a fair understanding of their ML/TF risks and compliance obligations, however the level of understanding is varied across the different financial sectors. The DNFBP sector's understanding of risks and subsequent obligations to mitigate specific vulnerabilities is nascent.

292. The development of the NRA of ML and TF has encouraged a collective understanding of risks and obligations across the FI and DNFBP sectors. The authorities noted that established FIs, such as commercial banks, had a developed understanding of ML/TF risks, which was not consistently evident across all the sectors e.g. the micro-finance lenders.

293. Neither the MLPA nor the Money Laundering (Prevention) (Guidance Notes) MLPGN include a specific requirement for FIs or DNFBPs to have in place a business-wide risk assessment of ML/TF that its business is exposed to. The requirement to develop ML/TF risk assessments would



encourage a consistent application across the sectors for firms to have a view of the ML/TF risks regulated entities are exposed to. This could subsequently be used to develop risk based policies and procedures using a risk based approach, and in turn ensure the sectors can effectively guard against identified inherent risks.

### *Financial Institutions*<sup>34</sup>

294. Interviews held across the FI sectors including trade bodies highlighted participation in the NRA exercise. However, at the time of the onsite Assessors found that in most cases the output of the NRA had only recently been shared. Therefore, relevant findings or gaps were yet to be incorporated into FIs own compliance programmes where necessary, including updating institutional and customer ML/TF risk profiles. Interviews with the private sector highlighted FIs either had their own risk assessment or were considering developing one as a follow-up to the NRA.

295. Risk typologies identified by the authorities (example below) feature in the FIA’s annual reports and are submitted to the Minister. The FIA shares information it identifies through SARs at the training sessions it provides to FIs. However, these typologies are not available to the private sector as reference material e.g. publications or newsletters. The availability of such reference material can increase understanding of ML/TF risks various sectors are exposed to and highlight potential deficiencies in the FIs preventive measures that criminals will seek to exploit.

#### **Box 5.1: Cash Deposits – FIA typology included in its 2014 annual report**

‘B’, a foreign national, recruited various locals to conduct banking transactions on his behalf.

‘B’ along with his associates registered shell retail and service companies in their names.

Multiple large local and foreign cash deposits were deposited in different banks on a regular basis on the assumption that they represented revenue from the companies. The deposits were structured either being made in amounts just below the statutory threshold or multiple deposits on the same day at different branch locations.

The banking transactions were not in keeping or consistent with the type of business activity that the individuals claimed to be involved in. ‘B’ was subsequently charged for drug trafficking”

296. Interviews with the international FIs (banks and mutual funds) and registered agents and trustees highlighted existence of complex structures, where it was not clear at what part of the chain appropriate preventive measures are being applied, based on the understanding of associated ML/TF risks, and which authority (both within Saint Lucia and out of Saint Lucia for consolidated group supervision) is responsible for ensuring these are effective.

297. Interviews with private mutual funds highlighted business models that involved complex and opaque structures, sometimes offering multiple products/services e.g. company corporation as registered agent, and links to a number of different FIs or DNFBPs that operate across a number of different jurisdictions ranging from London, Trinidad to Dubai. This was combined with a view that the ML/TF risks associated with the business were not perceived to be high. There is also reliance on FIs located outside of Saint Lucia to conduct CDD or EDD, which is permitted as per the recommendations but the requirement that the ultimate responsibility for CDD measures rests with the FIs relying on the third parties was not always demonstrated.

298. Commercial banks interviewed had a good knowledge of their ML/TF risks recognising specific issues associated to their sector e.g. cash intensive businesses, PEPs and CIP transactions. The latter issue was flagged in the NRA however no guidance was provided by the authorities to

<sup>34</sup> This category includes domestic FIs (commercial banks, credit unions, insurers, micro finance lenders) and international FIs (banks, insurance and mutual funds) and MSBs.

FIs about how to mitigate risks associated with CIP related transactions particularly where high risk jurisdictions were concerned e.g. Iran, Iraq, Russia and Turkey. Assessors were advised at the time of the onsite that only one local commercial bank accepts CIP related transactions.

299. MSBs demonstrated some understanding of the sector risk, based on the trends identified at branches in certain jurisdictions. Due the affiliation and obligations to international MVTs providers, there is a general understanding of their AML/CFT obligations. The agents interviewed demonstrated compliance with the obligations to develop written compliance manuals, conduct ongoing training and testing of AML/CFT measures. However, there were inadequate systems for monitoring sub-agents.

300. Sectors where cash transactions are prominent are categorised as ‘other business activity in the MLPA – these include credit unions, money service businesses and micro finance providers. Discussions with these sectors highlighted a varying degree of AML/CFT understanding and application of mitigating measures, with the credit unions demonstrating a relatively mature understanding of the procedural requirements.

#### ***DNFBPs***

301. Interviewees from the DNFBP sectors confirmed that the results of the NRA were shared with them during the three-month period prior to the onsite. Some attended a meeting where the findings were delivered and a related presentation was subsequently forwarded to them via email. Attendees received the NRA results related to their sectors only and therefore could not study and fully understand the risks related to other sectors or the country risk. Assessors believe this can impede the development and application of appropriate risk mitigating measures because customers may be businesses performing medium or high risk activities.

302. Attorneys-at-law interviewed are involved in transactions involving the buying and selling of real estate. Some of their clients were involved in large investment products. It was noted these clients are usually referred by FIs. There was some demonstration of an understanding of risks by attorneys-at-law.

303. It was noted that many licensed registered agents and trustees in Saint Lucia are practicing attorneys-at-law. It was also noted that registered agents interviewed were businesses established within attorney-at-law firms. Assessors found that they (registered agents) have a general understanding of the AML/CFT risks and obligations.

304. The only gaming operator functioning in Saint Lucia is affiliated with an established casino business operating in the United States. The activities of a gaming operator are defined as the ‘operation of a specific number of types of games at approved premises’, which Saint Lucia considers to be a casino. There is some level of understanding of the risk and AML/CFT obligations. The entity had submitted a total of 117 SARs to the FIA as of June 2019.

305. There is a Realtors Association which has a membership of 42 real estate agents. Another 41 are expected to gain membership upon completion of specialized training at the Monroe College. The Association has co-ordinated AML/CFT training for 37 realtors which was facilitated by the FIA. There is a general understanding of the AML/CFT risk and obligations by the realtors who are members of the association.

306. The real estate sector, which has no restrictions on entry for agents, is very active with leasing and rental being mostly cash-based transactions. Interviewees confirmed that clients for these transactions (leasing and rentals) are mostly non-nationals from jurisdictions such as Japan, Taiwan and Africa, who are in Saint Lucia either for educational or business purposes. Though there was no standard cash threshold established by the entities, large cash transactions are probed, and source of funds obtained (as per Section 21 of the MLPA). The agents interviewed demonstrated a

general understanding of the risks associated with the sector and a basic understanding of AML/CFT obligations.

### **5.2.2 Application of risk mitigating measures**

307. FIs generally displayed a fair understanding of the requirement to put in place mitigating measures by demonstrating they had dedicated compliance staff, policies and procedures and monitoring controls.

308. The MLPA sets out the legal AML/CFT requirements regulated entities are required to comply with, supported by the MLPA Guidance notes. The primary form of guidance issued to FIs and DNFBPs to ensure appropriate application of risk mitigating measures is the MLPA and associated Regulations (Guidance Notes). Both are focussed on legal requirements rather than providing FIs and DNFBPs examples of the latest risk with trends, typologies, and best practices identified by the authorities. This can guide entities when developing their own preventive measures, and in its absence, sectors tended to comply by following a procedural approach as opposed to risk-based approach.

309. The FIA has on its website newsletters<sup>35</sup> in relation to FATF Recommendations. The FSRA also issues prudential AML/CFT guidelines<sup>36</sup>, for the sectors it prudentially supervises. The FIA and FSRA should consider consolidating the AML Guidelines for FIs into one overarching standard guidance document for all entities, to ensure consistency in messaging across all sectors where relevant. This should be supported by the inclusion of sector specific nuances in risks and mitigating measures for sectors where the ML/TF risks tended to be higher and differs from the standard. Inclusion of risk typologies into this guidance will assist regulated sectors with the practical application of the legal requirements set out in the MLPA.

#### ***Financial Institutions***

310. FIs interviewed representing commercial banks, insurers and credit unions reported having AML/CFT compliance programmes in place. Examples of compliance programmes provided showed evidence of CDD, EDD, transaction monitoring and suspicious activity reporting policies and procedures being in place.

311. The FSRA observed for the firms inspected in its international insurance and credit union sectors, that FIs' client risk profiling tools have shown improvements and are resulting in an increase in the number of clients refused business. However, it was also noted by the authorities that certain sectors e.g. credit unions required further training to increase their understanding of ML/TF risk.

312. The measures applied by the domestic commercial banking sector were the most mature, demonstrating use of dedicated AML/CFT human resources (including compliance officer), client risk profiling, automated or manual transaction monitoring and screening systems, enhanced due diligence and AML/CFT training for staff. This demonstrates the positive impact that AML/CFT supervision can have as the FIA reported carrying out inspections for this sector during 2013-2014, the specific details of which were not made available to the assessment team.

313. To ensure a balanced approach was taken towards understanding deficiencies in FIs, Assessors reviewed the key areas of weaknesses raised by internal and external audits provided by the FIs interviewed<sup>37</sup>. These audits showed that deficiencies were found in relation to: inappropriate

<sup>35</sup> FIA website links to newspaper articles relating to FATF standards: <https://www.slufia.com/document-categories/newsletters>

<sup>36</sup> FSRA AML/CFT Guidelines for insurance companies: [https://fsrastlucia.org/images/AML-CFT\\_Requirements.pdf](https://fsrastlucia.org/images/AML-CFT_Requirements.pdf)

<sup>37</sup> FIs interviewed were a very limited sample therefore issues raised cannot be indicative across the FI sectors.

records management; inadequate PEP checks (including source of wealth); lack of senior management sign-off for PEPs; deficiencies in transaction monitoring tools; and poor staff vetting controls. EDD and recording keeping measures were notable deficiencies identified by the MSBs interviewed. These deficiencies highlight the need for significant development required by FIs to improve their application of risk mitigating measures.

### ***DNFBPs***

314. The FIA is the agency authorized to inspect FIs and persons engaged in other business activity (DNFBPs) to assess compliance with the provisions in the MLPA. The inspections aspect of the supervision regime of the FIA is in its infancy. Policies and procedures have been developed and human resources employed for this supervision function. Assessors were therefore unable to ascertain application of risk mitigating measures by the DNFBP sectors. Though on-site inspections have been conducted on the jewellery sector, the analysis and findings were not yet provided.

315. Most entities interviewed from the DNFBP sectors have documented and approved AML/CFT compliance manuals. However, there was no testing of the measures implemented by the medium and high-risk sectors by the FIA.

### ***5.2.3 Application of CDD and record-keeping requirements***

316. FIs in general demonstrated that customer due diligence measures are applied as a matter of course, including examples of when business has been refused until CDD is complete. However, there are concerns about the extent to which a risk-based approach is followed as there was an inference through the private sector interviews that a higher standard of due diligence is expected even of standard risk customers. The extent to how well CDD measures are applied in keeping with the FATF standards is therefore difficult to measure.

#### ***Financial Institutions***

317. An appropriate level of CDD is conducted across the FI sectors, which includes the requirement of more than one (1) form of ID and verification at account opening or when conducting transactions. The larger and more established FIs use automated screening and transaction monitoring systems as part of their due diligence measures at onboarding and during ongoing monitoring.

318. In circumstances when CDD is incomplete, the practice is to refuse business or wait until complete documentation is received. The practice to refuse business was commonplace, particularly among domestic commercial banks and credit unions. These FIs displayed a strong culture towards ensuring appropriate information is obtained before accounts are opened.

319. Beneficial ownership checks are conducted to ascertain the ultimate natural person; however private sector representatives interviewed did not reference the analysis of source of wealth and source of funds checks as part of their routine beneficial ownership and PEP checks. This would need to be considered when FIs are dealing with international PEPs. It was therefore difficult to assess how well beneficial ownership checks are made beyond following the procedural requirement to do so, particularly in the absence of any notable concerns identified as a result of FIs conducting these checks.

320. Some interviews with the private sector highlighted the fact that the same level of CDD was conducted for all customers, whereby even the standard customers were subject to enhanced measures, raising questions about the application of a risk-based approach to CDD. One private sector interviewee raised concerns that the due diligence measures conducted by banks were too rigorous for basic/standard risk transactions. This raised concerns that Saint Lucia is requiring a higher standard of due diligence across all types of clients, not just higher risk scenarios, which has

an adverse impact on its application of a risk-based approach. Rationale was not provided to Assessors about any specific risks Saint Lucia seeks to mitigate through the application of enhanced measures e.g. local corruption levels being identified as high-risk in its NRA. However, Assessors noted that domestic commercial banks had concerns about losing their correspondent banking relationship with foreign banks due to non-compliance with AML/CFT measures. This may inadvertently result in an overly cautious approach followed towards CDD.

321. Specific deficiencies highlighted by the FSRA concerning CDD include: purpose of business not clearly being defined for clients; purpose of business differing from the original intended nature/purpose provided at the application stage; inadequate evidence of source of funds; incomplete KYC information recorded; and AML/CFT procedures not being properly documented. These deficiencies relate to the essential preventive measures expected to be in place at FIs, the lack of which poses the risk that FIs may not always know who they are entering into a business relationship with to provide financial services.

322. Deficiencies identified in the international banks by the FSRA, which it seeks to address through firm action, include: insufficient CDD and EDD including beneficial owner checks obtained and recorded; inadequate verification of source of funds; transaction monitoring systems excluding AML/CFT factors; AML/CFT policies not appropriately considering product which pose higher risk; and not informing the regulators of changes in FI's management structure. Additionally, for the one (1) private mutual fund interviewed, issues identified in its own audit report featured EDD; source of funds checks for applicants of fund; AML policies not being compliant with local requirements/legislation and no dedicated function responsible for ensuring the fund's activities are compliant with AML obligations. These weaknesses are important to consider in relation to international FIs to ensure Saint Lucia's AML/CFT requirements are continuously adhered to.

323. Conversations with international banks, private mutual funds and insurers highlighted that reliance on conducting CDD was being placed on other FIs linked to a transaction rather than these FIs demonstrating responsibility for conducting the appropriate level of due diligence themselves. Discussion with one insurer highlighted difficulties in obtaining CDD information within the 30-day onboarding period and the risk of having to turn away business, with CDD issues prevalent when brokers were involved in attracting business.

324. MSB interviews highlighted that the level of CDD conducted was determined by set thresholds which required varying degrees of documentation. There were also instances where the controls were applied retrospective since due diligence and screening of transactions occurred after payments had been made. One representative advised that transaction monitoring of payments to screen for adverse intelligence is carried out on weekly basis. This approach raised concerns about the extent to which MSBs follow a procedural and prescriptive approach, instead of a risk-based approach.

#### ***DNFBPs***

325. Assessors noted the CDD and record keeping measures implemented by DNFPB sectors, including registered agents, real estate, attorneys-at-law, accountants, jewellers and the casino. However, the FIA was unable to provide an assessment of how well such measures are applied by the DNFPB sectors. Feedback on compliance inspections on the jewellery sector had not yet been provided to those entities in the jewellery sector. There was no other mechanism utilized by the FIA for assessing how well CDD and record keeping measures are applied.

#### ***5.2.4 Application of EDD measures***

326. The assessment team did not find a distinct variance in the approach followed by the different sectors to the application of enhanced measures, commensurate with the specific ML/TF

risks per sector. This is as a result of the gap in sector specific understanding of risks, which has only begun to develop through the NRA. In addition, the FIA has not conducted AML/CFT inspections of FIs since 2014, which further highlight a gap in supervisory oversight to demonstrate how well the different sectors apply EDD measures commensurate with their risks.

327. Assessors noted that international financial groups interviewed displayed more developed AML/CFT frameworks which aligned to the requirements of their head offices. This includes branches of FIs where the head office is located in the Caribbean region. International financial groups were also structured where further support was provided by head office compliance when issues in relation to AML/CFT arose, particularly application of enhanced due diligence measures. This differed to domestic FIs where there was limited resource and there was a reliance on manual checks to apply enhanced measures. Domestic FIs also tended to rely on the FIA's website for information to ensure they applied enhanced measures where relevant e.g. PEP lists, raising the need to ensure this resource to FIs provides robust and up-to-date information to smaller FIs to support the development of their EDD measures.

328. As referenced in previous paragraphs, there has been an absence of appropriate AML/CFT oversight of FIs. Therefore, a view on the extent of compliance by FIs could not be clearly determined. Private sector interviews broadly did not indicate deficiencies highlighted to them on the measures set out below. This does not mean that deficiencies do not exist, particularly when consideration is given to the firms' internal audit reports provided to Assessors (examples of some issues are raised in the section above).

#### ***Politically Exposed Persons (PEPs)***

329. Interviews with the private sector representatives highlighted that PEP risks were adequately and sufficiently considered by the larger and more established institutions when identifying domestic and foreign PEPs and the family and associates of such PEPs. Evidence of use of internal transaction monitoring and screening systems which featured PEP screening was provided through policies and procedures. Smaller institutions conducted manual checks and relied on the PEP list provided on the FIA's website. While this is adequate given the limited resources available, the assessment team found concerns that the list is focussed on domestic PEPs and created gaps in smaller FIs ability to effectively comply with the requirement to identify foreign PEPs and apply EDD when a higher level of ML risk is presented. Where enhanced measures could not be applied adequately by the smaller FIs, there remains the risk that this is not detected, in comparison to the larger firms which feature group compliance functions, including international FIs. This is further exacerbated due to insufficient AML/CFT oversight.

330. Discussions with the private sector highlighted that most PEP clients are domestic PEPs known locally and there is a requirement as per the MLPA, to conduct enhanced due diligence on this category of PEPs. As highlighted in the previous section, the level of scrutiny required to be applied to foreign and domestic PEPs did not differ. While most PEP clients were domestic PEPs, FIs did not demonstrate that enhanced due diligence is carried out for international PEPs e.g. source of wealth, source of funds checks. This reflects the concerns previously raised about FIs following a prescriptive approach rather than risk-based approach. The Assessors noted the effectiveness weaknesses raised above are created by deficiencies in the technical compliance with R12. Deficiencies identified in the PEP measures detailed in the MLPA is the basis for the application of a standardised approach towards both domestic and foreign PEPs. Refer to analysis of R12 for details.

#### ***Correspondent banking***

331. FIs in Saint Lucia do not provide correspondent banking services to other FIs and are solely respondent banks. Since 2014, many of the international banks have lost their correspondent

banking relationships. They cited the perceived high risk in the Caribbean region as reasons for this occurrence. 11 international correspondent relationships were reported to have been terminated with regional commercial banks during 2014-2017. For commercial banks where correspondent banking relationships continue to exist, Assessors found that they sufficiently understood their EDD obligations. These banks followed a careful approach to ensure EDD and AML/CFT obligations were broadly adhered to in order to avoid the risk of losing their international correspondent banking relationships.

332. Foreign banks have been cautious, thus resulting in them providing services to certain client bases, to avoid losing their correspondent banking relationships. This has resulted in a transfer of client business to national banks (commercial banks). The concerns include those about CIP related payments as correspondent banks because these require additional information on clients before such payments could be processed. Because of the cost required for the additional compliance measures related to CIP transactions, FIs in Saint Lucia had a low appetite for providing banking facilities to the CIP client base.

#### *New technologies*

333. FIs interviewed by the assessment team all indicated limited use of new technologies as part of their business offering. Where online banking services were provided, included for non-face-to-face transactions, clients were expected to come into the branch to complete CDD checks. These measures are considered enough in the context of the products and services provided by the FIs sectors, which is limited in relation to new technologies. However, there is a concern about the lack of clear guidance and obligations requiring FIs to adequately assess the ML/TF risks for new technologies (refer to R15).

#### *Wire transfer rules*

334. Wire transfers are conducted by commercial banks, MSBs (money remitters only) and international Class A Banks. FIs interviewed highlighted the use of consolidated automated screening tools featuring a range of information including PEPs, TFS and adverse media and intelligence as part of checks made for incoming and outgoing wire transfers. This also included ensuring appropriate information is available about the originator and beneficiary. The main destinations involving wire transfer payments were to USA, Europe, UK and Canada. The authorities did not raise any deficiencies in relation to the application of enhanced measures for wire transfers. However, the Assessors noted that effectiveness weaknesses are raised by the major deficiencies in technical compliance with R16, caused by the weaknesses in requirements set-out in the MLPA to apply enhanced due diligence measures to comply with wire transfer rules. (Refer to analysis of R16 for details).

#### *Targeted financial sanctions*

335. The authorities did not raise any deficiencies within FIs in relation to the enhanced measures that are required to comply with TFS. However, Assessors identified deficiencies in the country's compliance with R6. This included the absence of an established mechanism to communicate the designations to the regulated sectors and for monitoring compliance. Interviews with the private sector highlighted that larger established FIs utilise automated screening tools, which included consolidated lists, available from KYC utility providers. For the smaller institutions, manual checks were conducted using the information provided on the FIA's website. While FIs conducted these checks, the extent to which these can be determined as effective is low, particularly as there is no mechanism or guidance to FIs to ensure these measures are being applied as required. This includes the process to be followed when a breach is identified.

336. The authorities highlighted that FIs conduct daily screening against sanction lists and that FIs are aware of their obligations to freeze assets without delay when there are positive matches. However, a mechanism is not in place for the authorities to oversee compliance with TFS rules, including identification of breaches.

337. Detailed analysis about implementation of TFS sanctions is included in Chapter 4.

***Higher risk countries***

338. The authorities did not identify any deficiencies regarding the enhanced measures which FIs are required to apply when dealing with higher risk countries identified by the FATF. The private sector highlighted use of automated internal screening tools or the use of KYC utility providers which include consideration of higher risk countries. Smaller institutions highlighted reliance on manually referring to websites containing information of high-risk countries. All private sector interviewees advised that no information was proactively communicated by Saint Lucian authorities about updates/changes to higher risk countries identified by the FATF (R.19), including advice on the counter measures FIs are expected to consider.

339. Overall, the extent to which FIs considered higher risk countries is broadly procedural and limited to focusing on screening procedures, as highlighted above. Further enhancements, commensurate with the ML/TF risks, are required to ensure FIs adequately consider higher risk countries through the application of enhanced or specific measures e.g. assigning a higher-risk rating to customers or transactions associated with those countries, for ongoing monitoring.

340. The authorities highlighted as part of the NRA, that Saint Lucia has identified other high-risk countries which pose a risk due to their geographical location. However, no further details and mitigating actions expected of FIs were provided through the NRA Summary Report. FIs need to address these deficiencies with the support of the authorities to ensure they are compliant with the FATF requirements to counter the risk of exposure to ML/TF emanating from higher risk countries.

***Application of EDD measures by DNFBPs***

341. Assessors concluded there is a weak understanding and application of EDD measures for PEPs, TFS related to TF and higher risk countries identified by FATF, by entities in the DNFBP sectors. Though some sectors demonstrated an understanding of risks associated with PEPs (jewellers, attorneys-at-law, accountants and real estate) and outlined measures implemented, evidence was not provided either by the entity or the FIA. There was little understanding or implementation of counter terrorism measures.

***5.2.5 Reporting obligations and tipping off***

***Financial Institutions (including MSBs) and DNFBPs***

342. Most private sector representatives interviewed displayed a good understanding of their reporting obligations, and the majority confirmed they had submitted SARs to the FIA. All private sector representatives interviewed said that feedback on their report, including quality, was not provided by the FIA. Assessors also noted there was no formal policy about the process FIs are required to follow when a SAR is submitted. The authorities clarified that FIs are not expected to wait for direction from the FIA about whether to proceed with the transaction when a suspicion has been raised.

343. The authorities highlighted two (2) instances of onsite inspections resulting in the identification of suspicious transactions where entities were required to submit a SAR to the FIA. However, the regulator did not consider these instances as breaches of the reporting obligations, requiring the FIs to address the deficiencies in their preventive measures which resulted in the



suspicious transactions not being correctly identified. This raised concerns that compliance with SARs measures is not adequately enforced to encourage an improvement in the level of compliance required for SARs reporting obligations.

344. Whilst most entities interviewed illustrated an understanding of their suspicious activity reporting obligations, the number of SARs reported by FIs is generally inconsistent and low, with the exception of domestic commercial banks (see table below). Saint Lucia is a cash intensive economy and there are a higher proportion of credit unions and MSBs (including branches) operating in Saint Lucia, however, the number of SARs reported in recent years is low. Saint Lucia also attracts a number of tourists/non-residents, therefore the risk of one-off transactions where there is no business relationship with a FI (i.e. occasional transactions) is high. This is indicative of further opportunities for these sectors to be alert to suspicious activity and report suspicion when it is reasonable to do so.

345. FIA analysis shows that wire transfers accounted for 67% of the value of total STRs filed in 2017. Examples of concerns identified included wire transfers being rejected due to lack of appropriate documentation to support verification of the source of funds.

**Table 5.1: Value of SARs per currency for the period 2016 – 2017**

Currency	2016	2017
<b>XCD</b>	38,221,970	71,171,746
<b>USD</b>	2,562,579	5,206,927
<b>GBP</b>	538,400	257,914
<b>EURO</b>	3,376,906	184,641
<b>BDS</b>	-	14,950
<b>CAN</b>	-	510

346. FIs should be encouraged to report good quality SARs to the FIA when there are reasonable grounds to suspect suspicious activity. This should include providing feedback where information has been useful to law enforcement investigations. The case below is an example of the usefulness of SARs submitted by two (2) commercial banks.

**Box 5.2: Case: Joint Investigation ML related to Drug Trafficking**

In 2015 SARs were filed by two commercial banks which indicated that two individuals were making frequent large deposits of Euros, USD and XCD to their personal and business accounts that seemed irregular to their normal pattern of business based on their proposed business profile. During the same year intelligence reports received also indicated that one of the individuals is suspected to be a major player in the Drug Trafficking and ATM Card skimming.

The SARs were analysed and assigned to financial investigators. Enquiries revealed that they were directors. They used shell companies purporting to be legitimate businesses to launder proceeds from drug trafficking and credit card fraud through financial institutions. They also used cash couriers and money remittance services to transfer money out of Saint Lucia to various jurisdictions. There is no physical location for any of the businesses. The businesses were not registered with the IRD. One of the individuals never filed income taxes. A total of 1 bank account was used.

The case was tabled at the Inter-Agency Intelligence Committee meeting. The FIA took a proactive approach in an effort to investigate and gather intelligence by conducting operations with other law enforcement agencies in order to make arrests.

347. FIs raised awareness of the need to report TF risk, however the extent to which SARs filed by FIs and DNFBPs in relation to ML, included features of TF risk within the report of suspicion was not raised by the authorities. This is likely because of the limited awareness of TF risks in Saint Lucia more broadly, with the authorities indicating no TF risks have been identified and no TF investigations are ongoing.

348. The majority of SARs were filed by FIs. Domestic Banks had filed 71% of the total SAR received as of June 2019. The quantity of reporting by entities in the DNFBP sectors has been negligible. Assessors noted the attorney-at-law six (6), casino 117 and registered agents two (2) are the sectors which have submitted a total of 125 SARs or 10.55% out of a total of 1184 SARs (10.55%) received by the FIA during 2013-2019.

Table 5.2: Number of SARs Received by the FIA

Institutions	2013	2014	2015	2016	2017	2018	2019	Total
<b>Domestic Banks</b>	108	151	81	148	149	120	87	<b>844</b>
<b>International Offshore Banks</b>	6	12	19	36	7	13	18	<b>111</b>
<b>Credit Unions</b>	3	5	5	5	5	11	4	<b>38</b>
<b>Insurance</b>	0	0	2	0	1	2	0	<b>5</b>
<b>Casino</b>	27	32	8	19	13	14	4	<b>117</b>
<b>Money Service Business</b>	0	0	0	19	16	7	6	<b>48</b>
<b>Registered Agents</b>	0	0	0	0	1	1	0	<b>2</b>
<b>Lending Agencies</b>	0	1	0	0	0	9	3	<b>13</b>
<b>Attorney-at-Law</b>	3	2	0	0	0	1	0	<b>6</b>
<b>Total</b>	<b>147</b>	<b>203</b>	<b>115</b>	<b>227</b>	<b>192</b>	<b>178</b>	<b>122</b>	<b>1184</b>

349. The only casino operating in Saint Lucia filed 117 SARs during 2013-2019, which is indicative of the entity's awareness of the obligation and implementation of systems to identify suspicious transactions. However, in the absence of any feedback from the FIA on the quality of the reports or the conduct of an on-site inspection, Assessors were unable to conclude whether there is a correlation between entity level of reporting (quantity) and the quality of their AML/CFT measures. No investigation or prosecution of an ML offence has resulted from reports submitted by the casino.

350. There was a general understanding of the legal requirement regarding tipping-off and the consequences of committing this offence. Most organisations have also introduced additional measures by including tipping-off as a topic in their internal training as well including the breach as grounds for termination of employment. Staff of FIs are sensitized, during AML training, to ensure that tipping-off does not occur when a SAR has been filed with the FIA. Only a few individuals would be aware that a SAR exists to limit the risk of tipping off. Disciplinary measures are not always explicit to prevent tipping-off however, private sector entities generally considered tipping-off to be a serious breach if it were to occur.

351. Feedback to entities on the quality or status of SARs reported was not provided by the FIA. Most entities interviewed confirmed they received either verbal or written acknowledgement of receipt of the SAR.

352. There is low reporting of suspicious transactions/activities by entities in the DNFBP sectors. Additionally, the FIA has not provided feedback to entities on the quality of SAR submitted. This was of particular concern with regard to the sole Casino which accounted for 10% of the reports received by the FIA.

353. There was no evidence of supervision tools being utilized to determine how well FIs and DNFBPs understood their risk or apply mitigating measures commensurate with those risks.

### ***5.2.6 Internal Controls and legal/regulatory requirements impending implementation***

#### ***Financial Institutions (including MSBs)***

354. Where firms were part of global structures, such as international insurance, the preventive measures in place at FIs are often driven by international requirements of the wider group structures. This included regular reporting to group compliance functions and use of risk committees and Board as part of the oversight mechanisms. FIs, particularly those that were part of global structures, were generally sufficiently well-resourced and displayed a positive AML/CFT culture involving regular training as part of their internal controls and responding to findings of internal or external audits. This included a culture where they sought to co-operate with the authorities as and when necessary.

355. The authorities flagged that AML/CFT training sessions are provided to compliance officers of FIs when requested. This involves due diligence being conducted on delegates receiving training by the authorities. Of concern to the Assessors was the identification of an individual who was not permitted to participate in the training exercise due to adverse findings from background checks conducted. While one case may not be reflective of widespread issues, this raises some concerns about the internal staff vetting controls in place at FIs which should include appropriate background security checks of staff, particularly to ensure the integrity of those handling client information, with obligation to identify suspicious activity. This is also in keeping with the requirements under Recommendation R18.1

356. There were differing levels of requirement to conduct internal and external AML audits across the different FI sectors. This requirement was particularly evident for the larger and more established FIs. MSBs interviewed highlighted they had to report to the Internal Audit within their group structures and were also subject to quarterly offsite reviews.

357. Where FIs were part of group structures, the level of consolidated group supervision being conducted was not evident in all cases. When SARs were reported by agents, there was a requirement to inform the Compliance function within the head office of the group, but this did not impede the reporting obligations to the FIA.

#### *Overall conclusions on IO.4*

358. **Saint Lucia is rated as having a low level of effectiveness for IO.4.**

## 6 SUPERVISION

### Key Findings

- a) Positive steps have been taken to develop a national view of ML/TF risks with all supervisors participating in the NRA, however individual supervisors' understanding of the ML/TF risks present in the different sectors is varied and requires further development.
- b) The FIA has not been able to establish itself as the lead supervisor in Saint Lucia due to persistent resource constraints over time, which were also raised in the previous MER. The FIA has recently, recruited two supervisors, in July 2019, when the FIA recommenced its supervisory activity following a gap in inspections conducted since 2014. The FIA is required to perform a number of functions in addition to supervision e.g. FIU, ML investigations and legislative (including guidance) function, which will also compete for its limited resources and impede its efforts to carry out its supervisory function.
- c) In the absence of adequate AML/CFT supervisory oversight, there have been no sanctions applied to FIs or DNFBPs for AML/CFT failings identified through supervisory activity. Further, the FIA has limited powers to issue administrative sanctions for non-compliance with AML/CFT obligations.
- d) Clarification is required about the respective roles and responsibilities of the FIA and the ECCB to supervise commercial banks, with the latter's new AML/CFT functions limited to conducting AML audits and providing training. Discussions with the authorities and representatives from the commercial banking sector raised concerns that the ECCB's new AML/CFT supervisory arrangements are yet to be agreed. As a cash-based economy and an offshore financial jurisdiction, there remain vulnerabilities to ML/TF risk that require an appropriate level of regulatory oversight to mitigate any AML/CFT deficiencies identified. This was not demonstrated by the two competent supervisory authorities i.e. the FIA and ECCB.
- e) Clarity is required about the arrangements between the FIA and FSRA to carry out the AML/CFT function for the sectors the FSRA regulates for prudential purposes. This includes clear ownership of which supervisory authority is responsible for addressing AML/CFT deficiencies by applying remedial actions or sanctions where necessary.
- f) Licensing, registration and fit and proper checks to prevent criminals from entering the financial market are generally in place, albeit with differing approaches used depending on who the authorising body is.
- g) The licensing arrangements for international banks (Class A and Class B) raised concerns about the interpretation of physical presence and the allowance for FIs where physical presence is not a requirement, to ensure shell banks are not approved.
- h) Training is a positive feature of Saint Lucia's AML/CFT supervisory system. In the absence of onsite inspections since 2014, the FIA has focussed on providing AML/CFT training to the regulated sectors it supervises. The FSRA has also been proactive in this area and has issued AML/CFT guidelines to the sectors it supervises for prudential risk. However, there are gaps in the availability of specific feedback and guidance on detecting and reporting suspicious transactions.

### *DNFBPs*

- i) There is no mechanism to ascertain which attorneys-at-law and accountants are performing the Other Business Activities stated at Schedule 2, Part B 32 and 33 of the MLPA.
- j) Supervision of the DNFBP sectors is not aligned with the results of the NRA.
- k) Further to the legislative remit, there were no established controls to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function of DNFBPs in the real estate, car dealership and jewellery sectors.

#### **Recommended Actions**

- a) The adequacy of AML/CFT supervisory resources available to the FIA to oversee both the FI and DNFBP sectors should be reviewed and increased to ensure the authority can deliver its supervisory remit.
- b) Clarify the AML/CFT supervisory roles and responsibilities of the FIA and ECCB in respect of the commercial banking sector through amendments to the relevant legislation e.g. the MLPA. This is to ensure there are no gaps in AML/CFT supervisory oversight of sectors exposed to a higher level of ML/TF risk. The outcomes of the review of AML/CFT supervisory arrangements should be communicated to the sector, including details of when AML/CFT inspections of commercial banks will resume.
- c) The FIA should implement its compliance enforcement ladder to remediate the AML/CFT deficiencies it identifies through its supervisory activities. Further, the FIA should be given appropriate powers relating to a range of proportionate and dissuasive administrative sanctions to be used in practice for breaches of AML/CFT obligations, by its supervisees.
- d) Supervisors should continue to develop their understanding of ML/TF risks following the completion of the NRA by periodically enhancing their own sectorial risk assessments. The depth of understanding the ML/TF risks specific to the different sectors should be enhanced through increased AML inspections in both frequency and scope/depth.
- e) Review the formal role of the FSRA to reflect how it supports the FIA to deliver its AML/CFT supervisory mandate or as a standalone AML/CFT supervisory authority through amendments to the relevant legislation e.g. MLPA or FSRA Act. The review should also consider the remedial measures and sanctions the FSRA can apply in practice when AML/CFT deficiencies are identified.
- f) The follow-up activity post-inspections should be a core part of supervisory processes, specifically monitoring and collecting statistics on the use of remedial actions and sanctions to demonstrate the effect that supervisors' actions have on compliance by FIs and DNFBPs.
- g) Use the AML/CFT supervisory risk models to prioritise AML/CFT inspections of the FIs and DNFBPs on a risk-based approach including prioritisation of higher risk sectors identified by authorities and the NRA.
- h) Review the licencing process for international banks, including the requirements to have physical presence and the circumstances where this is not required. This is to demonstrate that there is a clear authorisations process to ensure shell banks are not established.
- i) Written feedback and guidance on SARs should be provided and used to facilitate regular dissemination of information about ML/TF and weaknesses identified in relation to AML/CFT controls and also to encourage awareness of risks and compliance with AML/CFT obligations.

*DNFBPs*

- j) Conduct a review of Schedule 2 of the MLPA and undertake the necessary amendments to:
  - i. clarify the definition of the financial institutions and other business activities listed; and
  - ii. harmonize the definitions of the FIs and other business activities with their respective legislation.
- k) The FIA should develop and implement control/mechanisms to prevent criminals and their associates from holding controlling interest and managerial functions of entities in real estate, car dealership and jewellery businesses.
- l) Given the results of the NRA, Saint Lucia should implement mechanisms to identify and understand the actual DNFBP population, particularly in the real estate, car dealership, attorneys-at-law and accountant sectors, to achieve effective supervision. Such mechanisms should also include powers to impose sanctions against those entities that wilfully evade supervision.

359. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

### 6.1 Immediate Outcome 3 (Supervision)<sup>38</sup>

360. There are some characteristics of an effective AML/CFT supervisory system in place. These relate to training provided with a view to mitigating the ML/TF risks in the financial sector as well as licencing and registration arrangements. However, the AML/CFT supervisory regime requires time to develop and mature through frequent supervision and monitoring of sectors prioritised by an understanding of ML/TF risks. The lack of regular onsite inspections of the regulated sectors has inhibited Saint Lucia's ability to demonstrate that it promptly identifies, remedies and sanctions, where appropriate, violations of AML/CFT requirements.

361. There are four (4) supervisory authorities in Saint Lucia - the Financial Intelligence Authority (FIA), the Financial Services Regulatory Authority, (FSRA), the Eastern Caribbean Central Bank (ECCB), and the Eastern Caribbean Securities Regulatory Commission (ECSRC). The latter three (3) are core prudential regulators.

362. The FIA is the primary competent authority with designated AML/CFT supervisory responsibility, through the MLPA, for both FIs and DNFBPs. There are also ongoing discussions about the ECCB's new AML/CFT supervisory responsibilities to conduct AML audits and provide training to commercial banks following amendments made to the MLPA in April 2019. Discussions with the authorities and the private sector raised concerns about when the changes would be implemented and the effect the changes would have on implementation of AML/CFT supervision, which at the time of the onsite were yet to be determined.

363. For the reasons of their relative materiality and risk in the Saint Lucia context, implementation issues were weighted most heavily for the international sectors (banks, mutual funds and insurers), commercial banks, and money service businesses (MSBs) securities, credit

<sup>38</sup> When assessing effectiveness under Immediate Outcome 3, Assessors took into consideration the risk, context and materiality of Saint Lucia.

unions, micro finance lenders, and domestic life insurers were weighted as moderately important. Domestic general insurance and the development bank were weighted as less important. The rationale for this is explained in chapter 1 (under structural elements) and summarised in the previous chapter.

### ***6.1.1 Licensing, registration and controls preventing criminals and associates from entering the market***

364. Licensing, registration and fitness and propriety controls to prevent criminals from entering the financial market are generally in place but with differing approaches applied depending on who the authorising body is. The extent to which these arrangements are effective could not be demonstrated in the absence of any breaches of licensing controls at market entry being identified or as part of ongoing monitoring to display the robustness of controls in place.

#### ***Financial institutions***

365. Saint Lucia's financial sector comprises domestic and international sectors totalling 143 FIs (refer to table 6.1 for supervisory population). There is a requirement for all FIs to be licensed by either the FSRA, ECCB or ESCRC depending on the type of financial activity an entity requires authorisation for to operate in Saint Lucia.

366. All three (3) prudential supervisors/licensing authorities conduct fit and proper checks which broadly cover an assessment of individual shareholders who have a significant or controlling interest. A fit and proper assessment is also conducted on senior management, such as directors who will hold a management function within an FI.

367. The requirement to ensure routine checks are carried out on individuals who may be the beneficial owner of a significant or controlling interest are not consistently followed by all licensing authorities (refer to R.26.3 analysis). However, the FSRA demonstrated it does consider beneficial ownership checks as part of its fit and proper checks. Post-entry, monitoring controls to ensure criminals or their associates do not hold a significant controlling interest, or a management function were generally applied when there was a request for changes in ownership or management.

368. However, the extent to which these authorisations arrangements are effective could not be demonstrated as there were no breaches identified by the FSRA of its licensing controls at market entry which resulted in applications being declined for AML/CFT concerns. The ECCB and ESCRC did not authorise any new firms to operate in Saint Lucia during the period of review, therefore there was no opportunity to identify breaches in their licensing requirements at the market entry stage. Additionally, there were no breaches in registration or licensing arrangements identified resulting in licenses being revoked, by all three (3) prudential supervisors for FIs that were already authorised due to AML/CFT concerns.

369. The FIA confirmed it does not play a role in the licensing or registration activity of new market participants. The FSRA however, as part of its licensing and registration process, works with the FIA when high risk indicators are identified. Data and cases, however, were not available to demonstrate the extent to which the FIA, in its law enforcement capacity, gets involved in the operational aspects of market entry controls. This also extends out to interactions with the other two (2) prudential supervisors, ECCB and ESCRC.

370. Additional financial business types such as financial leasing, trust and other fiduciary services are listed in the MLPA (Part B, Schedule 2) but are not explicitly defined. This raised concerns about such financial business firstly being made aware of the need to comply with the AML/CFT regulations set out in the MLPA and secondly being required to seek registration or a license to operate through the relevant authority.



371. The table below (6.1) sets out the details of the licensed financial entities currently operating in Saint Lucia.

Table 6.1: Number of financial institutions per sector

Domestic Sector	Number of Entities	Licensing / Registration Authority & Prudential Supervisor	AML / CFT Supervisor*
<b>Commercial Banks</b>	5	ECCB	FIA / ECCB
<b>Credit unions</b>	17	FSRA	FIA / FSRA
<b>Development bank</b>	1	FSRA	FIA / FSRA
<b>Securities brokers</b>	2	ECSRC	FIA
<b>Domestic life insurance</b>	6	FSRA	FIA / FSRA
<b>Domestic general insurance</b>	17	FSRA	FIA / FSRA
<b>Micro Finance Lenders</b>	5	FSRA or ECCB?	FIA / FSRA
<b>MSBs - Remittances</b>	10	FSRA	FIA / FSRA
<b>Total</b>	<b>63</b>		
International Sector	Number of Entities	Licensing / Registration Authority & Prudential Supervisor	AML / CFT Supervisor*
<b>International Banks Class A</b>	8	FSRA	FIA / FSRA
<b>International Banks Class B</b>	4	FSRA	FIA / FSRA
<b>International Insurance</b>	54	FSRA	FIA / FSRA
<b>International Mutual Funds</b>	14	FSRA	FIA / FSRA
<b>Total</b>	<b>80</b>		
<b>Total FIs in Saint Lucia</b>	<b>143</b>		

\*The FSRA is not the competent AML/CFT supervisor but conducts joint inspections with the FIA.

#### ***FSRA – International Financial Sector and Other Financial Institutions Sector***

372. The FSRA authorises and grants licenses covering both the domestic and international sectors. The FSRA uses information held at the Registrar of Companies & Intellectual Property (ROCIP) as part of its due diligence process. However, this measure was not included in the processes provided by all licencing authorities to check ownership information (direct and indirect). The FSRA during the period of review did not identify any breaches through its licensing controls process at market entry or as part of ongoing monitoring. The FSRA also did not decline or revoke any licences due to AML concerns.

#### ***International Banks (Class A & B)***



373. The FSRA requires licensed deposit taking international banks, categorised as Class A, to have a physical presence and meaningful mind and management in Saint Lucia. This licence allows the holder to conduct business with third parties who are not residents of Saint Lucia. These banks typically deal with high net worth individuals and are actively engaged in transaction accounts (wire transfers), corporate loans and trade financing. These banks process a significant number of cross border wire transfers, including those involving high-risk jurisdictions.

374. The FSRA grants a Class B licence to international banks which accept deposits only from their parent and affiliates. They are not required to establish a physical presence in Saint Lucia. According to the NRA, these banks cater to high net worth foreign nationals, and provide loans to their parent/affiliate companies, whereby the majority of the transactions are expected to be intercompany transactions. There are currently four (4) licenced Class B banks, three (3) of which are affiliates or subsidiaries of commercial banks operating in the Caribbean region. The fourth bank is not linked to a commercial bank.

375. The assessment team found concerns about the specificity of approach to ensure international banks have a physical presence in Saint Lucia and that shell banks are not established. Assessors were advised there are no express legislative or regulatory measures setting out that shell banks are prohibited from operating in Saint Lucia, but that the existing licensing requirements prevent them from operating. This is through the requirement to have 'meaningful mind and management in Saint Lucia', but what this constitutes in practice was not demonstrated. The FATF definition of shell banks sets out that the existence simply of local agents or low-level staff is not considered physical presence. Additional concerns were identified about the allowance of international banks to be licenced without having a physical presence in Saint Lucia, which may be mis-interpreted to suggest shell banks could operate in Saint Lucia.

376. Given that Saint Lucia is an offshore financial centre, it is recommended that it review its licencing approach to international banks, including the requirements are to have physical presence and the circumstances where this is not required. This is to demonstrate that there is a clear authorisations process to ensure shell banks are not established. Where international banks are unaffiliated with a regulated financial group that is subject to effective consolidated supervision, there are concerns that the location of their head office may not be in close proximity to ensure they can be effectively supervised for AML/CFT. Clarity about which authority is responsible for the AML/CFT supervisory oversight of international banks that do not have a physical presence in Saint Lucia should be set out to ensure no loopholes can be exploited to evade supervision.

### ***ECCB & ECSRC***

377. The ECCB grants licences to banks and persons carrying out banking business in the Eastern Caribbean currency union. Since 2014 the ECCB received no applications for licences to carry out banking business in Saint Lucia.

378. The ECSRC grants licenses to domestic securities which cover specific activities in relation to broking and providing investment advice. These are activities that cannot be carried on by individuals without authorisation. During the period of review, the ECSRC issued 24 licenses, all of which were granted, and none were suspended or revoked for failure to meet AML/CFT controls. There are currently two (2) securities operating in Saint Lucia which were established prior to the assessment period. Clarity about the location of the 24 licensed securities was not provided as the FIA raised it has no interaction with the ECSRC on supervisory matters. This raised a concern that there is no AML/CFT supervisory oversight of the sector, albeit small in size.

### *DNFBPs*

379. Attorneys-at-law are required to obtain a practicing certificate in accordance with the Legal Profession Act Chap 2.04 and a list of practicing attorneys is gazetted annually. As at January 31, 2019 there were 114 practising attorneys in Saint Lucia. However, there is no mechanism to ascertain which attorneys are performing the functions listed in Section 32 of the MLPA: a) buying and selling real estate; (b) creating, operating or managing companies; (c) managing bank, savings or securities accounts; (d) managing client's money, securities or other assets; and (e) raising contributions for the creation, operation or management of companies.

380. The Gaming Authority established in accordance with section 4 of the Gaming Control Act has responsibility to consider applications for a license under the Act and make recommendations to the Minister. The Authority is administered by a three-member Board appointed by the Cabinet of Ministers. The Minister with responsibility approves licenses to gaming operators as well as gaming distributor, gaming manufacturers and gaming license operator based on recommendation from the Board. A gaming operator license is granted for the 'operation of a specific number of types of games at approved premises. To date the Commission has issued two (2) licenses but only one (1) gaming operator is operational in Saint Lucia.

381. Saint Lucia does not define 'casino' in its legislation. However, 'Casino' is a sector listed in Schedule 2 of the MLPA. Saint Lucia refers to 'Gaming Operator', licensed under the Gaming Control Act, as a casino.

382. Under the Gaming Control Act the Authority also has a responsibility to 'verify, or cause to be verified, the character, the background character and reputation of an applicant'. It was not clear if the reference to the word applicant means also the beneficial owner or persons holding significant controlling interest in the entity. The Authority also has responsibility 'to issue a list of persons to be excluded from a gaming establishment or from participating in gaming'. This list may include persons with prior convictions for an indictable offence, a crime involving moral turpitude or conspiracy to violate laws relating to gaming; or notorious or bad reputation that would adversely affect public confidence in the fact that the gaming industry is free from criminal or corrupt elements. Assessors were not provided with evidence of its implementation.

383. Registered Agents are licensed by the FSRA under the Registered Agent and Trustee Licensing Act. The legislation provides for these licenses to be issued to both resident and non-resident companies incorporated under the Companies Act. However, all agents must maintain a place of business in Saint Lucia. The business activity of Registered Agents includes the requirement to maintain books and records of foreign based residents and corporation such as IBCs and Mutual Fund Providers. There are 24 registered agents licensed in Saint Lucia in this sector that was deemed Medium/High risk in the NRA.

384. There is no mechanism through which the FIA can identify all entities operating in sectors such as real estate, car dealership and jewellery, to ensure supervision of those sector. However, the real estate and car dealership sectors were rated between medium and medium/high risk for money laundering in the NRA. This raised concerns about a lack of adequate mechanism to identify the supervisory population of DNFBPs, particularly as the FIA is not involved in authorisations activity and has no powers to register DNFBPs.

385. Notwithstanding the legislative powers under the MLPA, there are no controls developed or implemented by the FIA to prevent criminals and their associates from being the beneficial owner or holding significant or controlling interest or holding a management function of entities performing the functions listed at Schedule 2 of the MLPA. With respect to accountants, Assessors noted disciplinary powers of the ICAEC, which may be exercised for any licensed accountant found

guilty of any criminal offence, impropriety or serious professional misconduct, negligence or incompetence.

### **6.1.2 Supervisors' understanding and identification of ML/TF risks**

386. The FIA, ECCB, FSRA and ESCRC have a varied degree of understanding the ML/TF risks facing the sectors they supervise. The FIA, as the primary competent AML/CFT supervisory authority had no documented supervisory AML/CFT risk assessments in place prior to the NRA to demonstrate its understanding of ML/TF risks and how this has developed over time. The FIA should continue to develop its understanding of ML/TF risks as they evolve to have a more nuanced view of risks affecting sectors operating in Saint Lucia. This applies to both the FI and DNFBP sectors. This will support the supervisory methodology to target resources to mitigate risks where it is clearly established that higher inherent ML/TF risks exist.

387. There are inconsistencies with the definitions of FIs and DNFBPs in the MLPA. This will have an adverse impact on supervisors identifying ML/TF risks for specific sectors and institutions based on the specific regulated activity they carry out. For example, Schedule 2 of the MLPA categorises 'Money transmission services' and 'Deposit taking' as Other Business Activity, which Saint Lucia broadly considers as DNFBPs rather than FIs. It is therefore difficult to know if the identification of ML/TF risks relevant to these categories is the responsibility of the FIA or the FSRA.

388. The FIA has a general understanding of the ML risks facing the FI sectors, but a less developed view of risks affecting the DNFBP sectors. It has developed its understanding of ML risks largely through its FIU and investigatory function, historic supervisory activities and engagement with the private sector when training is delivered.

389. While the FIA has a good understanding of ML risks through its ML investigations, its supervisory understanding of ML risks across all the regulated sectors has not been fully developed due to resource constraints, thereby impacting its ability to effectively execute its supervisory function. The establishment of more frequent AML supervisory inspections is required to have a more detailed view of the vulnerabilities in firms' AML/CFT controls that can be exploited by criminals.

390. The FSRA in its capacity as a prudential supervisor, where AML/CFT is included as a component, and through its joint inspections with the FIA, has a fair understanding of the ML risks affecting its sectors. Its view of risks is in line with the NRA findings.

391. The FIA and FSRA's understanding of the TF risk posed by the financial sector or the DNFBP sector is limited and was not assessed at a sectorial level in the recent NRA. The private sector's understanding of TF risk is therefore also very limited. This gap in having an awareness of TF risk is driven by the lack of a central national strategy for CFT (refer to the analysis in chapters 2 and 4 of this report).

392. The ECCB and ECSRC do not have a fair understanding of ML/TF risks and whilst they did not dispute the findings of the NRA produced in March 2019, they were not able to provide an independent view of whether they agreed or disagreed with the findings. This is as a result of the limited role the two prudential supervisors play in relation to AML/CFT i.e. licensing arrangements. Discussions with the FIA, ECCB and ECSRC highlighted that, except for the NRA exercise, the various supervisors do not, as a matter of course, collaborate to routinely share information to inform each other's understanding of financial sector risks including ML/TF risks. A stronger collaborative and co-operative framework amongst all supervisors is encouraged to safeguard against the ML/TF risks to which Saint Lucia is exposed.

393. The FIA and FSRA entered into an MOU on August 30, 2019. The MOU facilitates cooperation regarding the conduct of joint examinations whereby the FIA will conduct the AML/CFT examination when the FSRA has a prudential examination scheduled for one of its licensees. At the time of the on-site, no joint examinations had been conducted. This type of cooperation is encouraged among all the supervisors to enhance the understanding and identification of ML/TF risks, particularly those that have an AML/CFT supervisory oversight role.

### **6.1.3 Risk-based supervision of compliance with AML/CFT requirements**

394. The FIA is at an early stage of applying a risk-based approach to the sectors it supervises for compliance with AML/CFT requirements. The March 2019 NRA provides a baseline to further develop supervisory AML/CFT risk assessments, on an ongoing basis, which can be used to prioritise supervisory resources.

395. The efforts of the FIA, as well as the FSRA, to establish their own ML/TF risk assessments, using the NRA to plan their supervisory workplans were displayed during the onsite. It was clear both supervisors intended to use these to support their forthcoming programme of AML/CFT supervision by applying a risk-based approach. However, whilst encouraging, these risk matrices had only just been developed therefore the Assessors to judge their effectiveness as risk models which target supervisory activity.

396. AML/CFT supervisors should ensure that their supervision programmes adequately test the extent to which FIs and DNFBPs, commensurate with their level of ML/TF risk, apply preventive measures covering enhanced due diligence measures in relation to PEPs, correspondent banking, new technologies, wire transfer rules, targeted financial sanctions and higher risk countries (refer to IO4.4 analysis).

#### ***FIA – All financial institutions and DNFBPs***

397. The FIA is the mandated competent supervisory authority, with responsibility for supervising or monitoring AML/CFT compliance levels of the approximately 143 FIs and 347 DNFBPs. However, resource constraints have prevented the FIA from conducting AML inspections since 2014. This deficiency is raised throughout this report and affects the extent to which Saint Lucia can demonstrate effectiveness across most of the Immediate Outcomes.

398. Until July 2019, when the FIA recruited two (2) supervisors, it prioritised its law enforcement work. The newly recruited supervisors were used to establish a dedicated AML/CFT supervisory function which recommenced the FIA's supervisory activity prior to the assessment team's onsite cut-off date. The FIA's supervisory role had previously been carried out by its Director and an investigator, as ancillary work, in addition to their core FIU and investigatory functions. The FIA's staff headcount is nine (9). This includes the Director, Deputy Director an Executive Assistant, an Analyst, three (3) financial investigators and the two (2) newly recruited supervisors. In line with the findings of the NRA, Saint Lucia should review and increase the adequacy of the current supervisory resources at the FIA for it to be able to effectively discharge its supervisory functions.

399. The FIA at the time of the onsite was in the process of implementing its recently introduced AML supervisory policy, with a view to restarting its supervisory activity. The lack of AML/CFT inspections conducted by the FIA since 2014 is a limiting factor to its understanding of ML/TF risks across all the FIs and DNFBPs sectors it has supervisory responsibility for.

400. The FIA conducted compliance inspections on four (4) jewellers in August 2019, with the final supervisory actions yet to be determined at the time of the onsite. At the time of the on-site, feedback on the findings of the inspection was not yet completed. Jewellers or dealers in precious metals and stones were not included in the NRA summary report provided to Assessors; therefore, it

was difficult for Assessors to link this supervisory activity to the application of a risk-based approach. However, Saint Lucia were able to assess the sector risk after the inspections.

401. The ‘Risk Based Framework for AML/CFT Supervision’, outlines the risk-based approach to supervision adopted by the Authority. Further to the sector risk outlined in the NRA, entities in the sectors are assessed based on factors including customer/business type, product/service, geographic location, size of the institution, delivery channels and the entity AML/CFT programme. The policy does not demonstrate the risk strategy to select entities for off-site or on-site supervision but stated the supervision tools are crucial to understanding risk. This approach suggests all entities will be subject to on-site or off-site supervision which will determine the entity’s risk profile and inform the on-site inspection cycle of the entity. The FIA intends to conduct an in-depth risk analysis of each entity over the next two (2) years.

402. The FIA demonstrated implementation of AML/CFT supervision with the conduct of four on-site inspections on four (4) entities in the jewellery sector. Assessors were not provided with evidence of implementation of other supervisory tools to inspect any other sector for compliance with the MLPA. This was not reflective of risk-based supervision nor did it demonstrate an understanding of the country risk outlined in the NRA. The jewellery sector was not included in the NRA, which was the rationale for the focus of the sector. The AML/CFT risk assessment of the sector was completed subsequent to the on-site inspections. Assessors also noted there was no submission of SARs to the FIA by entities in the sector.

403. After a gap of several years the FIA re-commenced on-site inspections in July 2019 after the recruitment of two (2) Regulators which also occurred in July 2019. Since then, the regulators have established the FIA’s Regulation and Supervision department and developed policies and procedures to guide their supervision activities. However, the two (2) Regulators are insufficient if the FIA is to effectively supervise the 143 FIs and persons engaged in other business activity listed at Schedule 2 of the MLPA. This supervision gap places Saint Lucia at greater risk particularly for entities with complex structures and activities or those more vulnerable to ML/FT and PF.

***FIA/FSRA – International banks, insurers and mutual funds & domestic non-bank financial services***

404. The FIA and FSRA have a joint AML/CFT supervisory role for ten (10) of the financial sectors (refer to table 6.1 above). This is a substantial remit when compared to the supervisory population in Saint Lucia. The FSRA issues prudential AML guidelines and includes an AML assessment as part of its prudential supervision. This includes the requirement for FIs to submit an AML audit report to the regulator. However, the frequency and intensity of the FSRA’s AML/CFT role was not found to be a core part of its central function (refer to table 6.2 to see statistics of supervisory visits that had an AML element).

***ECCB – Domestic Banks/Commercial Banks***

405. The ECCB has been delegated additional powers through legislative changes in April 2019 (Section 41 of MLPA) to conduct AML/CFT audits and training of institutions licensed under the Banking Act. However, Assessors found concerns about the lack of detail available on the ECCB’s AML/CFT remit. Discussions with representatives from the commercial banking sector highlighted they had been informed that the ECCB would be including a review of AML as part of its operational risk assessment of core prudential supervision. The ECCB contradicted this view and informed Assessors they did not have an AML mandate, citing concerns about the way the recent legislative changes had been drafted. As such, the ECCB and the FIA are yet to agree how the AML/CFT supervisory role will be carried out, including consideration of specific resources that will be required to operationalise the new remit.

406. Considering the above, there is a significant concern about the lack of regular AML/CFT inspections being conducted to oversee commercial banks, particularly given the inherently high nature of ML/TF risk this sector poses. The number of SARs reported by this sector has remained consistently high since 2014 (refer to chapter 3 for more details). Supervisory arrangements for this sector should be clarified as a priority by the FIA and the ECCB.

#### ***ECSRC – Securities brokers***

407. The ECSRC is not the AML/CFT supervisor for the securities sector, in Saint Lucia as the sector falls within the AML/CFT supervisory remit of the FIA. However, the FIA advised it has no engagement with the ECSRC on AML/CFT supervisory matters. This is of concern as the two (2) securities firms which contribute 10% to Saint Lucia’s GDP, were risk rated as medium low risk based on the two (2) entities’ own responses to the NRA questionnaire which, in the absence of any independent supervisory inputs, could not be further corroborated. An independent supervisory and law enforcement overlay of the ML/TF risk for this sector would provide assurance that there is indeed a lower level of ML/TF risk this sector is exposed to, as determined in the NRA. This gap in supervision is of concern due to the FIA resource constraints and lack of co-ordination/co-operation among the supervisors highlighted above.

#### ***6.1.4 Remedial actions and effective, proportionate, and dissuasive sanctions***

408. The extent to which remedial actions are applied by supervisors in practice is low. In the absence of supervision carried out by the FIA, there have been no cases whereby remedial action or dissuasive sanctions have been applied as a result of AML/CFT failings identified through supervisory activity.

#### ***FIA***

409. The FIA as the primary supervisory authority has not carried out any remedial actions or imposed any sanctions pursuant to its supervision, since 2014, for both the FI and DNFBP sectors. The FIA advised that following completion of onsite inspections, the policy is to provide written feedback to the relevant entities to address areas of concern.

410. The Assessors were informed that two (2) Court rulings on the unconstitutionality of administrative fines made it impossible for the FIA to levy fines against FIs and DNFBPs for not filing SARs with the said FIA.<sup>39</sup> The assessment team found no examples of administrative fines used by the FIA, as part of its powers to sanction FIs and DNFBPs, for failure to comply with AML/CFT requirements. In addition to training, feedback on SARs and AML/CFT inspections of FIs and DNFBPs, there are deficiencies in the use of sanctioning powers used by the FIA to encourage compliance e.g. breaches identified in SARs reporting.

411. The FIA does not have the powers to impose administrative sanctions. The FIA’s new policy titled ‘Risk Based Framework for AML/CFT’ includes measures for a Compliance Enforcement Ladder to be considered when it identifies AML/CFT deficiencies. The options available to remediate weaknesses, which escalate as and when necessary, include:

- a. Notification of Recommendations
- b. Meeting with the entity’s senior management
- c. Warning Notice

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<sup>39</sup> ECSC, High Court of Justice, Saint Vincent and the Grenadines, claim no. svghcv2018/0056, &, Court of Appeal, Dominica, civil appeal no. 5 of 1997.

- d. Mandatory injunction
- e. Criminal Prosecution.

412. The FIA has not implemented its Compliance Enforcement Ladder. These measures specifically apply to non-compliance with the AML/CFT obligations of FIs or person engaged in other business activity outlined in Section 16 (1) of the MLPA and the MLPGN. The policy allows for exercise of discretion by the FIA.

### **FSRA**

413. The table below highlights the extent to which AML/CFT supervision has been included as part of the FSRA's prudential supervision workplan. The statistics show the number of onsite inspections is relatively low across the years, however the new AML/CFT risk models recently designed should show the increase in visits using a risk-based approach. The common AML/CFT deficiencies the FSRA has identified through its visits include: the purpose of business not clearly defined for clients of regulated entities; purpose of business being in variance with what was initially stated during the application; and inadequate evidence of source of funds; incomplete KYC information; and AML/CFT procedures not being properly documented.

Table 6.2: **FSRA – Onsite Inspections**<sup>40</sup>

Sector	2014	2015	2016	2017	2018	2019 (May)	Total
<b>International Banks</b>	1	1	2	1	1	0	<b>6</b>
<b>Credit Unions</b>	1	2	2	1	4	0	<b>11</b>
<b>Money Remitters</b>	0	1	1	0	1	0	<b>3</b>
<b>Domestic life insurance</b>	2	1	2	0	0	0	<b>5</b>
<b>Total</b>	4	5	7	2	6	0	<b>25</b>

414. The FSRA's post visit policy is to produce a detailed report of findings and recommendations with a timeline within which the relevant entity is required to respond. The FSRA advised where regulated entities do not comply within a reasonable timeframe, they would take further action such as non-acceptance of deposits, not underwriting new business, employing appropriately skilled personnel and non-approval of director. The assessment team found no evidence of these measures being used in relation to AML/CFT deficiencies identified by the FSRA.

415. While the FSRA has made good progress to include an AML/CFT element into its prudential supervision, there is a concern about the follow-up process where weaknesses are identified that require appropriate remediation. Discussions with the authority indicated that in the scenario where AML/CFT deficiencies were identified, it would be left to the FIA to follow-up as necessary. For example, as part of the FSRA's inspections of two (2) credit unions, the supervisor identified suspicious transactions and requested that the entities submit a SAR to the FIA which the two (2) firms complied with. However, weaknesses in the firms themselves to identify and report SARs as part of their AML/CFT compliance frameworks remained unaddressed as the authorities informed the Assessors no further action was taken.

416. Additionally, the FSRA can issue AML guidelines, however the Assessors did not consider these to be enforceable. Further, there was no evidence of cases where the FSRA acted, following identification of non-compliance by regulated entities with its AML/CFT guidelines.

### **ECCB**

<sup>40</sup> Saint Lucia's effectiveness submission.

417. The ECCB advised it cannot issue directives or amendments in relation to its AML/CFT audits of commercial banks as part of its prudential supervisory role citing its role was very limited. Assessors were advised that discussions are ongoing between the Saint Lucian authorities and the ECCB to clarify the supervisory arrangements with the FIA which were yet to be operationalised.

### **6.1.5 Impact of supervisory actions on compliance**

418. While supervisors observed that FIs have developed AML/CFT measures in line with the MLPA, the extent to which they are able to demonstrate that their actions have a positive effect on compliance by FIs and DNFBPs is limited given the lack of regular AML/CFT inspections carried out during the period of review by the FIA. Therefore, the focus on follow-up action and monitoring of how well FIs and DNFBPs are positively adapting their AML/CFT measures to compliance, is not currently a well-developed part of the overall supervisory process.

419. As the FIA and FSRA implement their new AML/CFT risk models and workplans, they should consider maintaining relevant information and statistics about their supervisory initiatives. This will assist supervisors in demonstrating what action they are taking including how FIs and DNFBPs respond to supervisory actions to show that over time, supervision and monitoring can improve the level of AML/CFT compliance within the private sector.

420. Though written feedback was not issued by the FIA or remedial measures to rectify deficiencies at the on-site inspections were not yet provided to the FIA, the jewellery entities interviewed indicated the on-site inspection provided some clarification and improved understanding of their AML/CFT obligations.

### **6.1.6 Promoting a clear understanding of AML/CFT obligations and ML/TF risks**

421. The FIA and FSRA place significant focus on carrying out regular outreach activities, either proactively or when requested, to promote a clear understanding by the FIs and DNFBPs of their AML/CFT obligations. However, the lack of proactive AML/CFT supervision means there is no tailored guidance, based on deficiencies identified, to encourage and assist the FI and DNFBP sectors to improve their application of preventive measures. As the FIA and FSRA continue to develop their AML/CFT supervisory programmes, they should include outreach activities within their workplans to target sectors that are perceived to be higher risk or where common/regular deficiencies are identified. This should include regular written feedback and guidance to detect and report suspicious activity.

#### ***FIA – all financial institutions and DNFBPs***

422. Private sector interviews confirmed that training is provided when requested from the FIA and that this had been useful to help them understand and comply with their AML/CFT obligations. However, there are gaps in the feedback and training provided to assist the private sector in detecting and reporting suspicious activity to the FIA, in its role as the FIU. This is demonstrated by the irregular reporting trends on SARs across the sectors (refer to chapters 3 and 5). Supervisors should ensure sector specific guidance is made available to the FI and DNFBPs sector to strengthen their understanding of sector specific as well as national ML/TF risks affecting Saint Lucia. Consideration should be given to including risk typologies and strategic analysis produced through SARs and other financial intelligence in sector guidance.

423. The FIA has been implementing a comprehensive AML/CFT training programme. However, these were mostly targeted for FIs. One session was held for the real estate sector. There was little focus on the DNFBP sectors especially those identified as medium and high risk in the NRA. The sessions covered topics such as Saint Lucia AML/CFT legislation, what is ML and TF, Due Diligence, Identifying Suspicious Transactions and Sector Risk. 32 sessions have been



conducted for employees and senior management of entities in the Credit Union, Banking, Money Lender, Insurance and Money Service Business between June 2015 and August 2019. The FIA should prioritise and intensify its training programme for the sectors rated medium and high risk in the NRA addressing topics on TF and PF.

424. The FIA has published amended sector specific guidelines for the real estate and attorneys-at-law sectors outlining their AML//CFT obligations.

Table 6.3: Training Provided by FIA (2015 – August 2019)

Sector	2015		2016		2017		2018		2019		Total
	# of Sessions	# of Persons	# of Sessions	# of Persons	# of Sessions	# of Persons	# of Sessions	# of Persons	# of Sessions	# of Persons	
Commercial Banks	2		1						3	61	
Insurance	1		1	11	1				3	44	
Credit Unions	1		1	10	1	8	2	19	2	43	
Money Service Business			2	18							
Other FIs			2	10	1		2	8			
Real Estate							1	37			
Government Agency			1								
<b>Total</b>	<b>4</b>		<b>8</b>		<b>3</b>		<b>5</b>		<b>8</b>		<b>32</b>

**FSRA – International banks, insurers and mutual funds & domestic non-bank financial services**

425. FSRA also has a policy to issue guidelines, which include AML, to the entities for which it is responsible for conducting prudential regulation. e.g. <https://fsrastlucia.org/index.php/credit-unions/guidelines>.

426. The FSRA also has an outreach programme in place which includes the promotion of a clear understanding of ML/TF risks (see table 6.4 below).

Table 6.4: FSRA Outreach to Industry

Entity type	Date	Attendees	Subject	Evidence
Credit Union	26-Jun-16	Board of Directors, Credit Committee, Supervisory Committee and members (AGM)	Corporate Governance, Prudential matters and the need to have policies in keeping with the MLPA	Power Point and Speech
Credit Union	26-Oct-16	Credit Union Sector	AML, Corporate Governance	Power Point, Agenda, Flyer
Credit Union	29-Dec-16	Management and Staff	AML, Corporate Governance	Invitation, Power Point
Credit Union	17-Oct-17	Management and Staff	AML, Corporate Governance	Power Point, Onsite Inspection Report
Microfinance	14-Mar-18	Management and Staff	FAFT 40 Recommendations	Power Point
International Bank	30-Jul-18	Management and Staff	FAFT 40 Recommendations	Power Point
International Bank	30-Jul-18	Management and Staff	FAFT 40 Recommendations	Power Point
International Bank	30-Jul-18	Management and Staff	FAFT 40 Recommendations	Power Point

<b>Institute of Chartered Accountants</b>	28-Aug-18	Members	IFRS 9, FAFT 40 Recommendations	Power Point, Attendance Register
<b>Credit Union Sector</b>	03-Sep-18	Sector Credit Unions	FAFT 40 Recommendations	Power Point
<b>Registered Agents and Trustees</b>	04-Dec-18	Registered Agents and Trustees, FSRA, IRD, Permanent Secretaries	EU Fair Taxation Assessment, Recording of beneficial ownership information	Power Point
<b>Credit Union Sector</b>	17-May-19	Credit Union Sector	Corporate Governance	Speech

*Overall conclusions on IO.3*

427. **Saint Lucia is rated as having a low level of effectiveness for IO.3.**

## 7 LEGAL PERSONS AND ARRANGEMENTS

### **Key Findings**

- a) Competent Authorities have not demonstrated that they have identified, assessed or understood the ML/TF risks associated with legal persons.
- b) In December 2018, Saint Lucia took a significant step to improve the transparency of beneficial ownership of legal persons by amending the Companies Act, the IBC Act and the IP Act to make it a requirement for beneficial ownership information to be provided. Significant gaps however still exist in relation to the accessibility of competent authorities to this information and the requirement to keep this information up to date.
- c) Saint Lucia has not demonstrated that the requirement to keep and provide BO information applies to legal persons other than companies incorporated under the Companies Act, IBCs and IPs.
- d) There is no standardized system in place at the Registry of Companies and IP (ROCIP) to conduct checks on the company information maintained at the Registry to ensure that required changes to basic information have been filed by the companies. This results in a deficiency in the accuracy of the basic information that is maintained at the Registry.
- e) The NGO Council which is statutorily mandated to monitor and investigate the activities of NGOs has not been established despite the NRA identifying the non-profit sector as high risk.
- f) While the IBC Act provides that an IBC shall give notice of changes to its BO, the requirement that this notice should be given within a “reasonable time” is too broad and subjective for the purpose of ensuring that the requirement for the information to be accurate and up-to-date is met.
- g) Saint Lucia provided limited and, at times, no information on co-operative societies, domestic partnerships and domestic trusts to enable an assessment of the measures in place for these entities.

### **Recommended Actions**

- a) Saint Lucia should undertake an assessment of the ML/TF risks associated with each type of legal person and implement appropriate measures commensurate with the risks identified.
- b) Saint Lucia should implement measures to ensure that beneficial ownership information on legal persons and arrangements is available to a wide range of competent authorities particularly law enforcement authorities.
- c) The Companies Act should also be amended to extend the requirement to file notices of changes in BOs within 30 days of the change to domestic companies and non-profit companies.
- d) The ROCIP should implement measures for the systematic checking of company files to ensure that the information contained therein is accurate and up-to-date.
- e) The IBC Act should be amended to insert a definitive period in which notices of changes to beneficial ownership information should be given to registered agents.
- f) Saint Lucia should establish the NGO Council so that the activities of NGOs can be monitored and investigated where appropriate.

428. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.<sup>41</sup>

## 7.1 Immediate Outcome 5 (Legal Persons and Arrangements)

### 7.1.1 *Public availability of information on the creation and types of legal persons and arrangements*

429. The relevant laws that govern the creation of domestic companies, non-profit companies, member state companies, external companies and partnerships are publicly available on the website of the Registry of Companies and Intellectual Property (ROCIP) at [www.rocip.gov.lc](http://www.rocip.gov.lc). This website also has guidelines on how to conduct certain transactions with the ROCIP and answers to common questions which enable the public to easily obtain basic information. Information on domestic companies, non-profit companies, member state companies and external companies can also be obtained by visiting the office of the ROCIP. The information contained at the ROCIP for these companies include their articles of incorporation, by-laws, company address, name of directors, names of secretaries, names of shareholders and names of beneficial owners (Bos). The public can access this information by attending the ROCIP and paying a search fee of XCD\$5.00 for up to three (3) files and XCD \$1.00 for each additional file. The public can also access information from the ROCIP online with free searches for basic information.

430. The relevant laws that govern the creation of International Business Companies (IBCs), International Partnerships (IPs) and International Trusts (ITs) are publicly available on the website of the Registry of IBCs, IPs and ITs at [www.saintluciaifc.com](http://www.saintluciaifc.com). Additionally, the website contains listings of registered agents and trustees and other professionals whose services are required in the registration and operation of these legal persons. The Registry also contains basic information on IBCs and IPs such as incorporation documents, name of registered agent, tax status, and whether the entity has filed its annual returns. Basic information can be viewed free of charge on the website while physical documents can be uploaded at a fee. US\$75 is the fee for incorporation documents while any other individual document carries a fee of US\$25.

431. The aforementioned legislations along with the Cooperatives Societies Act - which governs the creation of cooperative societies - is also publicly available on the website of Saint Lucia's National Printery Corporation at [www.slugovprintery.com](http://www.slugovprintery.com). Domestic Trusts are provided for under the Civil Code. Saint Lucia advises that the Civil Code is available from the National Printery at a cost of XCD \$150 for an electronic copy or XCD \$2.00 per page for a hard copy.

### 7.1.2 *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

432. Saint Lucia has not conducted a risk assessment of the ML/TF vulnerabilities of the legal entities within its jurisdiction. The risk assessment in the NRA was an assessment of the different sectors in Saint Lucia and was not specific to the risks of the legal persons within the country. The assessment team was not provided with any assessment of the vulnerabilities of the types of legal persons and the extent to which they are or can be misused for ML/TF. Neither did competent authorities demonstrate that they have sufficiently identified, assessed or understood the ML/TF risks of legal persons.

433. While it is however recognised that the NRA did include an assessment of NPOs, there is no statutory definition of an NPO for the Assessors to conclude which legal persons are considered NPOs and were assessed in the NRA. Instead, the Assessors found that non-profit companies under

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<sup>41</sup> The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

the Companies Act and non-governmental organisations under the Non-Governmental Organisation Act are legal persons that exist within the NPO sector. Nevertheless, there was a general understanding that NPOs may present higher ML/TF risks.

### ***7.1.3 Mitigating measures to prevent the misuse of legal persons and arrangements***

#### *Legal Persons:*

434. Saint Lucia has implemented mitigating measures to prevent the misuse of legal persons and arrangements to some extent. In accordance with the general understanding that non-profit organisations may present higher ML/TF risks, non-profit organisations that seek to be incorporated as non-profit companies under the Companies Act, first require the approval of the Attorney General (AG) before articles are accepted for filing. In this regard, a Non-Profit Oversight Committee has been established to review applications and meet with the intended directors of proposed non-profit companies. The Committee thereafter makes recommendations to the AG as to whether he should approve the incorporation.

435. The Committee comprises representatives from the AG's Chambers, ROCIP, Financial Intelligence Authority (FIA), Ministry of Equity and IRD. The Committee requires that the applicant obtain a Non-Objection from the Ministry of Equity and it may be necessary for the applicant to seek Non-Objections from other Ministries depending on the type of activities they propose to be engaged in. The Committee also requires the police record of each proposed director. At the meeting between the Committee and the proposed directors, the proposed directors are sensitized on the Guidelines under the Money Laundering Prevention Act (MLPA). The Committee also establishes whether the proposed non-profit company will be engaged in one of the prescribed non-profit activities, the structures they will have, the proposed accounting system and the source of funding. A total of 44 non-profit companies have been incorporated since 2014.

436. Effective December 2018, a new BO regime was incorporated into the Companies Act, the IBCs Act and the IPs Act to enhance the transparency of BO. Under this regime, non-profit companies, domestic companies, member state companies and external companies under the Companies Act are required to file a notice of BOs at the time of incorporation. Non-Profit companies and domestic companies are also required to maintain a register of BOs which should include the date on which the BO became or changed his or her status as a BO. Member state companies and external companies are also required to notify the Registrar of any changes made to its BOs within 30 days after the change has been made.

437. In relation to IBCs, they are required to keep a register of BO at the office of their registered agent and to provide BO information on an annual basis to their registered agent. They are also required to give notice of any changes to the register of beneficial ownership within a reasonable time period.

438. In relation to IPs, the December 2018 amendment to the IP Act provided that the register of IPs maintained by the Registrar of IPs must include BO information. This is however not practiced; instead, the authorities advised that BO information is maintained by the IPs registered agent and is not contained in the register of IPs. There is only one (1) registered IP in Saint Lucia. The authorities further advised that the IP Act will be abolished as at June 30, 2021, and no new entities can be registered under the existing legislation from January 1, 2019.

439. The NGO Act also provides a legislative regime to prevent misuse. The Act provides for the establishment of a Non-Governmental Organizations Council to register and oversee NGOs. The Council has statutory duties to ensure that NGOs are set up for a bona fide purpose and to conduct investigations into their administration and activities where complaints are made. The legislative establishment of such a Council with these duties is consistent with the fact that NGOs have been

identified as high risk. However, this Council has not been established. Instead, the authorities advised that the Department of Equity has been performing some of the functions of the Council in the interim.

440. No information was available on the mitigating measures Saint Lucia has in place for cooperatives and domestic partnerships and the extent to which they have been implemented.

*Legal Arrangements:*

441. The amendments introduced to BO information in December 2018 also extended to ITs with a requirement that the registered trustee keep BO information of ITs. However, the obligations of a registered trustee to keep the records of an IT confidential were only amended to allow the IRD the power to inspect the records. The FIA can nevertheless access these records under the MLPA as highlighted in chapter 7.1.5.

442. No information was available in relation to domestic trusts.

**7.1.4 Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons**

443. As stated in chapter 7.1.1, the ROCIP contains the articles of incorporation, by-laws, company address, name of directors, names of secretaries, names of shareholders and names of BOs for companies incorporated under the Companies Act which can be accessed by the public by the payment of the previously mentioned fees. Public access is also available on the website of the ROCIP; however, the information on the website is limited to basic information such as the name, address and status of the company and does not include access to beneficial ownership information.

444. Competent authorities are not required to pay a fee to access information contained in the ROCIP. Requests by competent authorities are generally made by way of phone calls, emails or letters. However, the ROCIP introduced a new form in June 2019 for competent authorities to use to request information. Only the Registrar, Deputy Registrar and Assistant Registrar handle requests by competent authorities and it is the policy of the ROCIP to respond to these requests within one (1) to three (3) hours. If the information cannot be produced in that timeline, it should be produced no later than three (3) days. Since 2014, the ROCIP received a total of 44 requests from the FIA, the RSLPF, CED and the AG's Chambers. These requests were in relation to incorporation documents, shareholders, directors, secretaries and annual returns with most of the requests being in relation to incorporation documents. In all cases, the ROCIP provided the information requested on the same day that the request was received. It is noted that there was no request for BO information; however, as noted above, the requirement for companies under the Companies Act to submit BO information only came in force in December 2018.

445. In terms of ensuring the accuracy and currency of the information maintained at ROCIP, the authorities advised that the ROCIP uses a computer system which has a compliance monitoring feature imbedding that ought to indicate when a file is not up-to-date. This feature is however not functional so the physical file for the company must be pulled in order to determine whether the file is up-to-date. In this regard, there is no procedure in place for the systematic checking of files as the authorities advised that the ROCIP has not done an audit of the files. Instead, the files are checked at the annual return stage or when there is need for a file to be pulled, such as a request for information. Data was not available on the results of the reconciliation of all the annual returns done by the ROCIP since 2014. However, in relation to the annual returns for 2018, the authorities were able to provide information in relation to a portion of the files. This portion amounted to 415 of the files which is less than half of the files. It was discovered that 138 of these 415 files were not up-to-date or contained inaccurate information. Some of the deficiencies in the information related to the registered address of the companies, the names of directors, the addresses of directors and the dates

of appointment of directors. This therefore raises concern as to the accuracy of the information provided to competent authorities.

446. It is also noted that BO information does not form part of the information that is required to be filed in a company's annual returns and non-profit companies and domestic companies are only required to file BO information at the time of incorporation.-The ROCIP is therefore unable to provide up-to-date BO information to competent authorities. Even though member state companies and external companies are required to file notices of changes in BOs within 30 days of the change, given that this obligation only came into force in December 2018, a proper assessment was not able to be conducted as to whether this is practiced.

447. The type of information maintained at the Registry of IBCs, IPs and ITs has been outlined above in chapter 7.1.1. Information on directors, shareholders and BOs are not maintained at the Registry and are instead maintained by the registered agents. Indeed, the website of the Registry indicates that "*The IBC Act provides for confidentiality of shareholders, directors and officers; only the Memorandum and Articles of association, the registered agent and office are public records.*" Competent authorities however do not pay a fee to access any document from the Registry. The Inland Revenue Department (IRD) has its own portal by which they can access documents. The FIA has set up an account with the website but have not made requests for documents. The number of requests made for basic information from the Registry has been less than five (5) per year. Even though there is no policy in place, the authorities advise that requests for production of printed copies of documents are responded to within 48 hours and requests for electronic versions are responded to within 12 hours.

448. Registered agents are the gate keepers and record keepers for IBCs and IPs. IBCs and IPs are required to have a registered agent in Saint Lucia. It is the registered agent who prepares and submits their application for registration under the IBC Act and the IP Act. The registered office of an IBC and IP is the office of their registered agent and it is at this office that information on directors, shareholders and BOs are required to be kept. Considerable reliance is therefore placed on registered agents to collect, verify and maintain accurate information. The accuracy of this information is dependent on the veracity of the registered agents' CDD measures. Registered agents demonstrated a sound understanding of these requirements and of the requirement to drill down to obtain BO information until the identity of a natural person is revealed.

449. However, as highlighted in IO3, there has been limited supervision of registered agents. No inspections have been conducted by the FIA during the period under review. The FSRA has not conducted any dedicated AML inspections; instead, prudential inspections have been conducted which contained an AML component. This limited supervision is of concern especially in circumstances where Saint Lucia advised that "*IBCs, IPs and ITs pose a higher ML/TF risk than that of Domestic Companies due to the significant non face-to-face interactions when dealing with foreign based residents and the possibility of complicated structures being set-up, which obscures the audit trail of transactions.*"<sup>42</sup> Given this limited supervision, Assessors are not able to confirm whether the information required to be kept by registered agents is actually being maintained and whether the information that is being maintained is up-to-date.

450. Additionally, in relation to the requirement to maintain up-to-date information, while the IBC Act provides that an IBC shall give notice of changes to its BO, the requirement that this notice should be given within a "reasonable time" is too broad and subjective. This has resulted in different time periods being set for this information to be provided by registered agents. For example, one registered agent advised that they require notice of the change within three (3) days while another

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<sup>42</sup> Saint Lucia's effectiveness submission.

indicated that their requirement is within 28 days. There is therefore a lack of consistency across registered agents which negatively affects the accuracy of the information that is obtained by competent authorities.

451. The range of competent authorities that can access information from registered agents is limited. The IBC Act makes provision for the IRD to access the register of beneficial owner of these entities. The FIA can access BO information of IBCs and IPs pursuant to the MLPA as registered agents are DNFBPs. No other competent authority can readily access BO information of IBCs and IPs without some form of court order being obtained.

452. The availability of information relating to co-operative societies was limited. It is noted that schedule 2 of the Co-operative Societies Regulations provides for the examination of any document for a fee of \$100 and allows for photocopying of any document for a fee of \$1.00 and additional pages at \$2.00. No information was however available on whether competent authorities were required to pay these fees. The authorities also advised that information on co-operative societies is entered into the Register of Co-operatives and published on the Saint Lucia Gazette; this information includes the name, registration number type, date of registration, current status and registered postal and operating business address. Other information is not publicly available and can only be made available at the discretion of the authorized office upon a visit to the Department of Co-operatives; this information includes: shareholders, directors, articles of incorporation, membership register. The authorities further advised that the following information is not available through an in person visit or other form of public access but may be available to law enforcement: banking and financial information, minutes of meetings, payment records and membership register. No information was available as to the circumstances in which requests for this information by competent authorities would be refused or granted. The authorities also advised that all requests for information should contain certain information to include how the information will be used. The requirement for competent authorities to disclose how the information requested will be used is of concern as competent authorities should not be required to disclose details of their investigations. It is however noted that credit unions, a type of co-operative society, are FIs under the MLPA; the FIA can therefore access any information held by credit unions and is not required to disclose how the information will be used.

453. No information was available as to the number of times competent authorities requested information from the Department of Co-operatives, the type of information, whether the information was provided and, if so, the time in which the information was provided.

454. No information was available in relation to domestic partnerships.

455. In addition to accessing information from the aforementioned registries and registered agents, the FIA is also able to access information held by FIs and other DNFBPs on legal persons which the FIs and DNFBPs obtained at the time of onboarding and during their business relationship with legal persons under the MLPA; this power is however limited to the FIA. As highlighted in IO4, FIs and DNFBPs demonstrated a comprehensive understanding of their obligations to obtain accurate information on their clients and, particularly, to obtain BO information. In relation to BO information, they demonstrated an obligation to drill down until they know the identity of a natural person. FIs and DNFBPs also demonstrated their obligations to provide this information to the FIA upon request pursuant to the MLPA. However, the Assessors were provided with little to no instances where the FIA requested this information from them. Additionally, given the lack of supervision as highlighted in IO3, the extent to which BO information is collected and accurately maintained cannot be confirmed.



### ***7.1.5 Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements***

456. The Registry of ITs within the Registry of IBCs, IPs and ITs is not a public registry. The website of this Registry states that, “*The trust registry is not public for trusts, the Settlor’s identity and the trust instrument are not public records; that information remains with the registered trustee.*” The deficiencies outlined in relation to registered agents above also apply to registered trustees. It is noted that even though the IT Act was amended to provide that BO information is required to be submitted to a registered trustee, under the Act, the registered trustee can only share that information with the IRD.

457. However, under the schedule of the MLPA a trust company declared by the Minister to be a FI, a registered trustee, and an IT are considered FIs; and a domestic trust that involves a business activity is a DNFBP. Accordingly, these entities are required to apply the full range of CDD and record keeping obligations including the requirement to obtain BO information. By virtue of the MLPA, the FIA can access this information.

458. The authorities advised that the Registry of the Supreme Court does not operate a Registry of Domestic Trusts nor a Register of Domestic Trusts. The Registry of the Supreme Court, through the Office of Deeds and Mortgages, may register a domestic trust if said document was submitted for registration with the Office. Presently there is no obligation on the parties entering into a trust to register their trust documents, thus the current process is entirely voluntary.

459. No information was available on the procedure to obtain beneficial ownership information on legal arrangements by the competent authorities. Neither was any information available as to the number of times that competent authorities requested beneficial ownership information on legal arrangements, whether the information was provided and, if so, the time period in which the information was provided.

### ***7.1.6 Effectiveness, proportionality and dissuasiveness of sanctions***

460. The sanctions available against companies under the Companies Act and IBCs are outlined in R.24.13. The authorities advised that ROCIP regularly imposes late filing fees on companies who fail to file their annual returns on time. However, no information was available on the details of the fees that have been imposed and the frequency with which this sanction is used. Striking off is another sanction that is used against companies who fail to file their annual returns. The authorities advise that for the period under review, 1834 companies were struck off due to failure to file annual returns.

461. Registered agents are required to submit notices of default to the Registrar of IBCs that have failed to submit their annual returns. These are required to be submitted by March 31 of each calendar year. When the Registrar receives the list of defaulting IBCs, it is filed in the registry and an entry is made online outlining the companies that are in default and the type of default. By end of September the registry must publish notices in the gazette that if the default is not corrected by end of year the company will be struck off. Since 2014, 1523 IBCs were struck off and 428 remain struck off as of July 31, 2019. Fees have also imposed on IBCs for late filing; a total of US\$153,650.00 in fines were imposed since 2014.

462. In relation to the sanctions that have been imposed on companies under the Companies Act and IBCs, there was no information to suggest the sanctions imposed were for breaches of AML/CFT obligations. Accordingly, the effectiveness, proportionality and dissuasiveness of sanctions could not be determined.

463. No information was available in relation to the sanctions imposed on other legal persons. No information was available in relation to the sanctions imposed on legal arrangements.

*Overall conclusions on IO.5*

464. **Saint Lucia is rated as having a low level of effectiveness for IO.5.**

## 8 INTERNATIONAL CO-OPERATION

### Key Findings

- a) Saint Lucia has experienced delays in satisfying MLA as approximately 62% of requests remain outstanding with some going as far back as 2015 and 2017. Lack of information in MLA requests and MLA requests being sent in a foreign language without being translated have contributed to the delay. Further, there are no MOUs or other formal arrangements in place between competent authorities specifically concerning the execution of MLA requests. There is also no formal tracking or monitoring system in place at most of the competent authorities that are responsible for executing MLA requests.
- b) There is limited use by competent authorities, particularly the FIA and RSLPF given their roles and functions, to seek MLA and other forms of international cooperation in relation to ML and the main proceeds generating predicate offences. This is particularly so in the context that the NRA identified Saint Lucia's location as being susceptible to being used as a transit for ML activities and that a significant amount of criminal proceeds generated from offences committed in foreign jurisdictions.
- c) Saint Lucia has not entered into asset sharing agreements with foreign jurisdictions. This creates a hindrance to the repatriation of forfeited funds and the use of these funds by Saint Lucia especially in circumstances where a significant amount of forfeited proceeds represents offences committed in other jurisdictions.
- d) Extradition requests are prioritized by Saint Lucia and executed in a reasonable time frame. There are systems in place to ensure such requests are rapidly and effectively executed.
- e) The FIA is the competent authority from which information is required in more than half the pending MLA requests. The FIA's human resource constraints hinder its ability to execute MLA requests in a timely manner.
- f) While the ATA gives the Commissioner of Police the power to disclose information to an appropriate authority of a foreign state and to disclose information in the possession of any other government department or agency, there is no definition of "appropriate authority" in the legislation to enable the Commissioner to know the kinds of authorities that he can disclose the information to and there is no provision which empowers the Commissioner to obtain information from other government departments or agencies.

### Recommended Actions

- a) Saint Lucia should issue guidance to requesting states on what it requires to be able to properly and expeditiously execute requests so that requests received by Saint Lucia will contain all the necessary information and be in a form that Saint Lucia can action.
- b) Competent authorities, particularly the FIA, RSLPF and CED, should develop formal tracking or monitoring systems concerning the MLA requests that they are responsible to execute.
- c) Competent authorities, particularly the FIA and RSLPF, should increase the use of MLA and other forms of international cooperation in relation to ML and the main proceeds generating predicate offences in line with the countries highlighted risk for these offences and the fact that a significant amount of criminal proceeds in Saint Lucia generate from foreign jurisdictions.

- d) Saint Lucia should enter into asset sharing agreements with foreign jurisdictions that are in line with its particular risk area so that funds can be repatriated and utilized in a timely manner.
- e) The human resources available to the FIA to deal with MLA requests should be increased to strengthen its ability to execute same in a timely manner.
- f) The ATA should be amended to include a definition of “appropriate authority” to enable the Commissioner to know the kinds of authorities that he can disclose information to and should include a provision that empowers the Commissioner to obtain information from other government departments or agencies.

465. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

## 8.1 Immediate Outcome 2 (International Co-operation)

### 8.1.1 Providing constructive and timely MLA and extradition

466. Saint Lucia can provide Mutual Legal Assistance (MLA) to Commonwealth countries (under the Mutual Assistance in Criminal Matters Act (MACMA)) and to the USA and the French Republic (under bilateral treaties). Assistance to other countries is provided by way of letters rogatory. See R.37 for more information. The Attorney General’s Chambers has been designated as the Central Authority for MLA matters.

467. From 2014, Saint Lucia received 45 requests for MLA, 22 of which were received by way of letters rogatory. It should be noted that no information was available for four (4) of these requests regarding the exact year in which they were received. Below is a table outlining the MLA requests received by Saint Lucia for which information was available and their status:

Table 8.1: MLA requests received by Saint Lucia

Period	Number of overall requests received	Number of requests received by way of letters rogatory	Number of requests received during the relevant period that have been executed	Average timeframe in which requests were executed	Number of requests received during the relevant period that remain pending
2014	3	1	3	3.33 months	
2015	1	nil			1
2016	2	nil	2	2.5 months	
2017	5	1	3	4.3 months	2
2018	15	11	8	3.15 months	7
2019	15	9	1	2 months	14
<b>Total</b>	41	22	17		24

468. The countries to which Saint Lucia provided assistance in the above 17 executed requests were Martinique, United Kingdom, Greece, Canada, United States of America, Saint Vincent, Belgium, Poland, Russia, Kenya, Denmark and Ireland.

469. The assistance provided ranged from the registering of a foreign forfeiture order, locating individuals, obtaining bank records and serving documents. The offences for which the assistance was provided included ML and predicate offences such as drug trafficking, fraud, armed extortion and robbery. The offences of ML, drug trafficking and fraud are consistent with Saint Lucia's risk profile. The time in which Saint Lucia took to complete these requests was on average three (3) months which does not appear to be excessive. Below is a case summary of the assistance provided by Saint Lucia in registering a foreign forfeiture order:

**Registration of Unites States Foreign Forfeiture Order**

Pursuant to a MLA request from the United States, the FIA was able to trace approximately Euro 1.4 million dollars which was generated from a fraud offence committed in the United States. The Attorney General's Chambers was then able to register a United States forfeiture order in relation to this amount resulting in the forfeiture of same. The authorities advised that while the funds have been transferred from the individual's bank account to the FIAs account, they remain in the FIA's bank account awaiting the determination of the amount to be shared.

470. The above case study highlights the fact that Saint Lucia has not entered into asset sharing agreements with foreign jurisdictions. Instead, the authorities advised that asset sharing will be done on a case by case basis. This however has resulted in a delay of the repatriation of forfeited funds and the use of these funds by Saint Lucia. There is also no designated entity responsible for the management of assets forfeited pursuant to MLA requests.

471. It was noted that included in the assistance provided by Saint Lucia, was assistance provided by way of letters rogatory. The assistance provided by way of letters rogatory was in the form of locating individuals, providing company records and serving documents. Assessors did not find the range of request for assistance received via letters rogatory to include assistance for the restraint or forfeiture of assets. As such, Assessors were unable to assess the extent to which these types of assistance can be provided by this method. The authorities however noted that such assistance could be provided by virtue of the Enforcement of Foreign Judgments Act which enables judgments from foreign counties to be registered and enforced in Saint Lucia.

472. Competent authorities coordinate informally and have good personal relationships which allow for the requests to be executed and monitored. MLA requests are generally dealt with by senior or vetted officers. The respective heads of competent authorities or their deputies play an active role in the processing and monitoring of MLA requests. There is also a case management system at the Attorney General's (AG) Chambers to monitor the progress of requests. See R.37 for more information.

473. In spite of the above, 24 requests remain pending. These pending requests are from the United States of America, Martinique, France, Switzerland, Cuba, United Kingdom, St. Vincent and the Grenadines, Dominica, Argentina, Bulgaria, Germany, Poland, Panama, Italy and Russia. These requests relate to offences including ML, fraud and drug offences which, again, is consistent with Saint Lucia's NRA which identified fraud and drug trafficking as high-risk areas. In one (1) of these matters, assistance has been requested by the United States of America from 2015 for a ML offence. Up to the date of the onsite, this request was not completed. It is noted that the majority of the requests which remain pending were sent in 2019; however, at least five (5) months have passed since three (3) of these requests were received by Saint. Lucia.

474. The authorities have advised that one (1) of the difficulties faced in executing requests for MLA from certain jurisdictions is the lack of information from the requesting jurisdiction in relation to the identity and location of the subject of the request. Additionally, the authorities have expressed that requests are sometimes sent by foreign jurisdictions without same being translated into English; further, the jurisdictions are sometimes unwilling to pay for the translation. Saint Lucia is only able to act on the request once it has been translated to English. Although the translations may be obtained, the time that it takes to obtain the translations affects the speed in which Saint Lucia can fulfil the request. Given these concerns, Saint Lucia is encouraged to issue guidance to requesting states on what it requires to be able to properly and expeditiously execute requests so that when the requests are received by Saint Lucia, they already contain all the necessary information and are in a form in which Saint Lucia can action.

475. It is also noted that in 15 of the matters that remain pending, the FIA is the competent authority from which the requested information is required<sup>43</sup>. As highlighted in IO 6, the FIA suffers from human resource constraints; these constraints hinder its ability to execute MLA requests in a timely manner. Additionally, as highlighted above, the competent authorities coordinate informally in executing MLA requests. There are no MOUs or other formal arrangements in place between competent authorities specifically concerning the execution of MLA requests. Further, other than at the AG's Chambers, there is no formal system in place in most of the competent authorities that are responsible for executing MLA requests which tracks and monitors the progress of the execution of requests. Instead, the heads of the departments are updated on the progress of MLA requests informally at meetings. It is noted that the CED provided a written SOP entitled "Procedure Governing the Treatment of Mutual Legal Assistance Treaties (MLATS)" dated August 29, 2019. However, this SOP did not outline a procedure to monitor the execution of MLA requests.

476. Regarding extraditions, the country has received a total of six (6) requests since 2014 from the United States of America, Canada, the United Kingdom and Martinique. Out of these, there were three (3) instances where the requested individuals were extradited, with their consent. In two (2) of these cases, the individuals were extradited within approximately two (2) months and six (6) months respectively. In the third case, the individual was extradited after approximately five (5) years. This delay was due to various legal challenges being made by the subject which resulted in the extradition ruling being appealed on different occasions. The subject however eventually consented, and he was extradited. A case summary of this matter is detailed in box 8.1 below:

**Box 8.1: Case Summary of Extradition Request**

On the 18<sup>th</sup> of June 2014, the Government of Saint Lucia received a request from the Republic of France (Province of Martinique) for the surrender of X. It was alleged that X had committed the offences of: Organized Illegal Import of Narcotic Drugs; Unlawful Transport, possession, offer or sale, or acquisition of Narcotic Drugs and; Participation in a criminal conspiracy. Saint Lucia accepted the request and a provisional arrest warrant was issued on the 18<sup>th</sup> June 2014, which was subsequently endorsed on the 23<sup>rd</sup> July 2014, resulting in the arrest of X.

X, who was previously ordered to be repatriated to Venezuela by the Courts of the Commonwealth of Dominica, challenged the jurisdiction of the Saint Lucian Court to determine the matter of his surrender to the province of Martinique. Pursuant to an application challenging the jurisdiction of the Court, the Learned Magistrate ordered the release of X. The prosecution however sought a review of the order of the Learned Magistrate by the High Court of Justice. The High Court of Justice subsequently overruled the decision of the Learned Magistrate and referred the matter back to the Magistrate's Court for determination of the extradition proceedings.

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<sup>43</sup> Subsequent information provided by the authorities indicated that the FIA executed an additional five (5) MLA requests during the onsite.

Counsel for X appealed the High Court Judge’s ruling to the Court of Appeal. After several applications, the Court of Appeal remitted the matter to the Magistrate’s Court for determination and X was finally surrendered on 13th February 2019.

477. In relation to the three (3) remaining extradition requests, one (1) was eventually withdrawn by the requesting state and two (2) remain pending. The two (2) that remain pending are recent as the requests for both were made in April 2019.

478. Saint Lucia has demonstrated that extradition requests are prioritized as both counsel from the AG’s Chambers and the Office of the DPP work together to handle these requests and appear before the Magistrate’s Court. Both counsels have conduct of the matter before the court and appear together at the hearings. Accordingly, if one counsel is not available, the other counsel is able to proceed therefore preventing delay and ensuring that the matters are heard in a timely manner. A police officer is assigned to the matter and the same officer maintains custody of the matter to execute the warrant once it is obtained. The courts also handle MLA requests with priority. Extradition applications are flagged in the Magistrate’s Court and early dates are set for extradition hearings. These hearings are also generally assigned to the Senior Magistrate. The High Court similarly flags applications relating to MLA such as the registration of foreign restraint/forfeiture orders so that they are placed before a judge in a timely manner.

### ***8.1.2 Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements***

479. Competent authorities are aware of and utilize the process of seeking MLA wherein requests are submitted to the AG’s Chambers for onward submission to foreign jurisdictions. The Assessors found that the FIA, RSLPF and CED, which are the competent authorities that investigate and are involved in Saint Lucia’s particular risk areas of ML, drugs and fraud and involved in confiscation, were knowledgeable of the process. The table below outlines the MLA requests made by Saint Lucia since 2014.

**Table 8.2: MLA requests made by Saint Lucia.**

<b>Year</b>	<b>Number of requests</b>
<b>2014</b>	14
<b>2015</b>	12
<b>2016</b>	10
<b>2017</b>	5
<b>2018</b>	5
<b>2019</b>	4
<b>Total</b>	50

The table below outlines the types of matters in which MLA requests were made:

Table 8.3: Types of MLA requests made by Saint Lucia

Type of Matter	Number of requests made <sup>44</sup>
<b>Attempted Murder</b>	3
<b>Blackmail</b>	1
<b>Death</b>	1
<b>Possession of false documents</b>	3
<b>Rape</b>	4
<b>Robbery</b>	2
<b>Murder</b>	4
<b>Suspected suicide</b>	1
<b>Human trafficking</b>	4
<b>Obtaining property by deception</b>	7
<b>Fraudulent Documents</b>	5
<b>Fraud</b>	1
<b>Attempted rape</b>	1
<b>Money Laundering</b>	7
<b>False claim</b>	3
<b>Operating without trade licence</b>	3
<b>Uttering false document</b>	1
<b>Custom offences</b>	3
<b>Drugs</b>	4
<b>Stealing by reason of employment</b>	1
<b>Repatriation</b>	1
<b>Burglary</b>	1
<b>Medical records</b>	1
<b>Cash forfeiture</b>	2

480. The assistance requested has been received in 35 of these cases from the United Kingdom, United States, St. Kitts and Nevis, Canada, Saint Maarten, Saint Vincent, Russia, France, Jamaica, Martinique, Guyana, Barbados and Peru. As highlighted in table 8.3 above, the main offences for which MLA requests were made were fraud offences, ML and drugs which is consistent with Saint Lucia's risk profile. However, given that the NRA identified Saint Lucia's location as being susceptible to be used as a transit for ML activities and that a significant amount of criminal proceeds generated from offences committed in foreign jurisdictions, it would have been expected that significantly more MLA requests would have been made for these offences. Further, it is noted that no MLA request was made in relation to tax offences even though tax crimes were identified in the NRA as one of the main sources of proceeds of crime. There has been no request related to TF as the authorities advised that they have never had a reported case of TF or a TF investigation.

481. Most of the requests originated from the FIA and the RSLPF which is expected given that these are the primary investigating bodies in Saint Lucia. For most of the requests however, details of the nature of the assistance requested were not available to be able to assess the level of effectiveness. The authorities however advised of two (2) ML cases in which MLA requests were made to freeze funds that had been transferred out of Saint Lucia to Trinidad as highlighted in the

<sup>44</sup> Please note that there were instances where 1 MLA request was made in relation to more than one offence; therefore, the number of MLA requests and the number of offences are not the same.



analysis of IO8 above. For others, the nature of the request was for evidence to be taken by way of video link. These requests have been facilitated and as recent as March 2019, the DPP was able to take the evidence of a witness in the United Kingdom via video link. Below is a case summary of one of the cases in which an MLA request was made for assistance in an ML investigation.

**Box 8.2: Case Summary of MLA request in MLA investigation**

An MLA request was sent in relation to a credit card fraud investigation that commenced from an SAR received by the FIA which involved multiple credits made to a business account totalling XCD\$18,512,653.74. MLA requests were sent to St. Kitts and the United States to locate card holders and to obtain information from relevant credit card companies.

A response from the United States was received but same was inadequate. Accordingly, a supplemental MLA request was sent and is still pending. It is anticipated that the response received will enable the authorities to lay ML charges.

482. A total of two (2) extradition requests were made by Saint Lucia since 2014. These requests were made to the United Kingdom in 2015 and to Canada in 2017. The request made to the United Kingdom was in relation to an attempted murder matter and the authorities advised that this request has been completed. In relation to the request made to Canada, the subject consented and was returned to Saint Lucia to face prosecution for the offences of uttering fraudulent documents and obtaining property by deception; the nature of these offences is consistent with the NRA's findings that fraud is one of the main predicate offences. The United Kingdom and Canada are among the countries which prominently feature in Saint Lucia's international co-operation.

***8.1.3 Seeking and providing other forms of international co-operation for AML/CFT purposes***

483. Saint Lucia can seek and provide other forms of international cooperation through the FIA, RSLPF, CED and the IRD.

**FIA:**

484. The FIA is part of the Egmont Group of FIUs and can request and share information with other members. From 2014, the FIA made 38 requests for information to other members of Egmont. The table below illustrates the number of requests made by the FIA through Egmont:

**Table 8.4: Number of requests made by the FIA through Egmont**

Year	Number of Requests
2014	6
2015	9
2016	12
2017	6
2018	5

485. These requests related to the offences of ML, drug trafficking, corruption, human trafficking and fraud, with ML and drug trafficking being the main offences for which requests were made. This is therefore in line with Saint Lucia's risk profile. Limited information was available in relation to whether the requests were executed and how the information received was utilized by the FIA. However, one example in which the FIA used information received through Egmont was a request made to Venezuela in which the information received was used to support a cash forfeiture application under the POCA. In any event, given the vast responsibilities of the FIA in Saint Lucia,

including ML investigation, criminal confiscation investigation and civil cash forfeiture investigation, the number of requests appears low.

486. The FIA received a total of 94 requests for information under the Egmont from 2014. The table below illustrates the number of received by the FIA through Egmont:

**Table 8.5: Number of requests received by the FIA through Egmont**

Year	Number of Requests
2014	15
2015	21
2016	24
2017	10
2018	15
2019	9

487. The majority of these requests related to ML and predicate offences such as fraud, drug trafficking, corruption and tax evasion which is consistent with Saint Lucia’s risk profile. Included in these 94 requests were three (3) requests related to TF, two (2) of which were received from Trinidad and Tobago and one (1) of which was received from the Ukraine. A request related to terrorism was also included in the 93 requests; this request was received from Bangladesh. The countries which made these requests included the United Kingdom, Canada, Trinidad and Tobago, the United States and St. Vincent and the Grenadines, which are countries which generally appear to feature in Saint Lucia’s international cooperation regime. No information was available concerning the status of these requests to be able to ascertain whether the FIA effectively responded to them in a timely manner. The authorities advised that the FIA has shared information spontaneously through Egmont but same was not documented.

488. The authorities advised that Egmont is only used for intelligence purposes. If it is determined that a prosecution can be commenced, the formal MLAT process is initiated in order to obtain the intelligence in an evidential form

489. The FIA also has MOUs with ten (10) other foreign intelligence units which facilitate the sharing of information. Five (5) of these MOUs were executed since 2014. The table below outlines the MOUs in place between the FIA and their foreign FIU counterparts.

**Table 8.6: MOUs between the FIA and their foreign FIU counterparts:**

Country	Year in which MOU was entered
Canada	2010
Saint Vincent and the Grenadines	2011
Dominica	2013
Jamaica	2013
Barbados	2013
Antigua and Barbuda	2015
Panama	2015
Barbuda	2015
Republic of China (Taiwan)	2017
Ukraine	2017
Guernsey	2018

490. Since 2014, the FIA has made one (1) request for information pursuant to the MOUs it has in force. This request was made in 2014; no information was available in relation to the nature of this request. In relation to requests received by the FIA, a total of 14 requests were received since 2014 from their foreign FIU counterparts. One (1) request related to tax evasion and another related to fraud and drug trafficking which is consistent with Saint Lucia's main predicate offences. No information was available on the nature of the other requests neither was there information available concerning the status of any of the requests. The table below illustrates the number of requests made to Saint Lucia by their foreign FIU counterparts:

Table 8.7: **Number of requests received by the FIA from foreign FIU counterparts**

Year	Number of Requests
2014	1
2015	4
2016	nil
2017	4
2018	1
2019	4

491. The countries which made the requests were the United Kingdom, St. Vincent and the Grenadines, the United States of America, St. Kitts and Nevis, France and St. Maarten. Out of these countries, the FIA only has MOUs with the Saint Vincent and the Grenadines. Therefore, there was no formal information sharing procedure in place for the majority of the requests received by Saint Lucia from their foreign FIU counterparts. In this regard, Saint Lucia is encouraged to enter into MOUs with additional foreign FIU counterparts that are in line with Saint Lucia's identified risks particularly their foreign FIU counterparts in the United Kingdom, the United States of America and Martinique given the frequency with which Saint Lucia interacts with these countries in international cooperation.

492. The authorities also advised that Saint Lucia is a member of ARIN-CARIB and that the FIA is the point of contact. ARIN-CARIB is an informal network of over 30 Caribbean countries which provides a platform for practitioners specializing in the recovery of the proceeds of crime and the prosecution of related criminal offences to share information with their counterparts and for inter-agency cooperation. No information was however available on the cooperation requested by Saint Lucia through this network. In relation to requests received by Saint Lucia through ARIN-CARIB, feedback from FATF members revealed that at least one request was made to Saint Lucia in October 2018 and reiterated in November 2018; however, the request remains unanswered.

RSLPF:

493. The RSLPF can seek and provide other forms of international cooperation through the use of Interpol, which comprises over 190 countries, the use of a regional security system, which comprises seven (7) countries, and through the Association of Caribbean Commissioners of Police, which comprises 25 countries. Interpol is the main method used. The Interpol desk is based in the CIU with four (4) officers. The RSLPF sent a total of 145 requests for international cooperation for the period under review. While some of these requests related to predicate offences such as credit card fraud, other requests -such as requests for vetting – do not appear to be related to AML/CFT purposes. Given that Saint Lucia assessed its ML threat to be Medium High and identified drug trafficking as one of the main predicate offences, it would have been expected that more requests for would have been made in relation to these crimes.

494. The authorities advised that the RSLPF received 1572 requests from foreign counterparts through Interpol for the period under review and that all were processed. While the authorities noted

that two (2) of the requests received in 2018 were related to ML while none of the requests received in 2019 were related to ML, no information was available in relation to the nature of the requests received in 2014, 2015, 2016 and 2017. Neither was information available concerning the time within which the requested information was provided. The authorities advise that this lack of information was due to a network issue where Interpol's system crashed in 2017 causing a loss of historical data.

495. Section 27 of the ATA empowers the Commissioner of Police to disclose information on terrorist groups and persons involved in terrorists acts to an appropriate authority of a foreign state. This provision has however never been utilized by the Commissioner. The authorities expressed concern there is no definition of "appropriate authority" in the legislation to enable the Commissioner to know the kinds of authorities that he can disclose the information to. Concern was as well expressed that while the section also empowers the Commissioner to disclose information in the possession of any other government department or agency, there was no provision which empowers the Commissioner to obtain the information from other government departments or agencies. Accordingly, while the legislation gives the Commissioner of Police the power to disclose information, there is an absence of provisions to practically enable this power to be exercised.

#### **CED:**

496. The CED is a member of the Caribbean Customs Law Enforcement Council. The Secretariat of the Council is housed in Saint Lucia. Information sharing between members is facilitated through a Memorandum of Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone. Custom offences are predicate offences in Saint Lucia; therefore, this MOU does facilitate the sharing of information for AML purposes. Since 2014, the CED only made one (1) request for information pursuant to the MOU. This request was made in 2019 to Panama to assist in retrieving invoices from Panamanian suppliers. While this request is primarily a valuation matter, the authorities have advised that there is a possibility of a future ML investigation. It is however noted that the CED only investigates offences under the Customs (Control and Management) Act. The CED does not investigate other predicate offences such as drugs or ML offences; these are investigated by the RSLPF and the FIA respectively. Further, offences under the Customs (Control and Management) Act were not identified as one of the main offences in Saint Lucia. The limited number of requests made by the CED is therefore not surprising.

497. No information was available on whether international cooperation was provided under the Memorandum of Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone.

#### **IRD:**

498. Saint Lucia is a party to the Multi-Lateral Convention on Mutual Administrative Assistance in Tax Matters ("the Convention") and the IRD is the competent authority for the purposes of this Convention. Saint Lucia is a signatory to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information which facilitates the sharing of information under the Convention. The Automatic Exchange of Financial Account Information Act also facilitates the exchange of information under the Convention. Tax offences are predicate offences in Saint Lucia; therefore, the Agreement facilitates the sharing of information for AML purposes. However, up until September 23, 2019, Saint Lucia was a non-reciprocal jurisdiction and was not able to seek information pursuant to the Agreement.

499. Saint Lucia has also entered into tax treaties with 21 countries under its International Tax Cooperation Act. Saint Lucia has made one (1) request under this regime but same was not related to AML/CFT. Given the fact that tax crimes were identified as one of the main sources of proceeds

generating crimes in the NRA, it would have been expected that more requests for would have been made by the IRD.

500. Saint Lucia received 58 requests pursuant to the tax treaties entered under its International Tax Cooperation Act for the period under review. However, information was not available as to whether any of these requests related to tax crimes or ML/TF. The Authorities advise that under the ITCA and related treaties, the requesting jurisdiction is not mandated to indicate whether the request is related to ML/TF.

#### **8.1.4 International exchange of basic and beneficial ownership information of legal persons and arrangements**

501. Saint Lucia has received MLA requests in relation to obtaining basic and beneficial ownership information of legal persons and arrangements. However, data on the amount of these requests, the nature of these requests and the timeframes in which these requests were satisfied was not available to be able to assess the level of effectiveness. The authorities nevertheless advised that these requests are executed by the FIA who can obtain the information in a timely manner from registered agents. The FIA has access to the Register of IBCs and is therefore able to identify who the registered agent is for a IBC and make the necessary request of that registered agent for the information. While registered agents are required by law to provide information requested by the FIA, the requirement of IBCs to keep a register of beneficial owners and to provide registered agents with their beneficial ownership information only came in force in December 2018. The requirement for companies under the Companies Act to file beneficial ownership information at the Registry of Companies and IP similarly only came into force in December 2018. Nevertheless, the FIA would have been able to access this information prior to December 2018, from FIs and DNFPBs, including registered agents, under the MLPA.

502. The authorities also advised that three (3) foreign authorities have accessed documents from the website of the Registry of IBCs, ITs and IPs at [www.saintluciaifc.com](http://www.saintluciaifc.com). Beneficial ownership information is however not held by this Registry and therefore not available on the website. Accordingly, the information accessed by these 3 foreign authorities would be limited to basic information.

503. Saint Lucia has achieved some results under this IO by providing MLA under the MACMA, under bilateral treaties and by way of letters rogatory for offences which are consistent with its risk profile. Several MLA requests however remain pending and are yet to be fulfilled by Saint Lucia. While Saint Lucia has a regime in place for competent authorities to provide other forms of assistance, limited information was available in relation to the assistance provided through these methods to allow for an effective assessment. The MLA requests and requests for other forms of assistance made by Saint Lucia appear limited in number and nature given Saint Lucia's Medium High ML threat, the type of its main proceeds generating predicate offences and the fact that a significant amount of criminal proceeds is generated from offences committed in foreign jurisdictions. In relation to extradition, Saint Lucia has demonstrated that it has an adequate regime in place where extradition matters are prioritized.

#### *Overall conclusions on IO.2*

504. **Saint Lucia is rated as having a moderate level of effectiveness for IO.2.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in [date]. This report is available from [link].

### **Recommendation 1 – Assessing risks and applying a risk-based approach**

3. This Recommendation was issued in February 2012 and therefore was not assessed in the 3rd Round MER of Saint Lucia which occurred in 2008. This Recommendation is therefore being evaluated for the first time.

4. **Criterion 1.1** – Saint Lucia identified and assessed its ML/TF risk through a National Risk Assessment (NRA) process it commenced during the third quarter of 2018, using the World Bank NRA Methodology. The assessment was co-ordinated by the National Anti-Money Laundering Oversight Committee (NAMLOC) with participation by all relevant law enforcement and supervisory authorities, and financial institutions (FIs) and persons engaged in relevant business activity (e.g. accountants, attorneys, car dealers, real estate agents and jewellers). The process entailed the collection of information, utilising questionnaires sent to all participants, and group discussions. The process also included an overview of the known sources of proceeds of crimes in Saint Lucia. The findings of the NRA were compiled in a National Money Laundering and Terrorist Financing Risk Assessment Summary Report dated March 2019.

5. **Criterion 1.2** – The NAMLOC oversees Saint Lucia's AML/CFT regime and is the mechanism to co-ordinate actions to assess risks. The committee has been in place since the 3rd round MER as the CFATF Oversight Committee and received Cabinet approval in March 2019 to change the name to NAMLOC. The NAMLOC was responsible for leading and organizing the NRA produced in 2019 and is currently responsible undertaking constant and continuous review of the NRA and National Action Plans of Saint Lucia.

6. **Criterion 1.3** – The NAMLOC's mandate includes ensuring risk assessments are undertaken and updated bi-annually or when the need arises (NAMLOC ToR and Cabinet Conclusion No. 754 of 2019). However, outside of the NRA, Assessors did not identify any other risk assessments (e.g. sectoral or thematic), to demonstrate that a review of the country risks is a continuous process. The country had recently conducted supervisory visits to jewellers, however this was not considered a risk assessment as findings of those separate visits were still in the process of being finalised and sector specific guidelines on ML/TF risks were not available at the time of the onsite as additional examples of available risk assessments.

7. **Criterion 1.4** – The Authorities distributed the results of the NRA through caucus meetings with the competent authorities, and on a sector by sector basis to the industry stakeholders, by utilising presentations and email communication. At the time of the onsite, findings of the NRA were still in

the process of being disseminated to private sector representatives who participated in the process, however it was not evident that findings had been shared with all of Saint Lucia's FIs and DNFBPs sectors. There is also no formal mechanism(s) through which Saint Lucia provides information on the results of risk assessment(s) to relevant competent authorities, FIs and DNFBPs.

8. **Criterion 1.5** - Saint Lucia has not applied a risk-based approach towards allocating resources and implementing measures to prevent or mitigate ML/TF.

9. **Criterion 1.6** – All FIs and DNFBPs operating in St. Lucia are subject to the requirements of FATF Recommendations.

10. **Criterion 1.7** - The NRA Summary did not include the identification of higher risk scenarios that Saint Lucia is exposed to; therefore, no requirements have been placed on FIs and DNFBPs to take enhanced measures. Recommendations were also not made requiring FIs and DNFBPs to ensure higher risks identified in the NRA are incorporated into their own risk assessments. Assessors did not find evidence where legislation or guidance had been updated following the identification of higher risk scenarios specific to Saint Lucia. Pre-existing requirements on FIs and DNFBPs to take enhanced measures are included to some extent in the MLPA. These requirements include: (a) develop and apply policies to address specific risks associated with non-face-to-face business relationships or countries that do not apply the FATF Recommendations (MLPA, section 16(1)(h)). (b) ensure that information collected under the customer due diligence process is kept-up-to-date particularly for high risk categories of customers or business relationships and to perform enhanced due diligence for high risk categories of customers, business relationships or transactions. (MLPA, section 17(2) and 17(3)). (c) Pay attention to listed transactions which are high risk (MLPA, section 16(7A)).

11. **Criterion 1.8** - The MLPA, Section 17(3) allows FIs and DNFBPs to apply reduced or simplified measures where there are low ML/TF risks or where adequate checks and controls exist in national system respectively, and to apply simplified or reduced customer due diligence to customers resident in another country which is in compliance and have effectively implemented the FATF Recommendations. The basis upon which the application of simplified measures apply in these circumstances were not based on the results of the NRA.

12. **Criterion 1.9** - The two competent AML/CFT supervisory authorities, the FIA and the ECCB, do ensure that FIs and DNFBPs are implementing their obligations under R1. The specific requirements on supervisors include ensuring regulated entities conduct a risk assessment, mitigate risk and apply a risk-based approach. See analysis of Recommendations 26 (supervision of FIs), 27 (Powers of Supervisors) and 28 (supervision of DNFBPs).

13. The existing requirements for supervisors include: (Under section 5(2)(k) of the MLPA, the FIA has the duty to advise financial institutions and DNFBPs of the measures that have been or might be taken to detect, prevent and deter the commission of offences under the Proceeds of Crime Act. Under section 6(1)(f) and (h) of the MLPA, the FIA has the power to issue guidelines to FIs and DNFBPs concerning compliance with the MLPA and to conduct audits of financial institutions and DNFBPs to ensure compliance with the MLPA. As noted under Criterion 1.7, the MLPA provides for a risk-based approach to be adopted by financial institutions and DNFBPs. Under section 15(1)(h) of the FSRA Act, the FSRA may issue guidelines to regulated entities in respect of anti-money laundering and combating the financing of terrorism. Under section 34(1)(b)(vi) of the FSRA Act, the FSRA may require a regulated entity to appoint an auditor to certify whether suitable

measures to counter money laundering and to combat the financing of terrorism have been adopted and are being implemented by a regulated entity. It is however noted that although Saint Lucia advised that the FIA and FSRA have sanctioning powers, such powers were not seen in the MLPA or FSRA Act.

14. **Criterion 1.10** - FIs and DNFBPs obligations do not require TF risk assessments to be made by regulated entities. Measures in the MLPGN Regulations (101A(c)) to assess their ML risk according to the specific FATF criteria include:

15. (a) There is no measure in place requiring risk assessments to be documented.

16. (b) FIs and DNFBPs are required to undertake risk assessments to identify the type of risk and level of risk associated with their product applications. This does not specify the requirement to consider risks in relation to customers, countries or geographic areas. Risks are required to be mitigated by 'implement multi-factor verification measures, layered scrutiny or other controls reasonably calculated to mitigate their risks'. These requirements do not align to the requirement to determine an overall risk and appropriate level and type to be applied.

17. (c & d) There is no requirement to keep their risk assessments up to date or to have appropriate mechanisms to provide risk assessment information to competent authorities.

18. **Criterion 1.11** -

19. (a) Section 16 (1)(g) of the MLPA (s.16 (1)(g)) requires FIs and DNFBPs to develop and apply AML/CFT internal policies, procedures or controls to combat ML/TF but does not require that policies be approved by senior management and developed to manage and mitigate risks identified either by the country or by the FIs and DNFBPs (not just high risk or non-face-to-face).

20. (b). The MLPA ((b) S16(1)(o)(iii)) requires FIs and DNFBPs to have an audit function to evaluate/test these policies, procedures and controls but there is no requirement for the enhancement of these policies, procedures and controls.

21. (c) - As noted in Criterion 1.7, the MLPA requires FIs and DNFBPs to take enhanced security measures in high risk circumstances.

22. **Criterion 1.12** - The MLPA (s.17 (3)) provides for the application of reduced or simplified measures where there are low ML/TF risks (as noted in criterion 1.8). Section 17 (10) of the MLPA (s.17 (10)) also requires that reduced or simplified measures may apply where low risks are identified. Neither of the cited provisions stipulate that simplified measures should not be permitted when there is a suspicion of ML/TF. Further, the identified deficiencies in criterion 1.9 to 1.11 have a cascading effect on this requirement of this criterion.

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

23. Saint Lucia has completed its first NRA in March 2019 however there is no established procedures in place to ensure that the NRA is reviewed and kept up to date. There are no other risk assessments to demonstrate that risks are regularly assessed by the country. There are significant deficiencies relating to supervisors ensuring FIs and DNFBPs implement their obligations to ensure they identify and mitigate risks. Saint Lucia has shared the findings of the NRA at meetings between the NAMLOC and its public and private sector stakeholders, but consideration should be given to



having a formal system to ensure that findings of any risks assessments produced are documented and received by all the relevant stakeholders. **Recommendation 1 is rated partially compliant.**

### **Recommendation 2 - National Co-operation and Co-ordination**

24. This Recommendation (previously R.31), was rated ‘NC’ in Saint Lucia’s the 3rd MER. At that time, it was noted that the co-ordination and co-operation among agencies was ad-hoc and that there were no effective mechanisms in place to allow policy makers and competent authorities to co-operate and co-ordinate with each other. Since then, Saint Lucia has introduced several measures to increase compliance with this Recommendation. These measures include the establishment of an oversight committee, NAMLOC, to monitor and implement the FATF Recommendations (representatives from different government agencies are part of this committee), amendments to the MLPA and Anti-Terrorism Act (ATA), the execution of MOU’s and the establishment of bimonthly meetings between the FIA and other government agencies.

25. **Criterion 2.1** - Saint Lucia has not established national AML / CFT policies which have been informed by the risks identified in the recently completed NRA. While a draft AML/CFT policy has been prepared by NAMLOC, it has not been approved<sup>45</sup>.

26. **Criterion 2.2** - As highlighted in IO1, an Oversight Committee, NAMLOC, comprising of representatives from various competent authorities, was established by the Cabinet of Ministers. A National Coordinator, supported by a Secretariat, has also been appointed and has responsibility of coordinating the AML/CFT efforts.

27. **Criterion 2.3** - NAMLOC is the primary co-ordination forum and mechanism for the co-operation and co-ordination between the FIU, law enforcement authorities and other competent authorities on policy and operational matters. The co-operation between members of NAMLOC is further strengthened through bilateral Memoranda of Understanding (MOUs). At the operational level, bilateral MOUs have been executed between competent authorities and an IAIC between law enforcement agencies was established in 2010 to enhance information and intelligence sharing between law enforcement agencies and to facilitate individual and joint investigations, operations and prosecutions.

28. **Criterion 2.4** - The assessment team has not been provided with evidence of co-operation and co-ordination mechanisms (legislatively or otherwise) to combat the financing of proliferation of weapons of mass destruction.

29. **Criterion 2.5** - There is a co-operation and co-ordination mechanism – namely the NAMLOC and bilateral MOUs between competent authorities however, no information was provided to show that such mechanisms ensure compatibility of AML/CFT requirements with data protection and privacy rules.

### **Weighting and Conclusion**

30. Saint Lucia has a framework for national AML/CFT co-operation and co-ordination through the NAMLOC, bilateral MOUs between competent authorities and an IAIC between law enforcement agencies. However, no national AML/CFT policies have been established through this framework. There is also an absence of co-operation or co-ordination mechanisms to combat the

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<sup>45</sup> NAMLOC’s “National Anti-Money Laundering/ Counter Financing of Terrorism/ Counter Proliferation Financing (AML/CFT/CPF) Policy - Saint Lucia 2019-2022” was approved by Cabinet on August 17, 2020.

financing of proliferation of weapons of mass destruction. **Recommendation 2 is rated partially compliant.**

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

31. Saint Lucia received ratings of 'PC' and 'LC' for this Recommendation (formerly R 1 and R2) in their 3<sup>rd</sup> MER. Among the deficiencies noted were that self-laundering was not covered by the legislation, that all designated categories of offences were not included as ML predicate offences and that there was a lack of effective and dissuasive sanctions. It was also noted that the legislation had not been effectively utilized and that the Palermo Convention needed to be ratified. Saint Lucia has since amended their MLPA to include self-laundering and to expand the definition of "criminal conduct" so that predicate offences for ML cover all offences in Saint Lucia. Saint Lucia has also since ratified the Palermo Convention.

32. **Criterion 3.1** - Sections 28 to 32 of the MLPA criminalise ML on the basis of Article 3(1)(b) & (c) of the Vienna Convention and Article 6(1) of the Palermo Convention.

33. **Criterion 3.2** - The definition of "criminal conduct" was amended by the Money Laundering (Prevention) (Amendment) Act to mean "any indictable or summary offence or an offence triable both summarily or on indictment". This definition covers all offences in Saint Lucia. By virtue of this, all the predicate offences for ML are covered under the definition of criminal conduct. The predicate offences also cover a range of offences in each of the designated categories.

34. **Criterion 3.3** - Saint Lucia does not apply a threshold approach as the underlying predicate offences for ML are determined by reference to all offences.

35. **Criterion 3.4** - Section 2 of the MPLA defines the word "property" in wide terms without reference to any value. ML offences under the MPLA refer to property that directly or indirectly represent the proceeds of crime. Accordingly, ML offences extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

36. **Criterion 3.5** - There is no requirement that a person be convicted of a predicate offence when proving that property is the proceeds of crime.

37. **Criterion 3.6** - Under the MLPA, predicate offences for ML are defined by reference to "criminal conduct". As noted in criterion 3.2 above, "criminal conduct" means "any indictable or summary offence or an offence triable both summarily or on indictment". This definition does not extend to conduct that occurs in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred in Saint Lucia.

38. **Criterion 3.7** - Under section 30(1) of the MLPA, the ML offences of acquiring or using property are limited to property that represents "another person's" proceeds from criminal conduct. This indicates that the predicate offence would have to be committed by another person as opposed to the person who has committed the ML offence. The remainder of the ML offences are however wide enough to apply to persons who commit the predicate offences.

39. **Criterion 3.8** - The Criminal Code applies to ML offences; section 56 (2) of the Criminal Code states that a Court "may infer the requisite intent from the act committed by the person and the relevant surrounding circumstances". Under section 29 of the MLPA, the mental element required for the ML offence is knowledge or suspicion. Under section 30(1A) of the MLPA, the mental

element required for the ML offence is “knowing or having reasonable grounds to believe”. Based on the foregoing, the offence of ML can be proven from objective factual circumstances.

40. **Criterion 3.9** - The penalties for a person who commits a ML offence under sections 28, 29 and 30 of the MLPA are: (a) on summary conviction, to a fine of not less than \$0.5 million and not exceeding \$1million or to imprisonment for a term of not less than 5 years and not exceeding 10 years or both; (b) on conviction on indictment, to a fine of not less than \$1million and not exceeding \$2million or to imprisonment for a term not less than 10 years and not exceeding 15 years or both. The penalties for a person who commits a ML offence under section 31 of the MLPA are: (a) on summary conviction, to a fine not exceeding \$1million or to imprisonment for 5 years or both; (b) on conviction on indictment, to a fine not exceeding \$2million or to imprisonment 15 years or both. The high value of fines and the lengthy time frame for imprisonment that can be imposed satisfy the criterion of being proportionate and dissuasive.

41. **Criterion 3.10** - The definition of “person” under section 2 of the MLPA includes a legal person. The penalties for ML offences have been outlined in criterion 3.9 and apply to legal persons. It is however noted that the same penalties that apply to a natural person apply to a legal person. This raises a concern as to whether the penalties are sufficiently dissuasive for a legal person such as a large financial institution. Parallel sanctions are also available against legal persons. For example, section 33(B)(1) of the MLPA provides that a court may, in addition to any other penalty, order the suspension or revocation of the licence of a financial institution or DNFBP that has been convicted of an offence under the Act.

42. **Criterion 3.11** - Section 31 of the MLPA creates the offence of attempting, aiding, counselling or procuring the commission of, or of conspiring to engage in, a ML offence under sections 28, 29 or 30.

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

43. While significant amendments have been made to the MPLA which increase Saint Lucia’s compliance with this Recommendation, deficiencies in the MLPA still exist particularly as it relates to 1) the definition of criminal conduct not being wide enough to encompass predicate offences that are committed in another country (2) the offences of acquiring or using property not being applicable to the person who committed the predicate offence (3) the proportionality and dissuasiveness of criminal sanctions against legal persons. The deficiency in relation to the limit on the definition of criminal conduct is particularly noteworthy given that Saint Lucia’s NRA found that a significant amount of criminal proceeds emanates from foreign predicate offences. **Recommendation 3 is rated is rated partially compliant.**

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

44. Saint Lucia was rated PC for R.4 (formerly R.3) in its 3<sup>rd</sup> round MER. The highlighted deficiency at the time was the lack of effective implementation as there were no prosecutions noted for ML. Additionally there were other avenues such as forfeitures and confiscations which are effective measures which were not utilized and thus add to the lack of effectiveness in implementation of the AML regime. The quoted deficiencies with regard to formally R.3 are in this 4<sup>th</sup> round MER evaluated in the immediate outcome analysis on effectiveness. R. 4 now requires countries to also have mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.

45. **Criterion 4.1**

46. (a) (*Met*) Confiscation proceedings apply to both criminal defendants and assets registered in the name of third parties including gifts (section 3(5) of POCA. Confiscation is applicable to property laundered as the Court is permitted to grant a forfeiture order against any tainted property in respect of a criminal offence based on an application from the DPP (section 4(1)(b) of the POCA). Tainted property includes property used in, or in connection with, the commission of the offence (section 2 POCA)

47. (b) – Confiscation proceedings are applicable against the person in respect of benefit derived by the person from the commission of the criminal conduct (which includes ML and predicate offences) and tainted property in respect of the criminal conduct (section 4 (1) (a) and (b) of the POCA). The definition of tainted property in section 2 of the POCA appropriately covers the confiscation of instrumentalities of an offence it does not include instrumentalities intended for use in an offence.

48. (c) – Section 33, 34 and 35(a) of the ATA gives the Police the power to seize, detain and forfeit property used in commission of terrorist acts. Section 9(c) in conjunction with section 2 of the ATA cover the confiscation of terrorist property intended or allocated for terrorism (financing) also in relation to a terrorist group. Offences under the ATA would give rise to criminal conduct under the MLPA which would allow for confiscation of property. Section 24 of the MLPA gives the power to forfeit property owned by, or in the possession or control of, a person who is convicted of an offence under the MLPA.

49. (d) – Property of corresponding value is liable for confiscation proceedings, as the Court may order the person to pay to the Crown an amount equal to the value of the property, part or interest in certain circumstances such the property has substantially diminished in value or rendered worthless (*section 14 of the POCA*).

50. **Criterion 4.2**

51. (a) – A Police Officer can apply make an ex-parte application for a Production and Inspection Order for identifying, locating and quantifying property where a person has been convicted of a criminal offence and that person is suspected of having documents in his possession or control relative to properties (s.41 of the POCA). A police officer can also apply for a search warrant to search land for tainted property (s.24 of the POCA). The POCA also makes provision for the obtaining of monitoring orders (s.47). Police Officers who work within the FIA retain their policing powers (s.4 under 4 MLPA).

52. (b) – The DPP may make an ex-parte application to the Court for a restraint order where as a provisional measure prevent any dealing, transfer or disposal of property subject to confiscation, in circumstances where the defendant has been convicted or is charged for a criminal offence, there is reasonable grounds for suspecting that the defendant committed the offence, where he has not been convicted and there is reasonable grounds to believe that the property is tainted property (section 31 of the POCA). Similar provisions exist within the Anti-Terrorism Act in section 35.

53. (c) – The Court has the power to set aside any conveyance or transfer of property that occurred after the seizure of the property or the service of the restraint order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice (s.11 of the POCA).

54. (d) – Section 6 (1)(b) of the MLPA gives the FIA investigative powers in order to fulfill its functions which includes investigations into criminal conduct. In the context that R 4.2 is on the ability of all competent authorities, the IRD, and where appropriate the other LEAs cannot use investigative measures under R.31 to carry out the functions at 4.2.

55. **Criterion 4.3** – Saint Lucia law protects the rights of bona fide third parties (section 5, 8(3)(a), 9(4)(a), 12(1), 22(5), 25, 29 and 33 of the POCA).

56. **Criterion 4.4** – Property that is forfeited is subject to disposal, under the directions of the Court, pursuant to section 24 (6) (b) of the MLPA. For property that is restrained, the Court may direct the Registrar or such other person, as the Court may appoint to take custody of the property or such part thereof as is specified in the order to manage or otherwise deal with or any part of the property in accordance with the Order (s.31 of the POCA).

#### **Weighting and Conclusion**

57. The only deficiency found in relation to this Recommendation is that there are no investigative measures for LEAs, other than the FIA, to carry the functions in criterion 4.2. See R. 31 for an evaluation on the investigative powers the LEAs. **Recommendation 4 is rated largely compliant.**

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

58. This Recommendation (formerly SRII) was rated ‘NC’ in Saint Lucia’s 3<sup>rd</sup> MER. The basis of this rating was due to the fact that terrorist financing was not criminalized as the Anti-Terrorism Act (ATA) was not yet in force. The main change has been the bringing into force of the ATA which has since significantly increased Saint Lucia’s compliance with this Recommendation.

59. **Criterion 5.1** –The provisions of Article 2 of the International Convention for the Suppression of the Financing of Terrorism are criminalized in the ATA by virtue of sections 5, 6 and 20 of the ATA.

60. **Criterion 5.2** – Sections 5 and 6 of the ATA covers this criterion.

61. **Criterion 5.2 bis** – Section 6 of the ATA makes it an offence to provide financial or other related services intending that they be used for the purpose of committing or facilitating the commission of a terrorist act. While the term “facilitating the commission of a terrorist act” is broad enough to cover financing the travel of an individual for the purpose of the perpetration, planning, or preparation of, or participation in the terrorist act, the offence does not extend to financing the travel of an individual for the purpose of providing or receiving terrorist training.

62. **Criterion 5.3** - The definition of “property” under section 2 of the ATA is wide and does not make a distinction between property from a legitimate or illegitimate source. It includes “any asset of every kind” which is wide enough to cover both legitimate and illegitimate sources.

63. **Criterion 5.4** – Sections 5 and 6 of the ATA do not require the funds or other assets to have actually been used to carry out or attempt a terrorist act or that they be linked to a specific terrorist act. What is required is the intention, knowledge or belief that the property will be used to carry put a terrorist act. Further, the definition of terrorist property, for which the offences under section 8 and 9 of the ATA are concerned, includes property that is likely to be used to commit a terrorist act, likely to be used by a terrorist group, owned or controlled by or on behalf of a terrorist group or which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act.

64. **Criterion 5.5** - The Criminal Code applies to ATA offences; section 56 (2) of the Criminal Code states that a Court “may infer the requisite intent from the act committed by the person and

the relevant surrounding circumstances”. This provision incorporates the ability for the intent and knowledge required to prove a TF offence to be inferred from objective factual circumstances.

65. **Criterion 5.6** - The penalties for TF offences under the ATA range from imprisonment up to 15 years and 25 years. The significant time frames for imprisonment that can be imposed satisfies the criterion of being proportionate and dissuasive especially when compared to the penalties for other serious offences such as ML offences for which imprisonment goes to a maximum of 15 years.

66. **Criterion 5.7** - Section 34(1) of the Interpretation Act states that “Words in an enactment importing (whether in relation to an offence or otherwise) persons or male persons shall include male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons”. Accordingly, the reference to “person” under the ATA includes legal persons. However, terms of imprisonment are the penalties provided for the relevant offences; therefore, these penalties are limited to natural persons. While it is recognised that section 34 of the ATA - which provides for the forfeiture of property used for or in connection with or obtained from the commission of an offence for which a person has been convicted - can apply to legal persons, this penalty is not sufficiently proportionate or dissuasive.

67. **Criterion 5.8** - Sections 5, 6 and 20 of the ATA create the offences required by the criterion.

68. **Criterion 5.9** - Under the MLPA, ML predicate offences are defined by reference to “criminal conduct”. “Criminal conduct” is defined under the MLPA as “any indictable or summary offence or an offence triable both summarily or on indictment”. TF offences are indictable offences and would therefore fall within the definition of criminal conduct under the MLPA. Accordingly, TF offences are designated as ML predicate offences.

69. **Criterion 5.10** –As outlined in criterion 5.2, “terrorist act” includes “an act or omission in or outside Saint Lucia which constitutes an offence within the scope of a counter terrorism convention”. By virtue of this definition, TF offences apply regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

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

70. There are limited criminal penalties for legal persons that commit offences under the ATA, as the only criminal penalty provided in the Act that can apply to a legal person is the forfeiture of property used for or in connection with or obtained from the commission of the offence; this penalty is not sufficiently proportionate or dissuasive. This deficiency is significant given the lack of understanding of TF risks and vulnerabilities in Saint Lucia as outlined in IO 9 and the fact that TF risks of legal persons were not assessed. Further, the offences under the ATA do not extend to financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose providing or receiving terrorist training. **Recommendation 5 is rated partially compliant.**

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

71. Saint Lucia received a rating of ‘NC’ for this Recommendation (formerly SR III) in their 3<sup>rd</sup> MER. This was primarily due to the fact that the Anti-Terrorism Act (ATA) was not yet in force. Another point of concern was the fact that, even though the power to freeze terrorist funds was inferred in the MLPA, there was no express provision for an ex parte application to be made. It was also noted that the MLPA attached the condition that a person against whom a freezing order was made must be charged within 7 days or the order would expire. As noted under Recommendation 5, the ATA has since been brought into force. The ATA has express provisions for ex-parte applications relating to the freezing of terrorist property and there is no requirement that a person against whom a freezing order is made under the ATA to be charged failing which the order will expire.

72. **Criterion 6.1** – Saint Lucia has referenced section 3 of the ATA as the basis for meeting section (a) of this criterion. However, while section 3 empowers the Attorney General to, by order in the Gazette, declare an entity a specified entity, it makes no provision for proposing that entity to the 1267/1989 Committee or the 1988 Committee for designation.

73. There are also no measures in place to meet the requirements of sections (b) to (e) of this criterion.<sup>46</sup>

74. **Criterion 6.2** – In relation to designations pursuant to UNSCR 1373:

75. (a) Section 3 of the ATA identifies the Attorney General as the competent authority that is empowered to, by order in the Gazette, declare an entity a specified entity. Under section 2 of the ATA, the term “entity” includes a person. The ATA does not differentiate on whether the designation was put forward on the country’s own motion or after examining and giving effect to the request of a country.

76. (b) The ATA does not provide mechanisms for identifying targets for designation based on the designation criteria set out in UNSCR 1373 and Saint Lucia does not have a procedure in place to address same.<sup>47</sup>

77. (c) The ATA does not set out procedures to be followed when receiving a request for designation pursuant to UNSCR 1373.

78. (d) Section 3 of the ATA sets out that the Attorney General must apply an evidentiary standard of proof of “reasonable grounds” when deciding whether or not to make a designation. Further, there is no limitation on the power of the Attorney General to designate when there is criminal proceedings in course.

79. (e) The ATA does not set out procedures to request another country to give effect to the actions initiated under the freezing mechanisms and Saint Lucia does not have a procedure in place to address same.

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<sup>46</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made address some of the requirements of the criterion.

<sup>47</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made address some of the requirements of the criterion.

80. **Criterion 6.3 – (a)** Mechanisms available to competent authorities to collect or solicit information to identify persons or entities that, based on reasonable grounds or a reasonable basis to suspect or believe, meet the criteria for designation include: use of information obtained pursuant to the Interception of Communications Act; collecting, receiving and analysing reports and information submitted from various entities pursuant to section 5(2)(b) of the MLPA (this is in relation to the FIA) and conducting surveillances (this is in relation to the RSLPF).

81. **(b)** Sections 22, 23 and 24 of the ATA make provision for the police to apply ex-parte to a Judge of the High Court for a detention order, an order to gather information and an order to intercept communication respectively. However, these applications can only be made for the purposes of preventing the commission or interference in the investigation of an offence under the ATA, the investigation of an offence under the ATA and obtaining evidence for the commission of an offence under the ATA. Therefore, these applications can only be made in relation to a person who has been identified or whose designation is being considered if the person is preparing to commit or is being investigated for an offence under the ATA

82. **Criterion 6.4 –** Saint Lucia does not comply with the requirement of implementing TFSs without delay. Even though, the Attorney General is empowered to declare an entity a specified entity under section 3 of the ATA, the ATA does not prescribe the consequences or effect of such an order on the finances of the entity. In particular, there is no freezing of an entity's assets without delay once they are designated.

83. **Criterion 6.5 -** The analysis of criterion 6.4 above applies to criterion 6.5(a) and to criterion 6.5 (b); these criteria are therefore not met.

84. Criterion 6.5(c) - Section 6(b) of the ATA makes it an offence for any person to make available financial or other related services for use by or the benefit of a terrorist group. The phrase "terrorist group" includes a specified entity and therefore includes a designated entity or person. The offence in section 6(b) however does not extend to an entity owned or controlled or persons acting on behalf of a designated entity. No information was provided on whether nationals or persons and entities within Saint Lucia can make funds or other assets available based on licenses, authorisations or notifications in accordance with the relevant UNSCRs.

85. In relation to criterion 6.5 (d), section 3 of the ATA requires the Attorney General to publish the Order declaring an entity as specified entity in the Gazette. The FIA publishes the UNSCR 1267 sanctions list on their website so that FIs and DNFBPs can make checks against their databases. There are however no mechanisms for providing guidance to financial institutions on their obligations in taking action under freezing mechanisms.

86. In relation to criterion 6.5 (e), Saint Lucia does not have provisions or mechanisms in place to require financial institutions and DNFBPs to report any assets frozen or actions taken by them in relation to assets of designated entities.

87. In relation to criterion 6.5(f), section 32(5) of the ATA provides that no civil or criminal proceedings shall lie against any person for making a disclosure or report in good faith under subsection 32(1) to (4).

88. **Criterion 6.6 -** The ATA does not provide any procedures neither does Saint Lucia have any publicly known procedures for the submission of de-listing requests to the relevant UN Sanctions Committee as required in criterion 6.6(a). In relation to criterions 6.6(b), 6.6(c) and



6.6(f), sections 3(2) to 3(7) of the ATA outline the procedures to de-list and to review designation decisions before a court. Section 34 (8) makes provision for the Attorney General to apply to a Judge of the High Court to cancel or vary a warrant of restraint order and section 35A outlines the procedure for a person to apply to revoke or vary the order. The ATA does not provide for neither does Saint Lucia have any publicly known procedures required by criteria 6.6 (d) and 6.6 (e). In relation to criterion 6.6(g), the ATA does not provide any procedures neither does Saint Lucia have any publicly known procedures for communicating de-listings and unfreezings to FIs and DNFBPs. No information was however available on the mechanism for providing guidance to FIs and DNFBPs on their obligations to respect a de-listing or unfreezing action.<sup>48</sup>

89. **Criterion 6.7** - There are no provisions in place to authorise access to frozen funds in accordance with criterion 6.7.

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

90. The regime under the ATA as it relates to targeted financial sanctions is inadequate to meet the requirements of Recommendation 6.<sup>49</sup> There are no mechanisms that permit Saint Lucia to propose designations or entities to the 1267/1989 and 1988 UN Committees. Saint Lucia can designate an entity in accordance with UNSCR 1373 but there is no legal authority to action requests from other countries to designate an entity. There is no legal authority or guidelines to evidence the mechanisms for identifying targets for designation. While Saint Lucia has the ability to declare certain entities as specified entities, there is no consequence for the listing, that is, no obligation to freeze the assets of the specified entity. As a result, Saint Lucia does not have the legislative authority to freeze the funds of designated entities without delay. There are no competent authorities to implement and enforce targeted financial sanctions. No guidance is provided to FIs and DNFBPs on the obligations in taking freezing action or delisting. There are no provisions in place to authorise access to frozen funds in accordance with the respective UNSCRs. As a result, **Recommendation 6 is rated is rated non-compliant.**

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

91. This is a new Recommendation and therefore was not assessed in the 3rd Round MER of Saint Lucia which occurred in 2008. This Recommendation is therefore being evaluated for the first time.

92. **Criteria 7.1 – 7.5** - Saint Lucia has advised that it has not yet enacted legislation relating to the proliferation of weapons of mass destruction and its financing. There are currently no requirements or mechanisms in place to meet the criteria.<sup>50</sup>

<sup>48</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made address some of the requirements of the criterion.

<sup>49</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made address some of the requirements of the criterion.

<sup>50</sup> Saint Lucia subsequently enacted the United Nations Sanctions (Counter-Proliferation Financing) Act which came into force on October 14, 2019.

### *Weighting and Conclusion*

93. No steps have been taken by Saint Lucia to implement this Recommendation.<sup>51</sup>  
**Recommendation 7 is rated non-compliant.**

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

94. This Recommendation was formerly SR. VIII was rated NC in the 3rd MER since there was no supervisory programme in place, outreach conducted to protect the sector from being used for terrorist financing, systems or procedures to publicly access information on NPOs or formal designation of points of contacts or procedures to respond to international inquiries regarding terrorism related activity of NPOs. Notwithstanding the NGOA Order in 2017 and amendments to the MLPA to include nonprofit organisations, some deficiencies remain outstanding.

95. **Criterion 8.1 (a)** - Saint Lucia has not identified which subset of organisations fall under the FATF definition of NPOs or identified those types of NPOs that are likely to be vulnerable to TF abuse by virtue of their activities or characteristics. The NRA indicated there are over 500 NPO registered entities in Saint Lucia, but NPOs are not defined in the governing Non-Governmental Organisations Act (NGOA) which considers NPOs as a type of NGO. The activities within which NPOs are restricted are found at section 328 of the Companies Act and these are much broader than the activities noted in the FATF definition of an NPO. Neither the NGO Act nor the Companies Act address CFT issues.

96. **(b)** - Saint Lucia has not addressed the requirement to identify the nature of the threats posed by terrorist entities to NPOs which are at risk as well as how terrorist actors abuse those NPOs. The Attorney General's Chambers has appointed an Oversight Committee to scrutinize applications of non-profit companies. Typologies are given and explained to the initial Directors of the non-profit companies. Further, the Regulations issued under the Anti-Terrorism Act, outline general red flags 'associated with NGO terrorist financing'.

97. **(c)** - There was no undertaking by Saint Lucia authorities to review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for TF support.

98. **(d)** - There has been no periodic reassessment of the sector in Saint Lucia.

99. **Criterion 8.2 (a)** - Section 9 of the NGOA requires submission to the NGO Council by an NGO with a budget (i) of less than \$16,000 for the financial year, a financial statement approved at its Annual General Meeting, or (ii) of \$16,000 or more for the financial year, an audited annual financial statement. In addition, NPOs registered pursuant to the Companies Act are required to file financial statements at the Companies Registry and the IRD and are encouraged to provide a copy to the Ministry of Social Transformation. While these measures provide for a clear policy to promote financial accountability, it does not address policies to promote other types of accountability, integrity and public confidence in the administration and management of NPOs.

100. **(b)** - Under section 7(d) of the MLPA the FIA has the responsibility to create and facilitate training for persons engaged in other business activities regarding transaction record keeping or reporting obligations. At the point of registration non-profit companies attend a session conducted by the NPO Oversight Committee to discuss CFT and methods of protection. The Ministry of Equity,

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<sup>51</sup> Saint Lucia subsequently enacted the Anti-Terrorism (Amendment) Act which came into force on October 8, 2019. The amendments made address some of the requirements of the criterion.

Social Justice, Local Government and Empowerment have also developed guidelines to NPOs. However, these have not adequately addressed measures that NPOs can take to protect themselves against TF abuse. There were no educational programmes to raise and deepen awareness of the donor community about the potential vulnerabilities of NPOs to TF abuse and TF risks.

101. (c) - While the FIA can issue guidelines (s6(1)(f) of the MLPA) as to compliance with the MLPA, there are no measures for Saint Lucia authorities to work with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from TF abuse.

102. (d) - Section 10(2) of the NGOA requires NGOs to deposit all funds they receive into the NGO's bank account, but there are no measures for the country to encourage NGOs to conduct transactions through regulated financial channels, wherever feasible. NGOs operating in Saint Lucia are however not recognized as NGOs since the registration authority (NGO Council) has not been established.

103. **Criterion 8.3** - Section 6 (1) of the MLPA grants the FIA the authority to supervise businesses defined as Other Business Activity for compliance with the Act. Non-Profit Companies (NPCs) and Non-Profit Organisations (NPOs), listed in Part B of at Schedule 2 of the MLPA, are considered a type of other business activity (DNFBP), and therefore subject to AML/CFT supervision by the FIA. However, Saint Lucia's NRA states that the size of the sector and limited resources of the Regulator has made regulation of the sector difficult. As mentioned in C8.1, there is no definition or description for a non-profit organisation. Faith Based Organisations are not captured under the NGO or the MLPA. Also, Saint Lucia has not identified that subset of NGOs that are at risk of TF abuse. Thus, steps to promote effective supervision and monitoring, applying risk-based measures to NPOs at risk of TF are not evident.

104. **Criterion 8.4 (a)** - NPCs and NPOs should be supervised by the FIA to monitor for compliance with the MLPA. The FIA has not undertaken any measures to monitor NPOs for compliance using risk-based measures.

105. (b) - The FIA can apply sanctions for violations to the MLPA and ATA by NPCs and NPOs. However, these sanctions cannot be applied by the FIA to NGOs registered under the NGOA which is the main legislation for organisations engaged in non-profit activity. Reference is also made to C8.1 (a) and C8.3.

106. **Criterion 8.5 (a)** - Section 5 of the MLPA allows the FIA to collect, receive and analyse reports and information submitted by the respective agencies. This does not constitute co-operation, co-ordination and information sharing as required in the criteria.

107. (b) FIA staff have received TF training to improve their expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting, terrorist activity or terrorist organisations.

108. (c) - The NGO Council that should be repository of information on the administration and management of NGOs has not been established. Once this body is established and information obtained, full access can be obtained.

109. (d) Section 32(1) of the ATA requires a person to report to the FIA if there is property in his or her possession which is either terrorist property or if there are reasonable grounds to believe that property in his possession is actually terrorist property. There were no mechanisms established by the FIA to treat or share with relevant competent authorities information where there is suspicion a NPO is either involved in TF, is being exploited for TF or is concealing/obscuring the diversion of

funds intended for legitimate purposes. Whilst Saint Lucia submitted the IAIC as being able to facilitate the sharing of such information/intelligence, there were no established processes or systems, in that arrangement, for prompt sharing in order to take preventive or investigative actions.

110. **Criterion 8.6** The Mutual Assistance in Criminal Matters Act provides for the point of contact in the name of the Central Authority (section 3) and for procedures for responding to or rejecting requests from commonwealth countries. The FIA can also share information with the international counterparts.

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

111. The sub-set of NPOs likely to be at risk for TF abuse has not been identified. Saint Lucia has not adopted a risk-based approach regarding regulation of NPOs. There is need for harmonization of all legislation regarding NPOs and NGOs and for the establishment of the NGO Council. Though some awareness activities were carried out, by the Oversight Committee, Saint Lucia must develop and undertake a programme for sustained outreach to deepen awareness among NPOs and the donor community. **Recommendation 8 is rated non-compliant.**

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

112. This Recommendation formerly R. 4 was rated PC in the 3<sup>rd</sup> MER due to there being no obligation for FIs to share information among themselves for the purposes of AML/CFT. The deficiency was addressed by amendments to the MLPA and other relevant legislation.

113. Criterion 9.1 - The FIA can share information domestically with CED, IRD, RSLPF and the DPP (section 5(2)(e) of the MLPA), provide information to foreign FIUs relating to SARs and enter into MOUs with foreign FIUs (section 5(2)(g) and (h) of the MLPA) but this is subject to appropriate conditions. Further, the FSRA, which is a prudential supervisor for FIs and has performed AML/CFT supervision functions, is not a designated competent authority in Saint Lucia.

114. Section 17(3) (a) of the FSR Act allows the FSRA to share information with a regulatory authority or the FIA for the purpose of enabling and assisting the FSRA in carrying out its functions under the FSR Act. Section 33(1) of the FSR Act requires regulated entities to submit any information required by the FSRA to fulfil its functions under the FSR Act. Regulated entities as set out in the schedule 1 of the FSR Act include all entities under the supervisory remit of the FSRA. The above measures allowed for the FSRA to share information with any other domestic and foreign regulatory authority and the FIA. However, there are no provisions for sharing with other domestic law enforcement and the DPP. Section 94 of the Banking Act allows the ECCB to enter into MOUs, co-ordinate, co-operate and exchange information with a foreign supervisory authority where the ECCB is satisfied that the foreign supervisory authority has obligation to protect the confidentiality of the information imparted. Section 178 of the Banking Act allows the ECCB to exchange information with competent authorities under the provisions of any law of Saint Lucia or agreement among the participating Governments.

115. Section 19 of the International Bank Act and section 20 of the International Insurance Act allow for the FSRA to disclose information for regulatory purposes. Further, section 38 of the FSRA Act allows the FSRA to enter into MOU with a regulatory authority or the FIA for the purpose of exchange of information to exercise regulatory functions.

### *Weighting and Conclusion*

116. Generally, the FIA can share information but is unable to do so with the other competent authority, the ECCB. The FSRA can share information with any other domestic and similarly foreign regulatory authority and the FIA. However, sharing with domestic competent authorities other than the FIA is not stipulated. There are no measures for the sharing of information among financial institutions where so required by R 13, 16 and 17. **Recommendation 9 is rated largely compliant.**

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

117. This Recommendation, formerly Recommendation 5 was rated NC in the 3<sup>rd</sup> MER with significant deficiencies identified in the MLPA as there were no legal obligations requiring customer due diligence information for certain transactions or enhanced due diligence in higher risk categories of customers and business relationships. Since the 3<sup>rd</sup> MER the MLPA was amended to rectify the deficiencies.

118. **Criterion 10.1** - There is no clear direct prohibition from keeping anonymous accounts or accounts in fictitious names. Section 15 of the MLPA requires that reasonable measures are taken to establish the identity of persons wishing to enter into or carry on a transaction or series of transactions with the FI or person engaged in other business activity. Further, FIs and persons engaged in other business activity are required to establish and maintain identification procedures mandating applicants wishing to form a business relationship to produce satisfactory evidence of his or her identity or the business activity cannot proceed. (subsections 15(2) and 15(3) of the MLPA). In practice, these measures to some extent prohibit the keeping of accounts with anonymous and fictitious names even though there is no express prohibition from keeping anonymous account or accounts in obviously fictitious names.

119. **Criterion 10.2** - Section 17 (1) of the MLPA requires a FI or a person engaged in other business activity to undertake customer due diligence measures when there is doubt about the veracity or adequacy of previously obtained customer identification data including identifying and verifying the identity of customers, when (a) establishing business relations; (b) carrying out occasional transactions above EC\$25,000 or that are wire transfers; (c) on funds transfers and related messages that are sent; (d) when funds are transferred and do not contain complete originator information; (e) there is a suspicion of money laundering or terrorist financing. The above measures suggest that CDD is only undertaken when there is doubt about the veracity or adequacy of previously obtained customer identification during the circumstances listed in (a) to (e) above and not generally for all the above situations.

120. **Criterion 10.3** - Section 15 of the MLPA *inter alia* requires FIs to take measures to satisfy themselves of the true identity of a person (body corporate or unincorporated body) seeking to enter into a transaction with or carry out a transaction or series of transactions or start a business relationship. Subsection (2) further requires the establishment and maintenance procedures for production of satisfactory evidence of identity. S17(4)(a) of the MLPA requires the use of reliable, independent source document, data or information in identifying and verifying the identity of a customer.

121. **Criterion 10.4** - Section 15 (6) *inter alia* of the MLPA requires a FI to establish whether the person is acting on behalf of another person and (7) stipulates FIs to take reasonable measures to establish the true identity of the other person on whose behalf or for whose benefit the person may

be acting in the proposed transaction, whether as a trustee, nominee, agent or otherwise. This refers to the principal on whose behalf the agent is acting and not the agent as the customer. There is no obligation to determine if the person (agent) is so authorized and to identify and verify the identity of this person.

122. **Criterion 10.5** - S 17(4) (b) of the MLPA requires FIs to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner which includes using reliable, independent source documents, data or information as per section 17(4)(a) such that the FI is satisfied that it knows who is the beneficial owner. The MLPA does not define beneficial owner and it is unclear whether it accords with the definition in the Standards.

123. **Criterion 10.6** - Section 17(4) (c) to section 17(5) of the MLPA requires CDD measures to be undertaken. These measures include obtaining information on the purpose and intended nature of the business relationship. However, the provision does not impose the requirement to understand the purpose of the relationship.

124. **Criterion 10.7** - Section 17 (2) and (4) (d) of the MLPA comply with the requirements of (a) and (b) of the criterion.

125. **Criterion 10.8** - Section 17 (4) (b) of the MLPA requires FIs to take reasonable measures to understand the ownership and control structure of legal persons or a legal arrangement. S 17(4) (c) obliges FIs to obtain information on the purpose and intended nature of business for all business relationships.

126. **Criterion 10.9** - (a) Paragraph 135 of the Money Laundering (Prevention) (Guidance Notes) Regulations lists documents, or their foreign equivalent should be carefully considered in the context of verification of types of companies. The language of the paragraph is discretionary in that the list of documents should be carefully considered. Additionally, paragraph 118 specifically states that “these Guidelines are not mandatory”. As such paragraph 135 of the Money Laundering (Prevention) (Guidance Notes) Regulations does not comply with this criterion which requires mandatory enforceable obligations.

127. **Criterion 10.10 (a)** Section 17 (4) (b) of the MLPA and (a) Section 17(4)(b) of the MLPA requires the identification of the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution or person engaged in other business activity is satisfied that it knows who the beneficial owner is and for legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer. Further, paragraphs 78 and 79 of the Money Laundering (Prevention) (Guidance Notes) Regulations indicate that, unless a company is quoted on a recognized stock exchange or is a subsidiary of such a company or is a private company with substantial premises and pay roll of its own, steps should be taken to verify the company’s underlying beneficial owner/s – namely those who ultimately own or control the company. There is no stated definition of beneficial owner in the MLPA therefore the natural person on whose behalf a transaction is being conducted including the persons who exercise ultimate effective control over a legal person is not covered. **(b) and (c)** There are no measures which cover (b) and (c) of the criterion.

128. **Criterion 10.11** The provision at paragraphs 72 and 221 of the Money Laundering (Prevention) (Guidance Notes) Regulations require FIs to take measures to identify the beneficial owners in trust/trustee relationships and in the course of company formation transactions. Paragraph 72 of the Money Laundering (Prevention) (Guidance Notes) Regulations requires that the true nature

of the relationship be established and ‘*appropriate enquiries*’ performed. Though the paragraph indicates that principals should be understood in its widest sense to include, for example, beneficial owners, settlers, controlling shareholders, directors, major beneficiaries, etc. it was not clear what is defined as appropriate enquiries. This does satisfy the requirement for trusts to identify the settlor, trustee, protector, the beneficiaries or class of beneficiaries and any other persons exercising ultimate effective control over the trust including through a chain of control/ownership. Further there are no provisions which treat with the identity of persons in a similar or equivalent position for other types of legal arrangements.

129. **Criterion 10.12** - There are no provisions which address CDD measures on the beneficiary of life insurance and other related insurance policies at the time of pay-out.

130. **Criterion 10.13** – There are no provisions that require FIs to include the beneficiary of a life insurance policy as a risk factor to determine whether enhanced due diligence measures should apply. Further, no provision mandates FIs to file a suspicious transaction report if such information cannot be determined.

131. **Criterion 10.14** - Section 17(11)(12) of the MLPA make it mandatory for FIs to verify the identity of the customer or beneficial owner before or during the course of establishing a business relationship or conducting business with an occasional client. Further, the FI is required to complete the verification process as soon as is reasonably possible following the establishment of a relationship, where the ML risks are effectively managed and there is no disruption to the normal conduct of business. As mentioned in C10.5, there is no definition of beneficial owner in the MLPA.

132. **Criterion 10.15** - Paragraph 115 of the Money Laundering (Prevention) (Guidance Notes) Regulations allows if it is necessary for sound business reasons to open an account or carry out a significant one-off transaction before verification can be completed, this should be subject to stringent controls which should ensure that any funds received are not passed to third parties. Alternatively, a senior member of key staff may give appropriate authority. This authority should not be delegated. This is not a risk management procedure.

133. **Criterion 10.16** - Section 17 (14) of the MLPA states FIs may conduct customer due diligence on existing relationships on the basis of materiality and risk at appropriate times. The word ‘may’ suggest discretion and the measure is not mandatory regardless of the risk.

134. **Criterion 10.17** - Section 17 (3) (a) of the MLPA requires FIs to perform enhanced due diligence for higher risk categories of customers.

135. **Criterion 10.18** - Section 17 (3) (b) of the MLPA requires FIs to apply reduced or simplified due diligence where there are low ML/TF risks or where there is a very stringent national system regarding checks and balances. However, the provision does not specify that such measures should be applied after having been identified through adequate analysis of risk by the country or FI and that the simplified measures should be commensurate with the lower risk factors and are not acceptable where there is a suspicion of ML/FT.

136. **Criterion 10.19** - (a) Section 17 (6) of the MLPA requires a FI to not open an account, commence business relations or perform a transaction and terminate the business relationship where it is unable to comply with the requirements for the identification and verification of the identity of the customer and beneficial owner and to understand the ownership and control structure of legal persons and arrangements and obtain information on the purpose and intended nature of the business



relationship. This only applies to specific CDD measures rather than all relevant CDD measures. (b) S17(6) of the MLPA requires financial institutions or persons engaged in other business activity to consider making a suspicious transaction report in relation to the customer.

137. **Criterion 10.20** - There are no provisions that require the FI to discontinue the CDD process and instead be required to file a suspicious transaction report if they reasonably believe that performing CDD will tip off the customer.

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

138. The significant criteria regarding CDD requirement and specific CDD measures for customers including beneficial ownership information contain deficiencies. The measure for the application of CDD to existing customers on the basis of materiality and risk is not mandatory. There are no CDD measures for beneficiaries of life insurance policies and no requirement that requires the FI to discontinue the CDD process and instead be required to file a suspicious transaction report if they reasonably believe that performing CDD will tip off the customer. There are no enforceable measures for identifying and verifying the identity of legal persons or legal arrangements. **Recommendation 10 is rated partially compliant.**

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

139. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as non-compliant with these requirements. The deficiencies related to weakness in maintaining appropriate customer identification and transaction records for a timely period, including, when necessary, the ability to reconstruct records and make information available to the relevant authority for the purposes of investigation and prosecution. Deficiencies covered both open and terminated customer relationships.

140. **Criterion 11.1** - FIs are required to establish and maintain all necessary records on transactions, both domestic and international, for at least five (5) years following completion of the transaction (MLPA, s16(1)(a)).

141. **Criterion 11.2** - FIs are required to keep all records obtained through CDD measures and supporting documents for at least seven (7) years following the termination of the business relationship or after the date on which the transaction was recorded (MLPA, section 16(7)(a)(b)). However, there are no similar provisions which relate to occasional transactions. There is no specific measure requiring record keeping arrangements to routinely include the results of any analysis undertaken as part of CDD obligations. There is a separate section in relation to ‘Duty of Vigilance’ in the MLPA requiring firms, in the circumstances where unusual or complex activity is observed, to make inquiries and make a written record of the analysis and make it available to the FIA when requested (MLPA, s31B).

142. **Criterion 11.3** FIs must keep sufficient detail about transaction records to enable a transaction to be reconstructed if necessary and to provide assistance in the investigation and prosecution of a suspected ML offence. However, these obligations do not extend to all other types of criminal activity, as only suspected money laundering offence is specified (MLPA, section 16(8)).

143. **Criterion 11.4** - FIs are required to ensure appropriate records are maintained as per the MLPA Guidance Notes (paragraph 180). While this measure requires FIs to make records available to the FIA, the provision does not extend to all relevant domestic competent authorities. Similarly,



measures in the POCA (section 51) only permit FIs holding information relevant to an investigation or prosecution, to *optionally* give the information to a gazetted office or the DPP. These measures therefore present deficiencies in the extent to which FIs can make transaction records swiftly available to all relevant domestic competent authorities.

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

144. Saint Lucia has amended the MLPA and POCA since its last mutual evaluation to address deficiencies and now has standards in place to ensure FIs maintain appropriate records for both open and terminated business relationships, enabling transactions to be reconstructed, where required and to support investigation and prosecution primarily led by the FIA as the main competent authority. Deficiencies remain in relation to the requirement to ensure records are maintained as part of CDD including analysis undertaken, as well as records for occasional transactions. The requirement to ensure FIs make CDD information and transaction records available swiftly to domestic competent authorities applies only to the FIA. **Recommendation 11 is rated largely compliant.**

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

145. In its 3rd Mutual Evaluation, Saint Lucia was rated as non-compliant with these requirements. Shortcomings were identified in relation to FIs applying a risk-based approach to manage risks in relation to PEPs, this included appropriate enhanced due diligence, ongoing monitoring and senior management oversight of PEP accounts. PEP deficiencies also applied to life insurance policies (explicitly insurance companies and credit unions).

146. Saint Lucia does not distinguish between domestic and foreign PEPs in the MLPA (section 18) or the MLPA Guidance Notes (Guideline 141). This has a cascading effect across all the criteria below.

147. ***Criterion 12.1*** In relation to foreign PEPs (which is not explicitly specified, as mentioned previously), FIs are required to comply with the PEP requirements in the MLPA (section 18) and to consider the MLPA Guidance Notes<sup>52</sup> on verifying PEPs (MLPA, guidelines 84-89). This includes:

(a) - Have appropriate risk management systems to determine whether the customer or potential customer is a PEP or whether he or she is acting on behalf of a PEP (MLPA Guidance Notes, 88(a)(i)). These obligations do not include determining whether a beneficial owner is a PEP.

(b) - Develop a clear policy and internal guidelines, procedures and controls concerning PEPs, which include obtaining senior management approval before establishing (or continuing, for existing customers) such business relationships (MLPA Guidance Notes, 88(a)(i)). However, the specific requirements FIs are obliged to comply with are limited to ensuring transactions relating to politically exposed persons are authorised by senior management (MLPA, section 18(d)), and therefore do not consider authorising the establishment of the PEP business relationship.

(c) - There are guidelines to take reasonable measures to establish the source of wealth and the source of funds of customers identified as PEPs but these do not extend to a beneficial owner who is a PEP (MLPA Guidance Notes, 88(e)(ii)). The specific requirements FIs are obliged to comply with include ensuring the source of funds and source of wealth are determined for PEPs (MLPA, section 18(e)).

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<sup>52</sup> MLPA Guidance Notes do not have a mandatory status.

These are therefore limited, and do not specify checks on foreign PEPs, including beneficial owners identified as PEPs.

(d) - The specific requirements FIs are obliged to comply with include conducting enhanced customer due diligence on an ongoing basis on all accounts held by PEPs (MLPA, section 18(f)). The MLPA guidance notes also set out that FIs should ensure proactive monitoring of such accounts is conducted (MLPA Guidance Notes, 88(a)(v)). As previous criteria, the deficiencies remain in relation to specific requirements on foreign PEPs, including beneficial owners identified as PEPs.

148. **Criterion 12.2 (a)** Saint Lucia does not differentiate between foreign and domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation.

149. (b) - The same measures specified above in c12.1(a-d) are applied here. Domestic PEPs or persons entrusted with a prominent function are considered as high risk, and therefore the higher standard required to comply with foreign PEPs is automatically applied. There are gaps in the identification and classification of PEPs to determine whether they are domestic or international PEPs, the lack of which means a risk-based approach is then not applied when applying enhanced due diligence measures for higher risk PEPs as per the risk based approach. Whilst it is acceptable for countries to apply a higher standard than what is required as per the FATF standards, the assessment team were not provided with any rationale as to why a higher standard is applied in Saint Lucia e.g. PEP related risks such as high vulnerability to corruption, identified in the in the NRA setting out the need to apply enhanced measures for all PEPs.

150. **Criterion 12.3** - While measures apply to the family members and close associates of PEPs (MLPA Guidance Notes, 141(d)), they do not apply to all the categories of persons defined as a PEP in the FATF Standards. This will have an adverse impact on FIs being able to clearly comply with PEP requirements, including applying measures to family members or close associates of appropriate level PEPs.

151. **Criterion 12.4** - there are no requirements for FIs to take reasonable measures to determine whether the beneficiaries and/or beneficial owners of the beneficiary of life insurance policies are PEPs - the deficiencies apply to both standard and higher risk customers. Where higher risks are identified, there are no measures in place to inform senior management before life insurance pay-out of proceeds, or to conduct enhanced scrutiny on the whole business relationship or to consider making a suspicious transaction report.

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

152. Saint Lucia does not define PEPs in such a way so as to distinguish between domestic and foreign PEPs and does not include Heads of State (foreign and domestic), senior executives of state owned corporations (foreign and domestic), important political party officials (foreign and domestic) and persons who have been entrusted with a prominent function by an international organisation. Further, there are no measures which require FIs to determine whether a beneficial owner is a PEP and for FIs to take reasonable measures to determine whether the beneficiaries and/or beneficial owners of the beneficiary are PEPs. In relation to life insurance policies, FIs are not required to inform senior management before pay-out of proceeds where higher risk situations are identified or to consider making a suspicious transaction report. **Recommendation 12 is rated partially compliant.**

## Recommendation 13 – Correspondent banking

153. This Recommendation formerly R.7 was rated NC in the 3<sup>rd</sup> MER. There were no measures to assess a respondent institution's AML/CFT controls, to determine whether they are effective and adequate, to document the AML/CFT responsibilities of each institution and to ensure that the respondent institution is able to provide relevant customer identification data upon request.

154. **Criterion 13.1 (a)** - Paragraph 94 of the MLPGN Regulations details the information that should be obtained, and the due diligence performed for correspondent banking. These include obtaining authenticated/certified copies of certificates of incorporation and articles of incorporation of the respondent institution, authenticated/certified copies of banking licences etc, determining the supervisory authority and ownership of the respondent institution; obtaining details of respondent bank's board and management composition. Additionally, information on the respondent years of operation, along with audited financial statements should be obtained together with ascertaining whether the respondent bank, in the last seven (7) years (from the date of the commencement of the business relationship or negotiations therefore), has been the subject of, or is currently subject to any regulatory action or any AML prosecutions or investigations. However, the paragraph applies to the limited definition of FIs defined in the MLPA and it does not make provisions for other similar relationships. This deficiency would cascade in the analysis of the other sub-criteria.

155. **(b)** - Paragraph 94(j) of the MLPGN Regulations requires that FIs ascertain whether the correspondent bank has established and implemented sound CDD, AML policies (including obtaining a copy of such AML policies) and strategies and appointed a compliance officer, at managerial level. The requirements do not extend to the assessment of CFT controls.

156. **(c)** - Paragraph 94(q) MLPGN Regulations requires FIs to ensure that the senior management approve the opening of the account.

157. **(d)** - Paragraphs 94 (o) and (r) of the MLPGN Regulations requires the documenting of the AML/CFT responsibilities of each institution in the operation of a corresponding account.

158. **Criterion 13.2 (a & b)** Paragraph 94(r) requires the correspondent bank to examine and satisfy itself that the respondent bank has verified the identity of the customers having direct access to the accounts and are subject to checks under 'due diligence' on an on-going basis. The bank shall also ensure that the respondent bank is able to provide the relevant customer identification data/information immediately on request.

159. **Criterion 13.3** There is no express prohibition for FIs not to enter into or continue a correspondent banking relationship with shell banks. Paragraph 94 (m) of the MLPGN Regulations satisfies the criteria as it requires confirmation that the foreign corresponding bank do not permit their accounts to be used by shell banks, i.e. the bank which is incorporated in a country where it has no physical presence and is unaffiliated to any regular financial group.

### **Weighting and Conclusion**

160. The cited provisions do not fully satisfy the requirements of c.13.1 as they do not apply to other similar arrangements and has a cascading effect on the other criteria. Also, there is no express prohibition for FIs not to enter into or continue a correspondent banking relationship with shell banks. **Recommendation 13 is rated largely compliant.**

## Recommendation 14 – Money or value transfer services

161. This Recommendation, formerly SRVI was rated NC in the 3<sup>rd</sup> MER as MVT service providers were not subject to the AML/CFT regime, there were no requirements for MVT service providers to be licensed or registered, no listing of MVT operators was available to competent authorities and no effective, dissuasive and proportionate sanctions were set out for MVT operators. These deficiencies were addressed by provisions in the Money Laundering (Prevention) (Guidance Notes) Regulations, the MLPA 2010 and the Money Services Business Act.

162. **Criterion 14.1** – The Money Services Business Act imposes mandatory licensing requirements at section 4(1) and as a result any such business providing the following services must be licensed: (i) transmission of money or monetary value in any form, (ii) cheque cashing, (iii) currency exchange, (iv) the issuance, sale or redemption of money orders or traveller’s cheques, and (v) any other services the Minister may specify by Notice published in the Gazette. The business of operating as an agent or franchise holder for a money service business must also be licensed.

163. **Criterion 14.2** - A person commits an offence for carrying on money service business without a licence. Section 4(4) of the Money Services Business Act provides for a sanction on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two (2) years or to both. This may be considered proportionate and dissuasive. There are no proactive measures taken by Saint Lucia to identify a natural or legal person carrying on money service business without a licence and apply sanctions to such person.

164. **Criterion 14.3** – There are no provisions that subject MVTS providers to monitoring for AML/CFT compliance. Furthermore, while Schedule 2 of the MLPA regards any person who carries on cash remitting services” as a financial institution and section 6 authorises the FIA to supervise them to verify AML compliance, such activity does not fall within the scope of the MSB Act. Additionally, the measures here do not include the CFT obligations of the Anti-Terrorism Act.

165. **Criterion 14.4** - In accordance with the definition of a Money Service Business in section 2 of the Money Services Business Act, agents are also required under sections 4(1) and (6) of the Money Services Business Act to be licenced by the FSRA.

166. **Criterion 14.5** – There are no measures to satisfy this criterion.

### **Weighting and Conclusion**

167. While MSBs are required to be licensed, no information has been provided about action taken to identify persons operating without a licence and applying sanctions to them. Also, there is no clear provision for the monitoring for AML compliance nor are there measures for MVTS providers to include their agents in their AML/CFT programmes and monitor them for compliance with these programmes. **Recommendation 14 is rated partially compliant.**

## Recommendation 15 – New technologies <sup>53</sup>

168. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as non-compliant with these requirements due to no provisions being place for the country and its financial institutions to identify,

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<sup>53</sup> The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This evaluation does not assess Saint Lucia’s compliance with revised R.15 because, at the time of the on-site visit, the FATF had not yet revised its assessment Methodology accordingly. Saint Lucia will be assessed for technical compliance with revised R.15 in due course, in the context of its mutual evaluation follow-up process.

assess and mitigate the ML/TF risks that may arise in relation to the development of new technologies.

169. **Criterion 15.1** Saint Lucia has not identified risks associated with new technologies in its NRA for FIs to consider, including highlighting there are no specific emerging ML/TF risks at the country level in relation to new technologies. FIs are required to undertake a risk assessment to identify the type of risk and attendant levels associated with product applications which does not include considerations relating to the development of new products and business practices (paragraph 101A (c) of the Money Laundering (Prevention) (Guidance Notes) Regulations. The Guidance Notes require FIs to give regard to additional risks of conducting business over the internet and non-face-to-face verification. FIs are not required to assess ML/TF risks relating to new delivery mechanisms and the use of new or developing technologies for new and pre-existing products. Additional guidance in the Anti-Terrorism (Guidance Notes) Regulations (Part III) sets out that for the purposes of implementing systems and measures to counter TF, FIs should apply vigilance, verification, reporting, record keeping and training when seeking to identify TF red flags.

170. **Criterion 15.2** - (a) and (b) There are no specific requirements for FIs to carry out risk assessments prior to the launch of new technologies and to take appropriate measures to manage and mitigate the risks. FI are required to provide a report to their Board of Directors on a quarterly basis with details of risk assessments of any new types of products and services, or any new channels for distributing them and the money laundering measures that have been either implemented or are recommended (paragraph 60(3) of the Money Laundering (Prevention) (Guidance Notes) Regulations (Part III). While this implies that a risk assessment should be done, there is no explicit requirement for such an assessment to be undertaken by a FI.

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

171. This Recommendation is aligned to some extent to the country risk assessment, and consideration of new and emerging technological advancements that may pose new vulnerabilities to the financial sector from being exploited for the purposes of ML/TF. Alternatively, the NRA could have also provided confirmation that emerging new technologies were considered in the context of ML/TF risks and that none were identified at the country level. Whilst progress has been made since the last mutual evaluation to address non-face-to-face business transactions and relationships, there is a lack of guidance and legal obligation requiring the country and FIs to assess the ML/TF risks for new technologies. **Recommendation 15 is rated partially compliant.**

### **Recommendation 16 – Wire transfers**

172. This Recommendation, formerly SR VII, was rated PC at the 3<sup>rd</sup> MER. Deficiencies identified included no requirement to obtain and maintain originator information for wire transfers, no risk-based procedures for identifying and handing wire transfers not accompanied by originator information and lack of sanctions for all essential criteria under the Recommendation. The consolidation of laws relating to money laundering and related matters in 2010. The Recommendation applies to domestic and international wire transfers and developed with the objective of preventing the movement of criminal proceeds and for detecting misuse.

173. **Criterion 16.1** - Paragraph 178 of the MLPGN Regulations requires for all electronic transfers that the identity and address of the remitting customer; the origin of the funds (the account number, when being transferred from an account); as far as possible the identity of the ultimate recipient; the form of instruction and authority; and the destination of the funds be obtained. These

requirements address outgoing transfers and do not stipulate that FIs specifically capture the originator account number, address, national identity number or date and place of birth or beneficiary information as required by this criterion. There are no measures to ensure the capture of accurate information. There is no definition of electronic transfers in the MLPA or the MLPGN, so all aspects of wire transfers as defined in the Interpretive Note to R.16 are not included.

174. **Criterion 16.2** – There are no provisions on the requirements that bundled wire transfers must meet.

175. **Criterion 16.3** - There is no provision for a de minimis threshold to be applied in Saint Lucia.

176. **Criterion 16.4** - The de minimis threshold is not applicable in the country. However, there is no requirement for the verification of customer information where there is suspicion of ML/TF.

177. **Criterion 16.5** - Paragraph 178 of the MLPGN Regulations does not differentiate between domestic and international transfers and requires the identity and address of the remitting customer and the origin of the funds (the account number, when being transferred from an account) to be captured for all electronic transfers. As mentioned in C16.1 There is no definition of electronic transfers in the MLPA or the GN, so all aspects of wire transfers as defined in the Interpretive Note to R.16 are not included.

178. **Criterion 16.6** - The MLPGN does not provide for information accompanying electronic transfers to be made available to beneficiary FIS by other means.

179. **Criterion 16.7** - Section 178 of the MLPGN does not make it mandatory for the identity of the ultimate recipient (beneficiary) to be captured but requires “as far as possible” for this information to be obtained. FIs are required to maintain transaction records for both domestic and international transactions for a period of seven (7) years after the completion of the transaction.

180. **Criterion 16.8** - There are no provisions to prevent the ordering FI from executing a wire transfer where originator information is not provided as required. Paragraph 179 (c) of the MLPGN Regulations suggests that the ordering FI is allowed to execute the wire transfer and the transaction is only rejected if the FI of the ultimate recipient detects the required originator information is either missing or incomplete.

181. **Criterion 16.9** - Section 178 of the MLPGN is silent on any obligation regarding ensuring that the originator and beneficiary information to each electronic transfer is kept with the transfer.

182. **Criterion 16.10** - As outlined under C 16.6 to 16.9 above, instances may exist where originator or beneficiary information do not remain in domestic wire transfers (since there is no distinction between domestic and international transfers). Nevertheless, FIs and any person engaging in any other business activity are required to retain transaction records (which would include any beneficiary and originator information obtained) for at least seven years from the termination of the transaction.

183. **Criterion 16.11** - Paragraph 179 of the MLPGN Regulations makes provision for the measures to be taken when transfers lack sufficient information, in addition to the obligation to report suspicious transactions in accordance with normal procedures. There are no measures for intermediary FIs, as the criterion requires. The obligation is only imposed on the FIs of the beneficiary and does not require FIs for originating transfers to have similar detection systems in place.

184. **Criterion 16.12** - Paragraph 179 (b) to (e) of the MLPGN Regulations outline a number of risk-based steps which FIs of the ultimate recipient are required to undertake in determining whether to execute, reject or suspend a wire transfer lacking appropriate information and what

appropriate action may be taken as follow-up action. These provisions are specific to FIs of the ultimate recipient and not intermediary institutions.

185. **Criterion 16.13** – Paragraph 179 (d) of the MLPGN Regulations requires risk-based post-event random sampling which includes previously identified FIs which previously failed to comply with the relevant information requirements.

186. **Criterion 16.14** - Section 17(a) to (d) of the MLPA mandates that customer due diligence be applied when there is doubt about the veracity or adequacy of previously obtained identification data not generally in the circumstances as described in (a) to (d). Further, subsection (b) mandates that this be executed when ‘*carrying out occasional transactions above \$25,000 or that are wire transfers*. The provision does not place an obligation on the beneficiary FI to verify the identity of the beneficiary, if the identity was not previously verified. As outlined under Recommendation 11, all transaction records are required to be maintained for a minimum of seven (7) years.

187. **Criterion 16.15** – Paragraph 179 (b) to (e) of the MLPGN FIs details the obligations requiring FIs to have effective risk-based procedures to detect missing or incomplete information as well as in determining whether to execute, reject or suspend a wire transfer lacking appropriate information and what appropriate action may be taken as follow-up action.

188. **Criterion 16.16** – The requirement of the MLPA apply to ‘a person who carries-on cash remitting services’ and ‘Money Transmission Services’ listed in Parts A and B of Schedule 2 of the MLPA. Both are required to comply with the AML/CFT legislative requirements. There are no stated requirements for MVTS to obtain and record the originator account number, address, national identity number or date and place of birth or beneficiary information. There are no measures to ensure that accurate information is captured. There is no stated definition of electronic transfers in the MLPA or MLPGN Regulations.

189. **Criterion 16.17** - Saint Lucia did not provide any information that that meets paragraphs (a) and (b) of this criterion and addresses situations where MVTS providers control both the ordering and beneficiary sides.

190. **Criterion 16.18** - There are no provisions that oblige FIs to freeze funds or other assets linked to terrorism and also which obliges them to comply with prohibitions from conducting transactions with designated persons and entities in the context of processing wire transfers<sup>54</sup>.

### **Weighting and Conclusion**

191. There are significant deficiencies regarding this Recommendation that include the requirement for: business licensed under the MSBA to be captured under the MLPA and the ATA, intermediary and beneficiary financial institutions to take originator and beneficiary identification information, FIs to prohibit the conduct of transactions with designated persons. The volume of incoming and outgoing remittances was noted as well as the risk rating applied to remittances and the county’s terrorist financing risk as per the NRA. **Recommendation 16 is rated non-compliant.**

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

192. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as partially compliant with these requirements due to deficiencies in customer due diligence requirements where business is introduced by third parties or intermediaries; lack of adequate measures in place by insurance companies to ensure copies of relevant customer due diligence documentation is made available in

<sup>54</sup> After the onsite, Saint Lucia amended the ATA to include section 22G allowing for freezing of funds. The amendment did not include prohibition from conducting transactions with designated persons and entities.



a timely manner from the third party; lack of procedures in place by the financial sector to satisfy itself that any third parties it uses are regulated and supervised.

193. **Criterion 17.1** - FIs are permitted to rely on third parties to apply CDD measures or intermediaries to introduce business on their behalf (MLPA, Section 17(7)). FIs are required to:

194. (a) - identify and verify a customer's identity; identify the beneficial owner; obtain information on the purpose and intended nature of the business relationship. FIs relying upon an intermediary or third party are required to immediately obtain the necessary CDD information (MLPA, section 17(8)(a)). The MLPA stipulates where a FI or person engaged in other business activity relies on intermediaries or other third parties, the ultimate responsibility for customer identification and verification remains with the FI or person engaged in other business activity relying on the third party.

195. (b) - FIs are required to take adequate steps to satisfy itself that copies of identification, data and other relevant documentation relating to the customer due diligence requirements will be made available from the intermediary or third party upon request without delay (MLPA, section 17(8)(b)).

196. (c) - Section 17(8)(c) requires a FI to satisfy itself that the intermediary or third party is regulated and supervised for and has measures in place to comply with the customer due diligence requirements. While there are measures in place for third parties to conduct appropriate CDD and ensure copies of identification are made available from the third party to the accountable FI, it does not cover compliance with the FATF's record keeping requirements. While requirements are set on in the MLPA setting out the responsibility for FIs to maintain customer due diligence and transaction records for a period of seven years (MLPA, section 16(7)), these record keeping requirements are not applicable to third parties that FIs rely on for CDD or to introduce business. Saint Lucia should consider updating its requirements in relation to reliance on third parties to ensure adequate compliance with records keeping requirements.

197. **Criterion 17.2** - When determining in which countries the third parties can be based that FIs rely upon, Saint Lucia does not have measures for considering information available on the level of country risk. The onus instead lies on FIs developing their individual policies and procedures to address risks for countries which do not apply the FATF Recommendations (MLPA, s16(1)(h); (Money Laundering (Prevention) (Guidance Notes), paragraph 89). These measures do not require the FI when considering the use of third parties, specifically to have regard to information available on the level of country risk where the third party is located.

198. **Criterion 17.3** - There are no measures which satisfy this criterion as no measures were available relevant to home or host supervisory authorities to ensure compliance by financial groups with this criterion. This has linkages to R18.

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

199. There are concerns about how specific the requirement is for FIs to take accountability when they use third parties. While Saint Lucia has made changes to the MLPA since its last mutual evaluation to address weaknesses identified in relation to FIs use of third parties, there remain concerns about the strength of current requirements as the onus on FIs to 'be mindful' in such scenarios may not result in requirements being strictly adhered to. In addition, consideration of country risk of third parties and the application of the requirements to use of third-party introducers



is not evident. Greater weighting is given to lack of consideration given by competent authorities when FIs rely on third parties that are part of the same financial group. **Recommendation 17 is rated partially compliant.**

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

200. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated ‘PC’ in the 3rd MER since provisions are contained in the law but all financial institutions do not comply. The deficiencies identified were remedied in the Guidance Notes (GN) which specifically requires the appointment of a compliance officer at management level, that internal policies and procedures require the compliance officer to have access/report to the Board of Directors and the conduct of ongoing due diligence of employees. R. 22 was rated ‘NC’ and provisions in the Revised GN reflect that foreign branches and subsidiaries of financial institutions observe AML/CFT standards consistent with Saint Lucia Laws.

201. **Criterion 18.1** - Section 16(1)(g) of the MLPA requires FIs to develop and implement policies and procedures to address ML/TF risks but does not have a requirement to have regard to the size of the business. Section 16 (1)(o) of the MLPA satisfies requirements (a) to (d) as it requires FIs to develop programmes against money laundering and terrorist financing and the programme must include— (i) the development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees, (ii) an ongoing employee training programme, (iii) an audit function to test the system.

202. **Criterion 18.2** - Financial groups are not required to implement group wide AML/CFT policies applicable to all branches and majority owned subsidiaries of the financial group. Further there are no measures for (a) to (c) of the criteria.

203. **Criterion 18.3** - There is no requirement for financial groups to apply appropriate additional measures to manage ML/TF risks if the host country does not permit implementation of measures consistent with the home country.

#### **Weighting and Conclusion**

204. FIs are required to implement AML/CFT programmes but not specifically having regard to the size of the business. There is no requirement to have financial groups implement group wide AML/CFT programmes. **Recommendation 18 is rated partially compliant.**

### Recommendation 19 – Higher-risk countries

205. In its 3<sup>rd</sup> MER, Saint Lucia was rated as NC with these requirements due to deficiencies in appropriate measures being in place by the country and financial institutions to give attention to, (and consider) weaknesses in the AML/CFT systems of other countries. This included FIs not being required to give to special attention to risks emanating from countries which do not sufficiently apply the FATF Recommendations.

206. **Criterion 19.1** - The current provisions for FIs to manage ML/TF risks arising from higher risk countries do not adequately satisfy the requirement to apply enhanced measures to business relationships and transactions with natural or legal persons (including FIs) from countries for which this is called for by FATF. Current measures are limited to requiring FIs to develop and apply policies and procedures to address specific risks associated with non-face-to-face business

relationships or countries that do not apply the FATF Recommendations (MLPA, section 16(1)(h)). Further, within the MLPA guidance notes (section 147), reference is made to high risk indicators which include consideration of country risks sourced by OFAC, Transparency International and FINCEN. However, these guidelines do not reference FATF high risk countries. In addition, consideration of these high-risk indicator is not a mandatory requirement that FIs must comply with (MLPA GN, section 118).

207. **Criterion 19.2** - The MLPA guidelines require FIs to refer to the OFAC, Financial Crimes Enforcement Network (FINCEN) and Transparency International lists for information on countries vulnerable to corruption when engaging in any transaction from countries that have inadequate AML systems. However, this does not require Saint Lucia to apply countermeasures proportionate to the risks when either called upon to do so by FATF or independently of the FATF. Assessors found no evidence of counter-measures Saint Lucia applies specific to higher risk countries identified by the FATF and for countries Saint Lucia itself considers as high risk.

208. **Criterion 19.3** - There is no mechanism by which the country ensures FIs are advised of the concerns about weaknesses in the AML/CFT systems of other countries. The authorities have indicated that the FIA, as part of its functions, disseminates FATF information to the FIs covering areas of weaknesses in AML/CFT system in other countries. However, specific measures which permit this were not available because Saint Lucia advised these remain a work in progress. Paragraph 147 (e) of the MLPGN Regulations identifies transactions from countries which have inadequate AML systems as a high-risk indication and identifies three (3) website sources of relevant information OFAC, Transparency International and FINCEN. This is not considered an effective measure since FATF's list of high-risk and other monitored jurisdictions was not identified and the websites are identified as a risk factor and cannot be considered as means which ensures that FIs are advised of weaknesses in the AML/CFT systems of other countries.

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

209. Saint Lucia has no measures which require FIs to apply enhanced measures for countries for which this is called for by the FATF. Saint Lucia also has no provisions to apply countermeasures as well as to proactively update and advise FIs of concerns about weaknesses in AML/CFT systems of other countries. **Recommendation 19 is rated non-compliant.**

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

210. In its 3<sup>rd</sup> MER Saint Lucia was rated NC with these requirements mainly because the reporting obligations did not apply to all relevant categories or predicate offences.

211. **Criterion 20.1** - There are two reporting obligations found at sections 16 (1) (c) and 16 (1) (k) of the MLPA. Section at 16 (1) (c) imposes the responsibility on an FI or person engaged in other business activity to report a transaction to the FIA where the identity of the person involved or the circumstances of the transaction give rise to a reasonable suspicion that the transaction involves proceeds of criminal conduct. "Criminal Conduct" as defined in section 2 of the MLPA sufficiently encompasses all criminal acts, including TF.

212. Section 16 (1) (k) further imposes a mandatory reporting obligation on a FI or person engaged in other business activity to report to the FIA any suspicion transaction relating to ML as soon as reasonably practicable or within seven (7) days of the transaction being deemed suspicions. However, ML as defined in the MLPA specifically refers to conduct which constitutes an offence

under sections 28, 29 and 30 and does not sufficiently encompass all criminal acts, including TF, that would constitute a predicate offence for ML in the country.

213. The reporting obligations articulated in the MLPA therefore imposes two standards, one with respect to criminal conduct for which there is no obligation for prompt reporting and the other which is limited to reporting ML only.

214. **Criterion 20.2** - Considering the weakness noted at R20.1 above, FIs are required to file SARs regardless of the amount, there is no requirement in law, only in an appendix of a law, for FIs to report attempted transactions to the FIA. There is no minimum threshold for reporting under the relevant laws once the transaction is deemed to be suspicious.

***Weighting and Conclusion***

215. There is no requirement for reporting entities to report promptly suspicion that funds may be related to criminal conduct. The requirement to report attempted transactions is not established in law. **Recommendation 20 is rated partially compliant.**

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

216. This Recommendation was rated PC in the 3rd MER due to no protection from civil and criminal liability to those who disclose information in good faith, as well as no prohibition against FIs, their directors or employees from ‘tipping off’ that a SAR or related information had been reported to the FIA. The Recommendation remained outstanding pending a legislative amendment.

217. **Criterion 21.1** - Section 37(1) of the MLPA provides protection against breach of confidentiality proceedings against any person or directors or employees of a FI or person engaged in other business activity who, in good faith, submit reports on suspicious activity to the FIA in accordance with the MLPA. Additionally, section 16(2) of the MLPA protects a FI or a person engaged in other business activity, its directors or employees who disclose information to the FIA in accordance with the MLPA from liability for breach of any other enactment or a contract. These provisions would cover any authorised disclosure made in good faith, even if the person making the disclosure did not know what the underlying criminality was, and regardless of whether illegal activity actually occurred.

218. **Criterion 21.2** - Section 16(3) of the MLPA prohibits tipping off by a FI or a person engaged in other business activity, the employee, staff, directors, owners or other representatives of the FI or person engaged in other business activity where the FI or person engaged in other business activity has formed a suspicion or information has been communicated to the FIA. Additionally, any information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that a report has been made or is in the process of being made cannot be disclosed.

***Weighting and Conclusion***

219. **Recommendation 21 is rated compliant.**

## Recommendation 22 – DNFBPs: Customer due diligence

220. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as NC with these requirements for similar deficiencies set out under R.10, 11, 12, 15 and 17. Deficiencies were addressed by issuing of the Money Laundering (Prevention) Guideline for Other Business Activity) Regulations and the Money Laundering (Prevention) Guidance Notes (Amendment) Regulations.

221. **Criterion 22.1** - DNFBPs are required to comply with the measures set out in the MLPA, the MLPGN Regulations and the Money Laundering (Prevention) Guideline for (Other Business Activity) Regulations. The analysis of the CDD requirements for FIs under R.10 is applicable to all DNFBPs. As indicated in the analysis for R.10, section 17 of the MLPA has a threshold of EC\$25,000, for occasional transactions. This threshold is equivalent to US\$9,250. While this threshold is well under the US\$15,000 for dealers in precious metals and stones it is well above the transaction threshold of US\$3,000 for casinos. Additionally, there is no measure for CDD requirements with the FATF recommended thresholds applicable to dealers in precious metals and stones and casinos. Further, whilst it is unclear whether the meaning of attorneys-at-law applies to other independent professionals Saint Lucia indicated all notaries are attorneys.

222. **Criterion 22.2** - DNFBPs are required to comply with the same record-keeping requirements as FIs under the MLPA (see analysis of R.11).

223. **Criterion 22.3** - DNFBPs are required to comply with the same PEPs requirements as FIs under the MLPA (see analysis of R.12)

224. **Criterion 22.4** - DNFBPs are required to comply with the same new technologies requirements as FIs under the MLPA (see analysis of R.15)

225. **Criterion 22.5** - DNFBPs are required to comply with the same third-party reliance requirements as FIs under the MLPA (see analysis of R.17)

### **Weighting and Conclusion**

226. Dealers in precious metals and previous stones are not covered in the DNFBP regime. Deficiencies identified in R.10, 11, 12, 15 and 17 are also applicable to DNFBPs. **Recommendation 22 is rated partially compliant.**

## Recommendation 23 – DNFBPs: Other measures

227. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as NC with these requirements due to a lack of clear obligations being in place for DNFBPs to ensure internal controls are established and maintained, suspicious activity is reported to the relevant authority, senior management function responsible for AML/CFT compliance being in place and ensuring special attention is given to higher risk countries.

228. **Criterion 23.1** - The requirement to report suspicious transactions is applicable to DNFBPs as FIs under the MLPA (see analysis of R.20).

229. **Criterion 23.2** - DNFBPs are required to comply with the same internal control requirements as FIs under the MLPA (see analysis of R.18).

230. **Criterion 23.3** - DNFBPs are required to comply with the same higher-risk countries requirements as FIs under the MLPA (see analysis of R.19).

231. **Criterion 23.4** - DNFBPs are required to comply with the same tipping-off and confidentiality requirements as FIs (see analysis of R.21).

**Weighting and Conclusion**

232. Whilst an AML/CFT framework exists for DNFBPs in Saint Lucia, there are gaps with respect to reporting promptly, and reporting of attempted suspicious transactions, implementation and communication of countermeasures for higher risk jurisdictions and group-wide internal controls for DNFBPs as outlined under R.18, 19 and 21. **Recommendation 23 is rated partially compliant.**

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

233. Recommendation 24 (formerly R.33) was rated ‘PC’ in Saint Lucia’s 3<sup>rd</sup> MER. The deficiencies noted were that there were inadequacies and lack of transparency in collating and maintaining accurate information which negatively affected access to beneficial ownership information and that registered agents had to be compelled by court order to comply even at onsite visits by the Financial Services Supervision Unit. Minor shortcomings in the transparency of trust deeds were also noted.

234. **Criterion 24.1.-.** The following legal persons have been identified in the jurisdiction: a) domestic companies, non-profit companies, member state companies and external companies under the Companies Act (b) international business companies under the International Business Companies Act (c) international general partnership and international limited partnership under the International Partnership Act (d) Domestic partnerships (general partnerships and limited partnerships) under the Commercial Code (e) Co-operative Societies under the Co-operative Societies Act (f) Non-governmental organisations under the Non-Governmental Organisation Act. The relevant laws that govern the creation of and obtaining and recording basic and beneficial ownership information of domestic companies, non-profit companies, member state companies, external companies and partnerships are publicly available on the website of the ROCIP at [www.rocip.gov.lc](http://www.rocip.gov.lc). The relevant law that governs the creation of and obtaining and recording basic and beneficial ownership of IBCs and IPs are publicly available on the website of the Registry of IBCs, IPs and ITs at [www.saintluciaifc.com](http://www.saintluciaifc.com).

235. The Co-operative Societies Act outlines the registration of co-operative societies and for obtaining basic and beneficial ownership information. This Act is publicly available on the website of Saint Lucia’s National Printery Corporation at [www.slugovprintery.com/](http://www.slugovprintery.com/). The Non-governmental Organisation Act outlines the process for the creation of non-governmental organisations and for obtaining basic information. No information has been provided in relation to the process for obtaining and recording beneficial ownership information for non-governmental organisations or whether the information is publicly available. The Commercial Code outlines the registration of domestic partnerships and for recording basic information. No information was provided regarding domestic partnerships under the Commercial Code in relation to the process for obtaining and recording beneficial ownership information or whether the information is publicly available. It is however noted that domestic partnerships consisting of more than 20 persons may be formed under the Companies Act as outlined in section 3. In these instances, the aforementioned information concerning companies under the Companies Act will apply.

236. **Criterion 24.2** - While Saint Lucia conducted an assessment of the ML/TF risks of the different sectors in its NRA, it did not conduct an assessment of the ML/TF risks specific to the types of legal persons within the country.

237. **Criterion 24.3** – IBCs are registered in a Register of International Business Companies (section 5 of the IBC Act). However, information on the list of directors is not kept in the Register. Basic information on IBCs can be accessed from the Registry online via [www.saintluciaifc.com](http://www.saintluciaifc.com). International Partnerships are registered in the Register of International Partnerships in which each memorandum submitted pursuant to this Act and all certificates and advertisements required by the Act shall be registered (section 7 of the International Partnerships Act). Section 7(2) of the Act also requires that the Register shall be open to the inspection of all persons desiring to view the Register during working hours. No information however is kept on names of the limited partners. Under section 502 of the Companies Act, the Registrar shall maintain a Register of Companies which shall contain the name of every body corporate. Section 503 of the Companies Act provides for persons to obtain copies of documents received by the Registrar pursuant to the Act on the payment of a prescribed fee. These documents would include the information required by the criterion. Pursuant to section 18 of the Non-Governmental Organisations Act, the Non-Governmental Organisations Council must keep and maintain a register of all Non-Governmental Organisations. However, this Council has not been established and no information was available on the information that should be recorded and maintained on the register or the public availability of the information in this Register. Section 13(2)(b) of the Co-operative Societies Act provides that the name under which a society is registered shall be noted in the register to be known as the “Register of Societies” which shall be kept at the office of the Registrar. No information was however available as to whether the Register of Societies contains the other information required by the criterion. In relation to domestic partnerships, domestic general partnerships are required under section 3 of the Commercial Code to deliver to the Registrar a written statement of the names of all the partners, the name of the firm, the character of its business, the date at which such partnership began, and the term (if any) of its intended duration. No information was however provided in relation to whether the address of the registered office and the basic regulating powers are required to be provided. Domestic limited partnerships are required under section 68 of the Commercial Code to deliver to the Registrar of the High Court information on: (a) the firm-name; (b) the general nature of the business; (c) the principal place of business; (d) the full name of each of the partners; (e) the term, if any, for which the partnership is entered into, and the date of its commencement; (f) a statement that the partnership is limited and the description of every limited partner as such; (g) the sum contributed by each limited partner and whether paid in cash or how otherwise. No information was however provided in relation to whether the basic regulating powers are required to be provided.

238. **Criterion 24.4** - Section 28 of the International Business Companies Act requires international business companies to keep a share register at its registered office containing, inter alia, the names and addresses of the persons who hold registered shares and the number of each class and series of registered shares held by each person. Section 42 (2) of the said Act also requires international business companies to keep a director’s register at its registered office containing, inter alia, the names and addresses of its directors and thus the registry will be aware of the location of this information. The memorandum and articles of association of an IBC are subscribed to by the registered agent of the IBC pursuant to sections 7(3) and 8(1)(b). The registered office of an IBC is the office of its registered agent pursuant to section 39(1) of the Act. The information required to be



kept in the memorandum and articles of association contain the information required by criterion 24.3 (Regulation 3, Schedule 1, Form 1, Attachments 1 and 2). The location of the registered office is contained within the memorandum of association which is required to be submitted to the Registrar of IBCs under section 4. Pursuant to section 184 of the Companies Act, companies are required to keep a register containing the names and addresses of all its substantial shareholders and the particulars of the shares held by them or their nominees. Further, section 177(2) of the Act requires a company to maintain a register of members showing, inter alia, the name and the latest known address of each person who is a member and a statement of the shares held by each member. In relation to maintaining the information required in criterion 24.3, section 177 (1) of the Companies Act requires a company to maintain a record at its registered office containing, inter alia, its articles and byelaws. Section 177 (3) also requires a company to maintain a register of its directors and secretaries and a register of its directors' holdings. Section 176 provides that incorporators must send a notice of the address of the registered office to the Registrar at the time of sending articles of incorporation and within fifteen days of any change of the address of its registered office. The Registrar is required to file these notices. Pursuant to section 18(2) of the Co-operative Societies Act, a co-operative society is required to make available at its registered offices documents to include: a copy of its bylaws which must contain its registered address (section 17 (1)), a register of members, copies of all notices of directors and notices of change of directors, a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the society with the dates on which each person became or ceased to be a director and a copy of every certificate issued to it by the Registrar. As noted, the bylaws of a co-operative society must contain its registered address; pursuant to section 9 (4), a co-operative society must submit its bylaws to the Registrar when applying for registration under the Act. No information was available to determine whether other legal persons are required to maintain the information set out in criterion 24.3 and the other requirements of criterion 24.4 or whether the location of this information is required to be notified to the company registry.

239. **Criterion 24.5** - Section 28(6) of the International Business Companies Act requires an international business company to submit an annual shareholder return to its registered agent. Section 42 (3) of the said Act requires an international business company to submit an annual director return to its registered agent. Failure to submit these returns and information renders an international business company liable to fines and to being struck off. Further, article 18 of the articles of association under Regulation 3, Schedule 1, Form 1 provides that the IBC shall not treat a transferee of a registered share in the Company as a member until the transferee's name has been entered in the share register. Article 53 of the articles of association under Regulation 3, Schedule 1, Form 1 provides that a director may be removed from office by a resolution of members or by resolution of directors. Article 55 provides that a vacancy in the Board of Directors may be filled by a resolution of members or by a resolution of a majority of the remaining directors. Section 66(2)(b) of the Act requires an IBC to keep copies of all resolutions consented to by directors and members. As such, as resolutions are made concerning the removal or appointment of directors, these are required to be kept by the IBC. Saint Lucia has also advised that entities regulated by the FSRA are required to provide prior notice to the Registrar upon the appointment of directors or shareholders. Under section 41(2), a change of registered agent and registered office is only effective upon the proper filing with the Registrar of an amendment to the IBC's memorandum or articles. Under section 10 (5)(a), any change to an IBC's name shall be entered by the Registrar in the Register in place of the former name and shall issue a certificate of amendment indicating the change of name and shall cause notice of

the change to be published in the Gazette. In relation to domestic companies, sections 77(1) and 176(2) of the Companies Act respectively require that a company shall send the Registrar a notice of any change among its directors or any change of address within fifteen (15) days of the change; the Registrar is required to file these notices. Further, section 174(4)(a) of the said Act requires that, within one (1) month after a person ceases to be a director, a company shall lodge with the Registrar a return notifying the Registrar of the change and containing, with respect to each person who is then a director of the company, the particulars required to be specified in the register in relation to him or her. Besides from the requirements relating to shareholder and director information for international business companies and domestic companies as outlined above, no information was provided in relation to the other information required in criterion 24.3 and 24.4. In relation to co-operative societies section 17 (3) of the Co-operatives Societies Act mandates a co-operative society to inform the Registrar of a change in address within one month. Co-operative societies are required to keep records of members, directors, etc. at their registered office as outlined in criterion 24.5. Section 20(1)(c) of the Act provides that failure to comply with the requirements under the Act could lead to suspension or cancellation of registration by the Registrar. Domestic limited partnerships under the Commercial Code are required by section 69 to notify the Registrar of any change to the information required to be provided as highlighted in criterion 24.3 within seven (7) days of the change.

240. **Criterion 24.6** - Section 69A of the Companies Act, requires incorporators of domestic companies and non-profit companies to send a notice of the beneficial owner of the company to the Registrar at the time of incorporation; the Registrar is, in turn, required to file this notice. However, the requirement to send a notice of the beneficial owner of these companies is only at the time of incorporation. Section 177 of the Companies Act however requires companies to maintain a register of beneficial owners at its registered office. This register must include the date on which the beneficial owner became or changed his or her status as a beneficial owner of the company; this requirement therefore provides that the information on the identity of its beneficial owners is kept up-to-date. In relation to member state companies and external companies, the Act requires them to file with the Registrar certified copies of the instruments by which any change to its beneficial owners has been made within thirty (30) days after the change has been made.

241. Section 28 of the IBCA, requires IBCs to keep a register of beneficial owners at its registered office which is the office of its registered agent. An IBC is required to provide information with respect to its beneficial owner on an annual basis to its registered agent and to give notice of any changes to the register of beneficial ownership within a reasonable time. The phrase “reasonable time period” is however subjective. Pursuant to section 7(1A) of the IP Act, the Register of IPs must establish and maintain a Register of IPs which must contain the name and address of the beneficial owner of the international partnership; (b) the date on which the beneficial owner became or changed his or her status as a beneficial owner of the international partnership; (c) the percentage of shares with voting rights that the beneficial owner holds in the international partnership.

242. In relation to IPs, section 7(1A) of the IP Act requires that Register of IPs contain (a) the name and address of the beneficial owner of the international partnership; (b) the date on which the beneficial owner became or changed his or her status as a beneficial owner of the international partnership; and (c) the percentage of shares with voting rights that the beneficial owner holds in the international partnership. Section 7(2) of the Act provides that the Register; shall be open to the inspection of all persons desiring to view the Register during working hours.



243. No information was provided in relation to the other types of legal persons.
244. **Criterion 24.7** - The provisions outlined in criterion 24.6 are also applicable to this criterion in relation to IBCs and companies under the Companies Act. No information was available in relation to the other types of legal persons.
245. **Criterion 24.8** - Saint Lucia has some comparable measures to ensure that companies fully co-operate with competent authorities in determining the beneficial owner. Under section 6(1)(b) of the MLPA, the FIA has the power to require from any person, institution or organization the production of any information that it considers relevant to the fulfilment of its functions. This would include beneficial ownership information. Section 6(2) makes it an offence for any person to fail or refuse to provide the information required under section 6(1)(b). Accordingly, legal persons would be compelled to provide the FIA with information to determine the beneficial owner. In relation to IBCs, the IBC Act provides that the IRD can access the share register and the register of beneficial owners. Under section 5(2)(e), the FIA can, in turn, share this information with the CED, IRD, RSLPF and DPP. In relation to IBCs, the IBC Act provides that the IRD can access the share register and the register of beneficial owners.
246. **Criterion 24.9** - The registered office of an IBC is the office of their registered agent and the registered agents are responsible for keeping the records of IBCs. Registered agents are DNFBPs under the MLPA. By virtue of regulation 172 of the Money Laundering (Prevention) (Guidance Notes) Regulations, registered agents are required to keep verification documents of IBCs for a period of seven (7) years after the termination of their relationship with the IBC. Under section 8 of the IP Act, a registered agent of an international general partnership is required to submit a memorandum to the Registrar containing information to include the name and address of the registered office. Under section 14 of the IP Act, a registered agent of an international limited partnership is required to submit a memorandum to the Registrar containing information to include the name, object, address and names of the international general partners. The registered agent would be required to keep this information for a period of seven (7) years after the termination of their relationship with the IP pursuant to the MLPA. There are no measures in place requiring the maintenance of beneficial ownership information and the other information required by the Recommendation for at least five (5) years after the date on which the company was dissolved or otherwise ceases to exist, or five (5) years after the date on which the company ceases to be a customer of the professional intermediary or FI in relation to the other legal persons.
247. **Criterion 24.10** - Competent authorities have access to the records held in the register of companies under the Companies Act. The IP Act provides that the Register shall be open to the inspection of all persons desiring to view the Register during working hours and that this Register must include beneficial ownership information.
248. In relation to IBCs, the IBC Act provides that the IRD can access the share register and the register of beneficial owners. The FIA can also access beneficial ownership information on IBCs from their registered agents as section 6 of the MLPA empowers the FIA to require from any person, institution or organization the production of information that the FIA considers relevant to the fulfilment of its functions. The aforementioned competent authorities are however the only competent authorities that can access beneficial ownership information on IBCs. In relation to co-operative societies, the aforementioned provision in the MLPA empowers the FIA to access

information from the Registrar of Co-operative Societies. However, the type of information that can be readily accessed by other competent authorities is limited to the discretion of the Registrar.

249. No information was available in relation to domestic partnerships.

250. **Criterion 24.11** - Section 29(2) of the Companies Act provides that a company shall not issue bearer shares or bearer share certificates.

251. **Criterion 24.12** - Section 182 of the Companies Act requires a substantial shareholder to give notice in writing and full particulars of the shares held by his or her nominee and for the substantial shareholder to name the nominee. Section 184 of the Companies Act further requires the Company to keep a register of the notices received under section 182. Saint Lucia advises that the Companies Act does not provide for nominee directors. Saint Lucia also advises that the IBC Act does not provide for nominee shareholders or nominee directors and that nominees do not apply to the IPs, NGOs registered under the NGO Act and producer (non-financial) societies registered under the Cooperatives Societies Act. No information was however put forward in relation to financial societies and domestic partnerships.

252. **Criterion 24.13** - The sanctions under the International Business Companies Act for failing to comply with requirements of sections 28 and 42 include fines of US\$250.00 and strike-off sanctions. A fine of US\$250.00 in the context of an international business company is minimal. Sanctions for breaches of sections 9(4), 28(6), 94(9), of the International Business Companies Act are fines of \$50.00, \$500.00 and \$100.00 respectively for each day that the breach continues. In relation to companies under the Companies Act, section 194 requires a company to send to the Registrar, not later than April 1<sup>st</sup> in each year, a return in the prescribed form containing the prescribed information made up to the preceding December 31<sup>st</sup>. If default is made in complying with this section, the company and every director and officer who is in default commits an offence. Pursuant to section 541 of the Companies Act, the penalty is a fine of \$5,000.00. Further, section 538 of the Act makes it an offence for a person to make or assist in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar or to any other person which contains an untrue statement of a material fact or omits to state a material fact. Where such an offence is committed, the person is liable to a fine or \$5,000.00 or to imprisonment for a term of 6 months, or to both. Where such an offence is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer also commits the offence and is liable on summary conviction to a fine of XCG\$5,000.00 (USD 1 850) or to imprisonment for a term of six (6) months, or to both. The fines and prison term in the context of a domestic company is minimal. In relation to an IP, section 113 of the IP Act makes it an offence for a person to contravene any provision of the Act or the Regulations and provides a penalty of a fine of XCD \$5000.00 (USD1 850). This fine is minimal. Section 220 of the Cooperatives Society Act makes it an offence for a society or any officer or member of a society or any other person to fail to comply with any requirement of the Act or the regulations or to furnish any information. The penalty is a fine of XCD\$2,500 (USD925) (or imprisonment for 6 months or both and to a further fine of \$50 for each day for which the contravention continues after a conviction is obtained. This penalty appears minimal. No information was available in relation to the other legal persons.

253. **Criterion 24.14** - The Registry of Companies and Intellectual Property contains information on domestic companies, non-profit companies, member state companies and external

companies. The Registry of International Business Companies, International Partnerships and International Trusts contains basic information of these entities. Both registries are publicly accessible online with free searches for basic information and can therefore be accessed by foreign competent authorities. The FIA can share information with a Foreign Financial Intelligence Unit pursuant to an agreement made under section 5(2)(h) of the MLPA. Section 34(2) of the MLPA also enables the FIA to co-operate with a court or other competent authority of a requesting States by taking appropriate measures to provide assistance in matters concerning an ML offence. The IRD can also obtain BO information on behalf of their foreign counterparts pursuant to sections 6 and 7 of the International Tax Co-operation Act.

254. **Criterion 24.15** - The FIA is signatory to the Egmont Group of Financial Intelligence Units which provides an avenue for FIUs to exchange information. The Egmont Group uses a feedback protocol which allows for countries to monitor the quality of the assistance they receive from other countries. No provisions for monitoring were cited by the other competent authorities.

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

255. Saint Lucia, in accordance with its law can establish various legal persons. However, limited information was available in respect to Co-operative Societies, NGOs and domestic partnerships which had a cascading effect on the Recommendation. For the most part, there are legal mechanisms which provide for obtaining and keeping basic and beneficial ownership information for companies under the Companies Act, IBCs and IPs but limited or no information was provided for other legal persons. No information was available as to whether the exemptions from the provision of beneficial ownership information that apply to the 5 types of companies as highlighted in criterion 24.1 are justified based on the country's assessment of its risks, as no risk assessment was conducted on the various legal persons in Saint Lucia. Further, there are no mechanisms in place to ensure that up-to-date beneficial ownership information is maintained at the company registry and the registry of IPs for domestic companies, non-profit companies and IPs respectively, and that up-to-date beneficial ownership information is maintained by registered agents for IBCs. Companies are only required to keep a register of its "substantial shareholders" and not all shareholders. The ability to provide rapid international cooperating is limited. The fines in the Companies Act and the IBC for non-compliance are not proportionate and dissuasive. **Recommendation 24 is rated partially compliant.**

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

256. Saint Lucia received a rating of 'NC' for this Recommendation (formerly R. 34) in its 3<sup>rd</sup> MER. Saint Lucia was held non-compliant because there was no requirement to file beneficial ownership information and non-disclosure of beneficial ownership to Registered Agents was enabled by the secrecy provision of the International Trusts legislation. Additionally, there was no obligation to disclose beneficial ownership information to the competent authorities without a warrant from the court or the FSSU and trusts created within the sector were so well layered that beneficial ownership information was not easily discernible. Some of these deficiencies have been addressed in that the IT Act has been amended to require registered trustees to obtain BO information and access to this information must be provided to the IRD. The MLPA Regulations also require registered trustees to obtain BO information and empowers to FIA to access this information.

257. **Criterion 25.1** - Regulation 139 of the of the Money Laundering (Prevention) (Guidance Notes) Regulations and regulation 133 of the Money Laundering (Prevention) (Guidelines for

Conducting Other Business Activity) Regulations requires that a trustee obtain information, on the identity of the settler or any person transferring assets to the trust, the beneficiaries and the protector, but does not include any other natural person exercising ultimate effective control over the trust. Further, a trustee as covered in Part B of the Second Schedule of MLPA and the Money Laundering (Prevention) (Guidelines for Conducting Other Business Activity) Regulations is limited to trustees of domestic trusts who are carrying out trust and other fiduciary services as business activities and therefore only apply to professional trustees. Section 52(1)(b)(iv) of the IT Act includes beneficial ownership information as information which should be kept confidential by a registered trustee of an international trust. Section 2 of the IT Act defines beneficial owner to include a natural person who ultimately owns or controls a trust. Therefore, information on any other natural person is required to be kept by ITs under the IT Act. No information was available for trustees of domestic trusts which do not involve a business activity. (b) No information was available. (c) Section 16(7) of the MLPA require trustees to keep records for a period of 7 years after the day on which the transaction recorded takes place.

258. In relation to criterion 25.1(a) and criterion 25.1(b), no information was available for trustees of domestic trusts which do not involve a business activity.

259. No information was available for domestic trusts which do not involve a trustee providing trust and other fiduciary services.

260. **Criterion 25.2** - Section 17 (2) of the MLPA requires persons providing trust services to ensure that information collected under the CDD process is kept up-to-date and relevant by undertaking routine reviews of existing records. Further, section 17(4)(a) of the said Act provides that CDD measures include identifying and verifying a customer's identity using reliable and independent source documents, data or information. No information was available for trustees of domestic trusts which do not involve a business activity.

261. **Criterion 25.3** - Sections 15(6), 15(7) and 17(11) of the MLPA provide measures to ensure that a person discloses whether he/she is acting on behalf of another person to FIs and DNFBPs when forming a business relationship and when carrying out transactions. This would include a person who is a trustee for an IT or a domestic trust whether or not the domestic trust involves a business activity. Regulations 76, 78 and 79 of the Money Laundering (Prevention) (Guidance Notes) Regulations provide measures to ensure that a trust company declared by the Minister to be a FI, a registered trustee and an IT disclose their status to financial institutions and DNFBPs when forming a business relationship.

262. **Criterion 25.4** - Section 16(2) of the MLPA nullifies any obligations as to secrecy or restrictions on disclosing information to the FIA in relation to international trusts and domestic trusts that involve a business activity. The power of the FIA under section 6 of the MLPA to require the production of any information from any person coupled with section 35, which overrides any secrecy obligations subject to the Constitution, is wide enough to cover trustees of a domestic trust which do not involve a business activity. Under section 5(2)(e), the FIA can, in turn, share this information with the CED, IRD, RSLPF and DPP. Further, section 7(3A) of the IT Act provides that the IRD may inspect the instrument, file and documents of an international trust. In relation to FIs and DNFBPs, section 15(7) of the MLPA provides that where a person requesting to enter into a transaction is acting on behalf of another person, a FI or DNFBP shall take reasonable measures to establish the true identity of the other person on whose behalf or for whose benefit the person may be acting.

263. **Criterion 25.5** - Section 6(b) of the MLPA empowers the FIA to require from any person, institution or organization the production of any information that it considers relevant to the fulfilment of its functions; this would include the production of information relating to all trusts. Any person failing or refusing to provide the information commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.00 or to imprisonment not exceeding 10 years or both. As noted in criterion 25.4, the IRD can also access information on an international trust. The RSLPF can also access information held by trustees through search warrants under section 622 of the Evidence Act and production and inspection order under section 41 of the POCA.

264. **Criterion 25.6** - The Registry of International Business Companies, International Partnerships and International Trusts contains basic information of these entities. This Registry is publicly accessible online with free searches for basic information and can therefore be accessed by foreign competent authorities. The FIA can share information with a foreign FIU pursuant to an agreement made under section 5(2)(h). Section 34(2) of the MLPA also enables the FIA to co-operate with a court or other competent authority of a requesting State by taking appropriate measures to provide assistance in matters concerning an ML offence. The IRD can also obtain BO information on behalf of their foreign counterparts pursuant to sections 6 and 7 of the International Tax Co-operation Act.

265. **Criterion 25.7** - In relation to international trusts, section 52 of the International Trust Act was amended to require a registered trustee to keep the records for 6 years from the date on which a transaction is completed and the registered trustee terminates the business relationship. These records include ownership information and the assets of the trust. A registered trustee that contravenes this requirement commits an offence and is liable on summary conviction to a fine of XCD\$10,000 (USD3 700) and the court may make an order that- (a) the registered trustee cease to act as trustee of the international trust or (b) that the license of the registered trustee to act as registered trustee be suspended. Further, pursuant to section 37 of the FSRA Act, if a registered trustee violates any law, regulations or guideline issued by the FSRA, the FSRA can issue a direction requiring remedial action. If the registered trustee fails to comply with the direction, its licence may be suspended or revoked; failure to comply is also an offence which may result in a fine not exceeding XCD\$100,000.00 (USD37 000) or imprisonment not exceeding 4 years. Under section 16(8) of the MLPA, a trust company declared by the Minister to be a FI, a registered trustee, an IT and a domestic trust that involves a business activity are required to keep records for the purpose of assisting in the investigation and prosecution of an ML offence. Section 16(9) makes it an offence to contravene section 16(8) and provides for a fine not less than XCD\$100,000.00 (USD37 000) or more than \$500,000.00 (USD185 010) or to imprisonment for a term of not less than seven (7) years or more than 15 years or to both fine and imprisonment. These sanctions are proportionate and dissuasive. No information was available in relation to trustees of domestic trusts which do not involve a business activity.

266. **Criterion 25.8** - The reference to section 6(b) of the MLPA and the corresponding penalty highlighted in criterion 25.5 is applicable here. There is no penalty in the IT Act for failing to grant the IRD access to information on international trusts.

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

267. While international trusts and domestic trusts that involve a business activity fall within the purview of the MLPA and regulations, not all domestic trusts are captured. Limited, and at times, no information has been provided in relation to trustees of domestic trusts which do not

involve a business activity which has a cascading effect on the Recommendation. There is no requirement to hold basic information on other regulated agents of, and service providers to, the trust. **Recommendation 25 is rated partially compliant.**

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

268. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as NC with these requirements due to deficiencies in its AML/CFT regulatory and supervisory measures for FIs.

269. **Criterion 26.1** - The FIA is the competent authority with responsibility to supervise FIs or persons engaged in other business activity to ensure compliance with the AML/CFT requirements set out in the MLPA (sections 5 and 6 of the MLPA). The FIA's AML supervision is supported by the financial supervisor, the FSRA, however the formal supervisory arrangements for how the FIA and FSRA share responsibility for AML/CFT is not clear e.g. delegated responsibility from FIA to the FSRA. The ECCB is the prudential regulator of persons conducting banking business in the currency union (Banking Act, No. 3 of 2015), and received additional powers in April 2019 through the MLPA enabling the authority to conduct AML audits of FIs that fall within its supervisory remit, therefore Assessors categorised the ECCB as the second competent authority with a specific AML/CFT remit in Saint Lucia.

270. **Criterion 26.2** - All core principles financial institutions (banks, insurers and securities), other financial institutions (e.g. lending, credit unions) and MVTS providers are required to be licensed in Saint Lucia through the following authorities:

- The **ECCB** grants licences in accordance with Section 3 of the Banking Act requiring banks and persons carrying on banking business in the currency union operating in and from within Saint Lucia to be licensed. This captures financial institutions categorised as commercial banks which are essentially retail banks catering to the mass market.
- The **FSRA** grants licences to international banks (Section 3 International Banks Act Cap. 12.17), international insurance companies (Section 3 International Insurance Act Cap. 12.15), international mutual funds (Section 3(1)(a)(b) International Mutual Funds Act Cap. 12.16), credit unions (Section 9(1) Co-operatives Societies Act Cap. 12.06), the Saint Lucia Development Bank (Saint Lucia Development Bank Act No. 12 of 2008), money transmission services (Section 4 (1) Money Services Business Act No. 11 of 2010), domestic insurance companies and intermediaries (Insurance Act Cap. 12.08). Additionally, the FSRA approves Registered Agents and Trustees (Section 4(1) Registered Agent and Trustee Licensing Act Cap. 12.12).
- The **ECSRC** grants licences to the securities sector pursuant to the Securities Act. This includes the consideration of Section 46 of the Securities Act, Cap.12.18 which cites a person shall not carry on business, or hold himself or herself out as carrying on business, as— (a) a broker dealer; (b) a limited service broker; (c) an investment adviser; (d) a custodian; (e) a principal of a broker dealer, limited service broker or corporate investment adviser; or (f) a representative of a broker dealer, limited service broker or investment adviser, unless the person is licensed to do so by the ECSRC established by Article 3 of the Agreement.

271. Whilst licensing or registration requirements are in place, there is no clear prohibition in Saint Lucia against shell banks being approved or continuing to operate. The authorities consider the existing licensing requirements prevent the establishment of shell banks. However, Assessors

were concerned these arrangements did not fully meet the FATF requirement when licensing Class B international banks that are unaffiliated with a regulated financial group that is subject to effective consolidated supervision. This is prevalent considering Saint Lucia provides offshore banking services. For example, whilst paragraph 2 of the FSRA's International Banks Guidance Notes indicates that Class A international banks are required to have mind, management and premises in Saint Lucia, Class B international banks do not require physical presence.

272. **Criterion 26.3** - The ECCB, ECSRC and FSRA take various regulatory measures to prevent criminals and their associates from being able to enter the financial market as beneficial owners or in a management capacity.

273. The three (3) licensing authorities apply fit and proper checks following their own set processes as determined by the legal requirements under which they assign a licence. Measures are in place across the supervisors and there is no ongoing check against significant shareholders or individuals with a management function at a firm to ensure they are fit and proper. However legal or regulatory requirements are not in place to check who the beneficial owner is. Measures to ensure fit and proper checks take place on a regular basis are also not consistently in place across the licensing authorities.

274. The FSRA authorises and grants licenses covering both the domestic and international sectors (see IO3). The FSRA's due diligence process at pre-entry includes reviewing documentation submitted by the applicant, verifying the information to check against fraud and ensure consistencies remain with the financial information provided. References are also required as part of the verification process from regulatory counterparts, lawyers, accountants and FIs.

275. FSRA's screening controls include requiring a signed and notarised Statutory Declaration, an original police record, World-Check screening and web searches for adverse intelligence. The FSRA advised the application process can take up to six (6) months to complete. The FSRA's licensing process published on its website is differentiated based on the type of FI for which an applicant is requesting a licence to operate. Therefore, the extent to which core fit and proper checks are carried out will differ based on its assessment of risk.

276. The FSRA during the period of review did not identify any breaches through its licensing controls process at market entry or as part of ongoing monitoring. The FSRA also did not decline or revoked any licences due to AML concerns.

277. The ECCB grants licences to banks and persons carrying out banking business in the Eastern Caribbean currency union. During the period of review the ECCB received no applications for a licence to carry out banking business in Saint Lucia. The ECCB's authorisations process includes conducting fit and proper checks on all applicants. These measures include police clearance, statutory declarations and requesting two forms of ID (including passport). Additional due diligence checks include World Check searches and background checks with supervisory authorities, law enforcement and with licensed financial institutions in the country of residence of the applicant. Checks for suitability are also made on individuals when they seek to acquire or increase controlling interest in a firm. Fit and proper checks are made on all directors, significant shareholders and senior officials of licensed FIs.

278. The ECSRC grants licenses to domestic securities which cover specific activities in relation to broking and providing investment advice. These activities cannot be carried on by individuals without authorisation. During the period of review, the ECSRC issued 24 licenses out of Saint Lucia none of which were suspended or revoked for failure to meet AML controls. There are currently two (2) securities brokers operating in Saint Lucia which were established prior to the assessment period. Its entry control checks for new applicants include fit and proper checks which

cover a review of business plans and an assessment of risk management frameworks. Specific criteria relevant to preventing criminals and their associates from operating in the financial market include checks on applicants' financial status, ability to perform the proposed function honestly and reputation and character. The ECSRC also requires all potential licensees to undertake an Eastern Caribbean Securities Market Certification Programme and Examination exercise as a legal requirement.

279. The table below summarises the legal or regulatory measures supervisors apply at market entry, and on an ongoing basis, to prevent criminals or their associates from holding i.) ownership (directly or indirectly) or ii.) management functions, in a financial institution:

Table 1: Overview of measures to prevent criminals and their associates from entering the financial system

Licenced under (authority)	Fit and Proper checks conducted			
	Shareholder (direct ownership)	Beneficial Owner (indirect ownership)	Holding a management function	Ongoing monitoring
<b>Banking Act (ECCB)</b>	✓ Section 23 section 25(a)	S. 22(h)	✓ Section 8 (2)(e)	Section 24
<b>Securities Act (ECSRC)</b>	Section 69	×	✓ Section 48 (3)(f)	×
<b>Saint Lucia Development Bank Act (FSRA)</b>	✓	✓	✓	✓
<b>Co-operatives Societies Act, Cap (FSRA)</b>	✓ Section 85	✓ S15(4) S12	✓ Section 50(4)	×
<b>Money Services Business Act (FSRA)</b>	✓ section 6 (5)	×	✓ Section 6(4)	✓ section 14 and 15
<b>Insurance Act (FSRA)</b>	✓ Regulation 4 (Form GR1010)	×	✓ Regulation 4 (Form GR1010)	✓ Regulation 4, section 18
<b>International Banks Act (FSRA)</b>	✓ Sections 13 and 17	✓ S13(2)	✓ section 9 (d); Sections 13 and 17	✓ Schedule 1, Form 1, Part 2
<b>International Insurance Act (FSRA)</b>	✓ sections 13 and 17	✓ S13(2)	✓ sections 13 and 17	✓ sections 13 and 17
<b>International Mutual Funds Act (FSRA)</b>	Unknown	Unknown	Unknown	Unknown

280. **Criterion 26.4** - Outside of the licensing requirements for the financial sector to be able to conduct business in Saint Lucia, FIs are not subject to appropriate AML/CFT regulation and supervision by the competent authorities for (a) core principles institutions, including consolidated group supervision and (b) for all other financial institutions. Measures to apply a risk-based approach to supervision and monitoring of FIs were not operational by the two competent authorities, FIA and the ECCB, at the time of the onsite. However, the FIA has considered the NRA produced in March 2019 to develop its program of AML/CFT supervisory activity. In addition, there are deficiencies identified in R.14.1 for MVTs.



281. **Criterion 26.5** - The relevant competent authorities (FIA and ECCB) do not determine the frequency and intensity of on-site and off-site AML/CFT supervision of FIs or groups based on (a) the ML/TF risks and policies, internal controls and procedures associated with the institution or group, as identified by the supervisors' assessment of the institution's or group's risk profile; (b) the ML/TF risks present in the country, however the FIA has considered the NRA produced in March 2019 to develop its program of AML/CFT supervisory activity, and (c) the characteristics of the FIs or groups where a degree of discretion is applied as part of the risk-based approach. The FIA at the time of the onsite was in the process of recommencing its AML/CFT onsite and offsite supervision activity.

282. **Criterion 26.6** - The relevant competent authorities do not periodically review the assessment of the ML/TF risk profile of FIs or groups (including the risks of non-compliance). This also applies to when there are major events or developments in the management and operations of the FI or group.

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

283. Since its 3rd MER, there remain weaknesses in Saint Lucia's AML/CFT regulation of FIs. Saint Lucia requires resources and time to develop its current supervisory regime to demonstrate periodic AML/CFT supervision and monitoring is conducted by the competent authorities. Clarity is required about the roles and responsibilities of the FIA and ECCB to ensure the two authorities are applying a risk-based approach to supervising FIs' compliance with the AML/CFT requirements. In this regard, the role of the FSRA should also be reviewed if it is to be formally recognised as a competent AML/CFT supervisory authority in Saint Lucia. In addition, there are deficiencies in measures to ensure there is a clear prohibition in Saint Lucia against shell banks being approved or continuing to operate. **Recommendation 26 is rated non-compliant.**

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

284. This Recommendation formerly R. 29, was rated PC in the 3rd MER. The deficiencies related to the effectiveness of the supervisor's ability to conduct examinations being negatively impacted by the differing levels of scope of examinations and training of staff. Additionally, the FIA lacked adequate powers to monitor and ensure appropriate AML/CFT compliance by FIs. The deficiencies were addressed by the enactment of the FSRA Act and the formation of the FSRA to regulate the non-bank financial sector.

285. **Criterion 27.1** - The FIA is the competent supervisory authority and has powers to supervise or monitor FIs to ensure compliance with the AML/CFT requirements as set out in the MLPA (subsections 6(1)(b) and (h) of the MLPA). The FIA can inspect any FI or require the production of any information necessary to ensure compliance with the AML requirements of the MLPA. These provisions do not include clearly specific inclusion of CFT.

286. The FIA and FSRA have joint AML/CFT supervisory responsibility for approx. 95% of the FIs in Saint Lucia (136 out of the 143 FIs reported). The remaining 5%<sup>55</sup> of FIs fall solely in the AML/CFT supervisory remit of the FIA. The MoU for the two supervisors to collaborate on AML/CFT matters was introduced in August 2019. It was finalised in September 2019 to facilitate co-operation regarding the conduct of joint examinations whereby the FIA will conduct the AML/CFT examination when the FSRA has a prudential examination scheduled for one of its licensees. Under section 13(2) of the FSRA Act, the FSRA is responsible for ensuring compliance

<sup>55</sup> The remaining 5% relate to domestic commercial banks and securities brokers.

with the requirements of the FSRA Act and to co-operate with the FIA, other regulatory authorities and the ECCB in the supervision of a regulated entity.

287. The ECCB received additional powers in April 2019 (MLPA Amendment No. 13 of 2019) enabling it to conduct AML audits of and to develop training for commercial banks that fall within its prudential supervisory remit. However, arrangements for carrying out these new functions are yet to be agreed between the FIA and the ECCB. In addition, the FIA has not signed the MMOU with the ECCB on AML/CFT matters even though the two supervisors have responsibility to oversee the AML/CFT compliance of the commercial banking sector.

288. **Criterion 27.2** - The FIA under subsection 6(1)(h) of the MLPA can conduct inspections of FIs in relation to AML. To perform their core prudential supervisory functions, the FSRA, ECCB, ECSRC can also conduct inspections (FSRA Act (Section 36), Banking Act (Section 74(2)) and Securities Act (Section 135)).

289. **Criterion 27.3** - The FIA can require from any person the production of any information relevant to its functions (MLPA, sections 5 and sub-sections 6(1)(b)). The FIA as per the MLPA has the power to inspect and conduct audits of a financial institution or a person engaged in other business activity to ensure compliance with the MLPA. This does not explicitly cover compliance with CFT requirements. The prudential supervisors are authorised to compel production of any information that is reasonably required in the exercise of the supervisor's functions from any person without the need for a court order (FSRA Act (Section 36), Banking Act (Section 74), Securities Act (Section 132)). It should be noted that these provisions are limited to requesting information relevant to the functions of these supervisory authorities under the respective Acts which do not include ensuring compliance with AML/CFT requirements.

290. **Criterion 27.4** - The FIA as the primary competent AML/CFT authority has the power to apply criminal sanctions under the MLPA for non-compliance with any of the provisions (MLPA, section 33). These breaches of the MLPA are considered an offence and could result in a maximum fine of XCD\$I million (USD370,020). However, these sanctions do not adequately cover failure to comply with both AML and CFT requirements. There are no other sanctions available to the FIA which demonstrate the availability of a range of disciplinary and financial sanctions the authority can use when it identifies cases of failure to comply with the AML/CFT requirements. To note the FIA does not have any licensing powers permitting it to withdraw, restrict or suspend financial institutions' licenses as a sanctioning tool. (Refer to R33 for further analysis).

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

Powers are in place for the FIA to supervise or monitor FIs to ensure compliance with their AML requirements, this includes the appropriate powers to conduct inspections and compel the production of information relevant to the monitoring of the compliance with AML/CFT obligations. However, deficiencies exist in relation to the powers the FIA has to demonstrate it has a range of sanctions it can impose based on the severity of AML deficiencies identified through its supervisory activity as part of its remediation and regulation functions. (also refer to R.35). In addition, there are concerns about the inclusion of CFT in the existing FIA powers. The ECCB has been granted new powers specific to AML but the scope, nature and implementation of these were yet to be determined at the time of the onsite. **Recommendation 27 is rated partially compliant.**

## Recommendation 28 – Regulation and supervision of DNFBPs

291. In its 3<sup>rd</sup> Mutual Evaluation, Saint Lucia was rated as NC with these requirements due to lack of supervision in place of the DNFBPs to ensure they are effectively implementing the AML/CFT measures required under the FATF Recommendations. This included no monitoring activity by the Bar Association.

292. **Criterion 28.1** - Saint Lucia has only one casino that is operational. Casinos are subject to AML/CFT regulation and supervision through the following:

293. (a) - Gaming Operator (casino type establishments) are required to be licensed under section 13 of the Gaming Control Act and no person is allowed to conduct gaming, lease gaming machines in exchange for remuneration, sell, supply or distribute a gaming device or other associated equipment or manufacture, assemble, programme or modify a gaming device unless issued an appropriate licence under the Act. It is unclear in the articulation / description of the relevant legislation which category of licence is categorised as “casino” or that a gaming operator is a casino.

294. (b) - Together with the office of the Commissioner of Police, the Cabinet ensures that criminals or their associates are prevented from holding a significant or controlling interest or management function in casinos. This is provided for under S. 22(5)(b) of the Gaming Control Act which empowers the Cabinet to grant licences only when satisfied that the individual or director or other officer of the company has never been convicted of a serious offence and a verification of this by the Commissioner of Police is required by section 16 of the same Act. A license will not be granted to individuals or companies (director or other officer (manager or company secretary) that have been convicted of a serious offence (Gaming Control Act, section 22 (5)(b)). Regulatory measures employed by the Gaming Authority, including role in approval by the Board of the Gaming Authority such as their fitness and propriety procedures have not been provided. These measures should be clarified particularly if the casino sector in Saint Lucia were to be expanded.

295. (c) - Section 6 (1)(h) of the MLPA *inter alia* assigns the FIA the power to inspect and conduct audits of a person engaged in other business activity as detailed in Schedule 2 of the MLPA.

296. **Criterion 28.2** - The FIA is the designated competent authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. See C 28.1(c) - S6 of the MLPA.

297. **Criterion 28.3** - The FIA is responsible for monitoring compliance with AML/CFT requirements by other categories of DNFBPs. Part B of Schedule 2 of the MLPA designates thirty four (34) business activities considered as DNFBPs - Real estate business; 2. Car dealerships; 3. Casinos (gaming houses); 4. Courier services; 5. Jewellery business; 6. Internet gaming and wagering services; 7. Management Companies; 8. Asset management and advice-custodial services; 9. Nominee services; 10. Registered agents; 11 Any business transaction conducted at a post office involving money order; 12. Lending including personal credits, factoring with or without recourse, financial or commercial transaction including forfeiting cheque cashing services; 13. Finance leasing; 14. Venture risk capital; 15. Money transmission services; 16. Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts); 17. Guarantees and commitments; 18. Trading for own account of customers in— (a) money market instruments (cheques, bills, certificates of deposit etc.); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest rate instruments; and (e) transferable instruments; 19. Underwriting share issues and the participation in such issues; 20. Money broking; 21. Investment business; 22. Deposit taking; 23. Bullion dealing; 24. Financial intermediaries; 25. Custody services; 26. Securities broking and underwriting; 27. Investment and merchant banking; 28. Asset management services;

29. Trusts and other fiduciary services; 30. Company formation and management services; 31. Collective investment schemes and mutual funds; 32. Attorneys-at-law; 33. Accountants; 34. Non-Profit Companies and Non-Profit Organisations. The rationale for designating financial activities as other business activities is unclear as well as the decision to treat NPOs as other business activity. While DNFBPs are included in the MLPA, it is unclear why NPOs and FIs are included in schedule 2, as the latter two are required to comply with specific requirements relevant to those businesses.

298. **Criterion 28.4 (a)** - Under section 6(1)(a) of the MLPA, the FIA is the competent authority and has the power to enter the premises of DNFBPs (which are identified in the MLPA under 'other business activities') during normal working hours and inspect a transaction record kept. Further, the FIA may require from any person, institution or organization the production of any information that the Authority considers relevant to the fulfilment of its functions.

299. **(b)** - Various bodies have responsibility for ensuring measures are in place to prevent criminals or their associates from being professionally accredited or holding a significant controlling interest or managing a DNFBP. Further, S33A and 33B of the MLPA provide for restrictions on conviction of ML offences and suspension or revocation of licences for conviction of an offence under the MLPA. S33A also provides that a person convicted of ML is not eligible to participate in the ownership, management or control of a FI or other business activity. It is unclear which authority oversees that these arrangements are working, particularly for those DNFBPs that are not licensed or registered (motor vehicles dealership, dealers in precious metals or real estate).

300. **(c)** - The range of sanctions available to be applied for non-compliance of DNFBPs is limited both with respect to the areas of non-compliance to which sanctions may be applied (tipping-off and keeping of records) as well as the range of sanctions available to address non-compliance. Both the ATA and the MLPA lists sanctions which are levied for failure to comply with AML/CFT requirements. Section 32(6) of the ATA highlights that persons who do not comply with requirements commit an offence and are on conviction of indictment liable to imprisonment for up to ten years. Further section 32(7) of the Act states that where an offence under this section is committed by a body of persons, whether corporate or incorporate, a person who at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the body of persons, is regarded as having committed the offence and shall be tried and punished accordingly. Additionally, section 16(4) of the MLPA examines the breaches for tipping off and confidentiality and indicates that a person who, at the time of the commission of the offence, acted or purported to act in an official capacity for or on behalf of the financial institution or person engaged in other business activity, commits an offence and is liable on summary conviction to a fine of not less than \$100,000 and not exceeding \$500,000 or to imprisonment for a term of not less than 7 years and not exceeding 15 years or both". Section 16(9) of the MLPA discusses the penalties for failing to keep proper records. A FI or DNFBP upon summary conviction of a breach is subject to a fine not less than \$100,000 but not exceeding \$500,000 or imprisonment of not less than seven years or both. Also, s 33B of the MLPA Amendment no. 20 of 2016 stipulates that where a person engaged in other business activity is convicted of an offence, the Court in addition to any other penalty, may order the suspension or revocation of their licence to operate. There is minimal enforcement ladder of sanctions available for less severe breaches of AML/CFT requirements.

301. **Criterion 28.5** - Whilst the FIA is the competent authority responsible for monitoring the AML/CFT compliance of the DNFBP sectors, there has not been any supervision conducted on a risk-sensitive basis as demonstrated through (a) the frequency and intensity of AML/CFT supervision driven by an understanding of the ML/TF risks and (b) taking into account the ML/TF risk profiles of specific DNFBPs. The FIA highlighted it is in the early stages of recommencing its supervisory work for both FIs and DNFBPs.

### *Weighting and Conclusion*

302. Adequate legislation is in place in Saint Lucia for (a) the licensing of casinos and to some extent, (b) testing of the fitness and propriety of directors, other officers in casinos and (c) the supervision of such entities for compliance with AML/CFT requirements. Deficiencies remain in relation to the application of risk-based supervision of other DNFBPs and the availability of a range of sanctions available to competent authorities as dissuasive measures to encourage compliance when they identify non-compliance within DNFBPs. The categorisation of ‘Other Businesses’ in the MLPA Part B Schedule 2 should be reviewed to ensure alignment with the FATF definitions of FIs, NPOs and DNFBPs. **Recommendation 28 is rated partially compliant.**

### **Recommendation 29 - Financial intelligence units**

303. In its 2008 3<sup>rd</sup> MER, Saint Lucia was rated ‘PC’ for R.29 (formerly R.26). The deficiencies related mainly to there being no systematic review of the ML and TF systems and the non-publication of the periodic reports of the FIA. Since the 2008 Report, the FATF Standards have been significantly strengthened in this area.

304. **Criterion 29.1** - The establishment of the FIA is covered under section 4 of the MLPA. Section 5 of the MLPA states the functions of the FIA, which include receiving, analyzing, obtaining, investigating and disseminating information/STRs which relates to or may relate to the proceeds of criminal conduct.

305. **Criterion 29.2** -

306. **(a)** - The functions of the FIA under section 5 of the MLPA include the receipt of suspicious transactions relating to ML and criminal conduct filed by FIs and persons engaged in other business activities in accordance with section 16(1)(k) and (c) of the said MLPA. There is no similar clear and specific obligation, like 16(1)(k) of the MLPA, for the FIA to receive suspicious transactions relating to TF.<sup>56</sup>

307. **(b)** - Saint Lucia does not require the reporting of cash transactions reports or wire transfers reports.

308. **Criterion 29.3** -

309. **(a)** - The FIA has wide powers to request any information that it considers necessary to fulfill its functions, from any person, institution or organization (section 6(1)(b) of the MLPA). This information is used to assist the FIA in the conduct of its functions including operational analysis which enables the FIA to conduct its operational/strategic analysis properly.

310. **(b)** - The FIA can access to the databases of the transport board, the NIC, the RSLPF and CED of the IRD, ROCIP, FSRA, the Courts, Land Registry, Electoral Department and FIs and DNFBPs. Section 5(2)(a) of the MLPA empowers the FIA to collect and receive information, inclusive of the threshold-based declarations from the CED Department. This obligation is bolstered by an MOU signed between the respective agencies.

311. **Criterion 29.4** -

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<sup>56</sup> Following the completion of the onsite visit, Saint Lucia officials amended its legislation to bring some clarity to the existing legislation. The ATA was also gazetted on October 8, 2019, subsequent to the onsite visit now address the requirement to reporting of STRs.

312. (a) - Section 5(1) of the MLPA provides for the FIA to analyze the reports and information it receives from Saint Lucia's reporting entities. This analysis is conducted by the analysts attached to the FIA and focuses on targets identified in the SARSARs received.

313. b) - The FIA does not conduct strategic analysis but instead generates an annual report with highlighted cases and statistical data, which it receives pursuant to section 5(2)(i) of the MLPA.

314. **Criterion 29.5 -**) The FIA can disseminate information relating to criminal conduct, in accordance with section 5(1) and 5(2)(e) of the MLPA, to specific competent authorities (CED, IRD, Commissioner of Police and the DPP). The FIA utilizes the bi-monthly meeting of the IAIC to facilitate the process whereby dissemination is done through single points of contact in each agency. Information is hand delivered to these contact points. There are measures which address dissemination upon request in the FIA SOP on 'Managing SARS, other investigations and information sharing', dated September 6<sup>th</sup>, 2019. Since the FIA is a hybrid FIU which includes the functions of law enforcement, most information stays in-house.

315. **Criterion 29.6 -** The FIA protects its information at the highest level through section 38(1) of the MLPA which imposes confidentiality obligations on any person who receives information as a result of his connection with the FIA.

316. (a) - The FIA has a SOP on "Physical & I.T. Security" dated, July 2<sup>nd</sup>, 2019 and a OP on SARs and Other Investigations and Information Sharing, dated September 6<sup>th</sup> 2019.

317. (b) - The SOPs referred to in 29.6 (a) are circulated to the staff to ensure compliance. Furthermore, the staff are subjected to vetting procedures which includes polygraphing. Sensitive FIA information is not permitted to be transmitted via electronic facilities unless authorised by the Director or the Deputy Director. There are also strict restrictions on the use of personal electronic mail, the public telephone system and the Internet aimed at protecting the sensitive information of the FIA.

318. (c) - The FIA SOPs referred to in 29.6 (a) ensures that there is limited access to its facilities and information by giving staff members a passcode to gain access to the FIA building which is secured with an alarm system. Furthermore, there is a clean desk policy, a visitor register, measures to secure the access to files and measures for IT security. The FIA's SOP on SARs and Other Investigations and Information Sharing specifically addresses the handling of information by mandating that the Director or Deputy Director authorise any information leaving the FIA and that such information be recorded in a register. Also, information to be disseminated is subject to a code handling system which dictates who it can be disseminated to.

319. **Criterion 29.7 -**

320. (a) - Saint Lucia's FIA is a statutory body created in accordance with section 4(1) of the MPLA. It is comprised of five (5) individuals appointed by the AG for a term of two (2) years and they in turn appoint the Director as the CEO of the FIA. As CEO (Director), the individual becomes part of the FIA's Secretariat. The Secretariat, which is responsible for servicing the FIA, must be comprised of a number of suitably qualified RSLPF, CED and IRD officers or persons from the private sectors. These individuals serve as financial investigators. The FIA may also employ other general support personnel. The FIA can also employ suitable qualified and experienced consultants, with the written approval of the AG (section 4 (6) MLPA).

321. According to the MLPA, (section 5), the core functions of an FIU is vested in the FIA. The Secretariat however services the FIA by carrying out the said functions freely and independent of the FIA. The appointment and dismissal process for the Director is not addressed in the MLPA however his two-year contractual term of office is in line with similar contractual arrangements for Saint Lucian public service professionals.

322. (b) - The FIA can independently enter into agreement or arrangement, in writing, with any foreign FIU it considers necessary for carrying out its functions (section 5(2)(h). The MLPA is silent as to whether the FIA can exercise similar functions in relation to domestic competent authorities. The general provision in section 5(2)(m) of the MLPA is not specific enough to address this. Nevertheless, the FIA has signed several MOUs with other domestic competent authorities on the exchange of information.

323. (c) - The FIA, as a statutory body, is not located within the structure of any other agency.

324. (d) - The FIA can deploy its resources freely and on a routine basis. The budget of the FIA is obtained from the Consolidated Fund through the AG following Parliamentary approval. This approval process provides governance and oversight. However, there is a structural lack of resources and budget within the FIA and the 'proposed budget' is not in line with the FIA mandate and is related to the chance on a certain amount of 'allocated budget'.

325. **Criterion 29.8** - The FIA became a member of the Egmont Group in June 2010.

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

There is a decent structure for the FIA to further grow and develop into an FIU that is compliant with Recommendation 29. Some functions might have been better presented by sharing the full annual reports with the assessment team. However, there is still room for improvement. There are concerns regarding transparency of the process for the appointment of the Director and management. The FIA does not conduct strategic analyses and the Secretariat is functioning as the FIA.

**Recommendation 29 is rated partially compliant.**

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

326. In its 3<sup>rd</sup> MER Saint Lucia was rated NC with these requirements. The investigative infrastructure was ineffective and low priority to ML and TF investigations was given by the police which resulted in there being no prosecutions at the time. Most of the deficiencies with regard to formally R.27 are in this 4<sup>th</sup> round MER evaluated in the immediate outcome analysis. Changes to the Recommendation include ML/TF investigations in a national context, and the designation a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation.

327. **Criterion 30.1** - The FIA is the designated agency with the responsibility for investigating the proceeds of criminal conduct and ML. The RSLPF is the designated LEA for TF and predicate offence but not ML. Criminal conduct as defined at section 2 of the POCA encompasses ML, the associated predicate offences and TF. Generally, the Police Service Act (PSA) provides for the duties of police officers and at section 23(1)(a) the duties include preventing and detecting crimes and other infractions of the law. When the RSLPF detects ML they can in theory investigate, however they will refer such investigations to the FIA. The IRD undertakes 'non-criminal' investigations into tax evasion offences. The IRD has no law enforcement officers and will pass criminal tax matters to the RSLPF.

328. **Criterion 30.2** - In Saint Lucia the Police use general police duties found at section 23(1)(a) and (b) of the PSA to conduct investigations into the predicates for ML and are able to pursue financial investigations pursuant to section 41 of the POCA. SOPs also address the possibility of parallel investigations in which the FIA investigates ML. The FIA is designated to conduct ML/TF investigations. If the need arises the FIA can start a parallel ML investigation while the RSLPF investigates the predicate offence. Section 5 of the MLPA enables the FIA to receive information



from the RSLPF. There is no legislation which permits LEA investigators to pursue cases wherever the predicate offences occurred.

329. **Criterion 30.3** - The FIA is the designated agency expeditiously identifying, tracing, freezing and seizing of property.

330. **Criterion 30.4** - IRD exercise investigative functions that can complement the RSLPFs and FIAs efforts in combating ML and TF. There is an MOU between FIA and CED, and one between FIA and IRD that addresses and organizes information exchange and collaboration in AML and CTF.

331. **Criterion 30.5** - Corruption is a predicate offence under the MLPA, as a result the FIA has responsibility and can use its powers for investigating assets and ML/TF offences arising out of corruption offences. There is no anti-corruption enforcement authority.

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

332. ML, the associated predicate offences and TF are designated to the RSLPF and the FIA. There is no legislation that permits LEA investigators to pursue cases wherever the predicate offences occurred. **Recommendation 30 is rated largely compliant.**

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

333. Saint Lucia was rated LC for R.31 (formerly R.28) in its 3<sup>rd</sup> MER due to the fact that: (i) The FIA could not take witness statements for use in investigations; nor search persons or premises that are not FIs or businesses of a financial nature.

334. R. 31 expands the powers of LEAs and Investigative Authorities (IAs). Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and be able to request information from FIA when conducting relevant investigations.

335. **Criterion 31.1 (a)** - Section 6(1) (b) of the MLPA enables the FIA to obtain information from any person, institution or organization or any information that the FIA considers relevant to the fulfillment of its functions. These functions include the investigation of offences under the MLPA and the POCA and includes ML offences. Section 41 (b) of the POCA authorizes a police officer to apply for a Production and Inspection order against a person suspected of committing a criminal conduct and that person has possession or control of a document. Section 51(1) of the POCA authorizes a police officer to obtain information from a financial institution. The foregoing however does not apply to DNFBPs and other legal and natural persons who may not have committed the offence but have custody or control of documents, these can be ordered by court by means of section 59 of the POCA. Section 23 of the ATA gives the Police the power to obtain information. Section 102 of the Customs Act and section 87 of the Income Tax Act allows the relevant Authority to obtain for information from FIs and DNFBPs.

336. **(b)** - Section 24 of the POCA enables the Police, including those seconded to the FIA, to apply for a search warrant for tainted property. Section 46 (1)(b) of the POCA provides for search warrants to facilitate investigations on 'any premises' for any document named in section 41 of the POCA. The documents listed in section 41 of the POCA are mainly on tracing assets. Section 622 of the Criminal Code provides for searching any building, ship, carriage, box, receptacle or place for evidence. Section 6(1) of the MLPA gives the FIA the power to enter the premises of FIs and DNFBPs to inspect transaction records however this is not a search. It is not clear if the police can search persons, other than the ones arrested (section 588 Criminal Code).



337. (c) - Section 6(1)(g) of the MLPA gives the FIA the power to take witness statements from any person in relation to ML offences. The RSLPF refers to section 153 of the Evidence Act that creates a provision for the RSLPF to take witness statements which is based on common-law provisions reflected in the Police and Criminal Evidence Act (PACE). Saint Lucia provided domestic case law to evidence this. CED can take witness statements according to the sections 25(5), 37(2)(c), 86(2) and 88(2)(f) of the Customs Act.

338. (d) - The ATA (s. 33 & 35), the MLPA (s. 22(b)), the Criminal Code (s. 622) and the POCA (s. 23, 46) give the powers to LEAs to seize and obtain evidence relative to ML, associated predicate offences and TF.

339. **Criterion 31.2 (a)** - Pursuant to section 624(4) of the Criminal Code a magistrate may issue a warrant authorizing a police officer to use any investigative technique or procedure or do anything described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property. Investigative techniques here include undercover operation.

340. (b) - Section 5 of the Interception of Communications Act provides for a judge to issue an interception direction for the prevention or detection of any offence in the MLPA and POCA and the ATA. Request can be done by an authorized officer, according to section 2(1) of the Interception of Communications Act that is the Commissioner of Police, the Director of the FIA and the Comptroller of Customs.

341. (c) - Section 624 (2) and (3) of the criminal Code gives the 'officer of law' power to access computer systems. The definition of 'officer of law' in the criminal code is: a sheriff, police or any other officer or person having authority for the time being to serve documents or execute process. Section 624 is related to any offence and thus includes ML.

342. (d) - Controlled delivery is only applicable to drug offences under the Drug Act (*section 34*). This is a power of the Minister charged with the responsibility for health.

343. **Criterion 31.3 (a)** - Section 6(1) of the MLPA gives the FIA the power to identify whether natural or legal persons have accounts and to enter into premises of FIs and DNFBPs during working hours and on weekend and public holidays. This is not in a timely manner. The RSLPF can access this information through the FIA. Section 41 of the POCA also gives the RSLPF this power. It is not clear if this can be done in a timely manner. Section 94 and 102 of the Customs (Control and Management) Act give the CED the power to search premises and require information.

344. (b) - The provision in law allows for the relevant authorities to identify assets without prior notification to the owner (see R.4).

345. **Criterion 31.4** The FIA has a MMOU with domestic authorities that permits them to ask for information.

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

346. Many of the powers of the competent authorities are in place, however some powers are not available. There are no provisions which permit searches at FIs and DNFBPs by the FIA, also it is not clear if the police can search persons and question witnesses. There is no mechanism for competent authorities to request information from the FIA. **Recommendation 31 is rated largely compliant.**

## Recommendation 32 – Cash Couriers

347. Saint Lucia was rated ‘NC’ for this Recommendation (formerly SR IX) in its 3<sup>rd</sup> MER. Among the deficiencies noted were: (i) no legal provision for reporting or for a threshold, (ii) the legislation did not specifically address the issue of currency and bearer negotiable instruments and (iii) no specific provision in the legislation that allowed custom authorities to stop and restrain currency and bearer negotiable instruments to determine if ML/TF may be found. The Customs (Control and Management) Act now has legal requirements for declaring cash or bearer negotiable instruments brought into Saint Lucia that is over USD\$10,000.00. There is however still no express provision under the Act that empowers custom authorities to restrain currencies or BNIs for a reasonable time pending investigation.

348. **Criterion 32.1** - The requirement for a declaration system for incoming cross-border transportation of currency and bearer negotiable instruments (BNIs) by travellers is met by virtue of sections 84(2), Part 2 paragraph 20 of the Customs (Control and Management) Act, section 9 (1)(a) of the Immigration Act and regulation 7 of the Immigration Regulations. In relation to outgoing cross-border transportation of currency and BNIs Schedule 3, Part 3, paragraph 5 of the Customs (Control and Management) Act requires the exchange control permission to export foreign currency exceeding the prescribed amount. This however only relates to foreign currency and does not cover local currency and BNIs. There is also no provision outlining the meaning of “exchange control permission” and no definition of “the prescribed amount” therefore preventing the enforcement of the provision. Accordingly, this provision does not meet the requirements of the criterion. However, section 86(2) of the Act provides that any person entering or leaving Saint Lucia shall answer such questions as the proper officer may put to him or her with respect to his or her baggage and anything contained therein or carried with him or her. This section therefore meets the requirements of a disclosure system for travellers and covers both incoming and outgoing cross-border transportation of currency and BNIs. As it concerns mail, regulation 143 (1) of the Customs Regulations requires that every postal packet posted in the Island for transmission to any place outside it or brought by post into the Island to have affixed to it or to be accompanied by a customs declaration fully and correctly stating the nature, quantity and value of the goods which it contains, or of which it consists. Under section 2 of the Act, the definition of “goods” includes money and the definition of “money” is currency and negotiable instruments. In relation to cargo, regulation 18 of the Customs Regulations provides that the contents of same shall be reported in accordance with the description thereof contained on the relevant bill of lading.

349. **Criterion 32.2** - The value of the currency and bearer negotiable instruments that must be declared for incoming cross-border transportation is over USD\$10,000.00; this declaration is made on a form.

350. **Criterion 32.3** - Section 86(2) of the Customs (Control and Management) Act provides that any person entering or leaving Saint Lucia shall answer such questions as the proper officer may put to him or her with respect to his or her baggage and anything contained therein or carried with him or her.

351. **Criterion 32.4** - The provision in section 86(2) of the Customs (Control and Management) Act also applies to this criterion. Further, section 102 of the said Act provides that any person concerned in the importation, exportation or carriage coastwise, or in the carriage, unloading, landing or loading of goods shall furnish to any officer in such form and manner as he or she may require,

any information relating to the goods and empowers the Comptroller to require evidence to be produced to his or her satisfaction in support of any information provided. These provisions therefore allow the competent authorities to request and obtain further information upon the discovery of a false declaration of currency or BNIs or failure to declare same.

352. **Criterion 32.5** - Sanctions for false declarations and disclosures are found in sections 86(3), 113(1)(b), 113(2)(b) and 116(1)(b) of the Customs (Control and Management) Act. These sanctions range between a fine of \$5000.00, \$10,000.00 or three times the value of the thing not declared or imprisonment for two (2) or five (5) years. Sections 113(1)(b), 113(2)(b) and 116(1)(b) are also wide enough to cover transportation of currency and BNIs through mail and cargo. Schedule 4, paragraph 8 of the said Act also allows for civil proceedings of condemnation to be initiated and section 130(5)(a) empowers the Comptroller to charge a restoration fee. Section 36(1)(e) of the Immigration Act also provides a sanction for false declaration which renders the person liable to a penalty of \$2,500 or to imprisonment for 6 months or to both such penalty and imprisonment. These sanctions are proportionate and dissuasive.

353. **Criterion 32.6** - There is no provision for the CED to notify the FIA about suspicious cross-border transportation incidents or to make the declaration information directly available to the FIA. However, the MMOU in place between the FIA and the CED allows for sharing information and includes cross-border transactions. While there is no specific provision in this MMOU for the CED Department to notify the FIA about suspicious cross-border transportation incidents, the MMOU allows for sharing of intelligence and for the CED Department to advise the FIA of investigations involving suspected ML and other financial crimes. These provisions are wide enough to cover suspicious cross-border transportation incidents. Further, section 5(2)(a) of the MLPA empowers the FIA to collect and receive information from the CED Department.

354. **Criterion 32.7** - The power of the FIA to collect information and the MMOU between the FIA and the CED Department as outlined in criterion 32.6 are relevant for this criterion. There is also an IAIC comprising of the FIA, customs and divisions of the police with the objective of enhancing intelligence and information sharing, assisting in the work of each individual agency and conducting joint investigations. The mandate of the Committee is wide enough to cover the transportation of currency/BNIs.

355. **Criterion 32.8 - (a)** Section 29A of the POCA empowers a police officer not below the rank of corporal to seize and detain cash pending investigations as to whether it represents a person's proceeds of crime or is intended by any person for use in any criminal conduct. The cash can be initially detained for a period of 48 hours and can thereafter be detained for up to 2 years pursuant to an order of a Magistrate. The definition of cash in the POCA includes BNIs. There is no express provision in the Customs (Control and Management) Act which empowers customs officers to restrain currency or BNIs where there is suspicion of ML/TF or predicate offences for the purpose of ascertaining whether there is evidence of ML/TF. However, the CED and the FIA have a system in place where the CED notifies the FIA about cases involving a suspicion of ML/TF. This enables the police officers who are assigned to the FIA to seize and detain the cash or BNI.

356. **(b)** - Customs officers are empowered to restrain currency or BNIs where there is a false disclosure or false declaration (sections 113(1)(b), 113(2)(b) and 130 Customs (Control and Management) Act). However, the restraint in these circumstances is not for the purpose of

ascertaining whether there is evidence of ML/TF; rather, it is to enable proceedings for the currency or BNIs to be condemned as forfeited.

357. **Criterion 32.9** - Saint Lucia does not have provisions to meet sub-criteria (a) and (b). In relation to sub-criterion (c), cross-border movement that concerns suspicions of ML are referred to the FIA. Section 5(2)(f) of the MLPA requires the FIA to *retain the record of all information that it receives for a minimum period of 5 years*".

358. **Criterion 32.10** - This criterion is met by virtue of section 6(1) of the Customs (Control and Management) Act and section 38 of the MLPA which provide criminal sanctions in the event of unauthorized disclosure.

359. **Criterion 32.11** - This criterion is covered under the ML offence at section 28(1)(a) of the MLPA which makes it an offence to bring into or remove from Saint Lucia any property which represents the proceeds of criminal conduct and the ML offence at section 30 of the MLPA which makes in an offence to be in possession of the proceeds of criminal conduct. The offence of TF is covered under the definition of criminal conduct. A person who commits any of these offences is liable (a) on summary conviction to a fine of not less than XCD\$500,000.00 (USD185 010) and not exceeding XCD\$1,000,000.00 (USD370 020) or to imprisonment for a term of not less than five (5) years and not exceeding ten (10) years or both; or (b) on conviction on indictment to a fine of not less than XCD\$1,000,000.00 (USD370 020) and not exceeding XCD\$2,000,000.00 (USD740 041) or to imprisonment for a term of not less than ten (10) years and not exceeding 15 years or both. The criterion is also covered by section 9 of the POCA which empowers a court to make a forfeiture order in relation to tainted property upon the conviction of a person for criminal conduct. "Tainted property" is defined at section 2 of POCA to mean (a) property used in, or in connection with, the commission of the offence; or (b) proper derived from, obtained or realised, directly or indirectly, from the commission of the offence.

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

360. Saint Lucia has significantly increased its compliance with this recommendation. Shortcomings however still exist in that: (1) Custom authorities do not have express power to restrain currencies or BNIs in order to ascertain whether evidence of ML/TF may be found where there is a false declaration or false disclosure or where there is a suspicion of ML/TF or predicate offences; and (2) There is no provision to retain information when there is a declaration or disclosure that exceeds the prescribed threshold or when there is a false declaration or false disclosure. These shortcomings are however assessed as minor given the fact that: (1) There is a system in place where the CED notifies the FIA about cases involving a suspicion of ML/TF which enables the police officers assigned to the FIA to restrain detain currencies or BNIs under the POCA for a reasonable time in order to ascertain whether there is evidence of ML/TF; and (2) There are provisions in place to retain information where there is a suspicion of ML/TF. **Recommendation 32 is rated largely compliant.**

### **Recommendation 33 – Statistics**

361. In its 3<sup>rd</sup> MER, Saint Lucia was rated 'NC' with these requirements. Among the concerns noted were: there was no legislative or structural framework; failure to keep comprehensive statistics; failure to disseminate statistics; and failure to acknowledge statistics as received. Since

then, the Methodology for assessing compliance with this Recommendation has changed significantly requiring countries to maintain comprehensive AML/CFT statistics.

362. **Criterion 33.1** - Whilst the FIA is mandated to compile statistics or records (MLPA, section 5(2)(i)), there was limited evidence of national statistics maintained in relation to AML/CFT as part of routine monitoring of Saint Lucia's AML/CFT regime. A range of statistics were provided to the Assessors through Saint Lucia's Effectiveness Report and supporting material which included:

- a.) SARs received by the FIA split by sector; offences and those resulting in investigations.
- b.) Investigations in relation to predicate offences more broadly, rather than statistics in relation to specific ML or TF investigations, including where they have led to prosecutions and convictions.
- c.) Statistics on cash seizures but there was no evidence of routine statistics maintained in relation to confiscations or frozen funds.
- d.) Various data on mutual legal assistance or other international requests for co-operation made and received.

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

363. Whilst statistics were produced for review by the Assessors, there is no evidence that these are routinely maintained by agencies, including the FIA, to assist Saint Lucia monitor the effectiveness and efficiency of its AML/CFT systems through for example at NAMLOC meetings. As Saint Lucia continues to develop its AML/CFT systems covering supervision, investigation, prosecution and cooperating with international partners, it should ensure relevant AML/CFT information and data is maintained routinely to help demonstrate how effectively its AML/CFT system is performing. **Recommendation 33 is rated partially compliant.**

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

364. This Recommendation (formerly R.25) was rated 'NC' in the 3<sup>rd</sup> MER because the guidance notes issued by the FIA did not give assistance on the issues required by the Recommendation and the FIA did not provide feedback to FIs on SARs filed and FATF best practices. The FSRA has also been proactive in this area, including issuance of AML/CFT guidelines to the sectors it supervises for prudential risk.

365. **Criterion 34.1** - The FIA has established and issued AML/CFT guidelines for attorneys and the real state sector. The FSRA as part of its prudential remit, has established and issued guidelines to FIs and registered agents and trustees; some of these guidelines were however not specific to AML/CFT but were instead guidelines in relation to the FSRA Act. The FIA has conducted compliance meetings, trainings and presentations with FIs and DNFBPs where further guidance is issued. The MLPA at Appendix G makes provision for a "Financial Intelligence Authority Feedback Report" for providing feedback to entities but the FIA has never utilised this form. The FIA however provides feedback on the quality of SARs to entities at the aforementioned compliance meetings and training sessions on the quality of SARs. No information was available in relation to the feedback provided by the FSRA. There are no SRBs in Saint Lucia.

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

366. No AML/CFT guidelines have been established and issued by the FIA to FIs. While the FSRA has issued guidelines to FIs and registered agents and trustees, some of these guidelines were not specific to AML/CFT. No information was available in relation to the feedback provided by the FSRA or in relation to guidelines and feedback provided by SRBs. **Recommendation 34 is rated partially compliant.**

### **Recommendation 35 – Sanctions**

367. Saint Lucia received a rating of ‘PC’ for this Recommendation (formerly R. 17) in its 3<sup>rd</sup> MER. The deficiency expressed was that the full range of sanctions (civil, administrative and criminal) was not available to all supervisors. The lack of enforcement of criminal sanctions negatively impacted the effectiveness of the imposition of criminal sanctions.

368. ***Criterion 35.1 -***

369. **(a) Targeted Financial Sanctions (R.6):** One sanction was provided in relation to breach of requirements to comply with TFS – this was a maximum of ten years imprisonment (section 32 of the ATA). This would apply to any person who fails to disclose to the FIA any information available about possession of terrorist property including relevant transactions. This is the only available sanction provided in relation to failure to comply with the AML/CFT requirements of R6, therefore it was difficult to assess that a range of proportionate and dissuasive sanctions are in place for supervisors to demonstrate the range of sanctioning powers available that can be applied based on the severity of deficiencies identified, and whether the sanction applies to legal persons as well as natural persons.

370. **(b) Non-Profit Organisations (R8):** The authorities highlighted that NGOs are required to comply with the provisions of the MLPA and ATA, but not the Guidance Notes. Therefore, the range of possible sanctioning powers available to supervisors to be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of the relevant NPOs were not illustrated. Examples of possible range of such sanctions might include freezing accounts, removal of trustees, fines, de-certification and de-registration, in addition to parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf.

371. **(c) Preventive Measures (R9-R23):** Breaches of the MLPA Guidance Notes by FIs and DNFBPs are considered an offence and could result in a maximum fine of XCD \$1million (USD0.37). There are deficiencies in the current measures to ensure sanctioning powers cover both AML and CFT breaches, as the inclusion of compliance with CFT obligations is not clearly articulated in the MLPA. There are no additional sanctioning powers available to supervisors specific to AML/CFT breaches. The FSRA issues guidelines which can cover AML/CFT (FSRA Act, section 15). Should an entity fail to follow the guidelines, the authority can issue a directive and failure to follow the directive can lead to a sanction being applied pursuant to Section 37 (5) of the Act. Additionally, the FSRA can impose directions with the additional sanction of suspension or revocation of an FI’s licence for failure to comply with the direction (FSRA Act, Section 37). The ECCB and ECSRC have powers to withdraw, restrict or suspend an FI’s license, impose civil penalties and prohibit individuals from managing a relevant FI. However, it is unclear whether these sanctions can be applied for AML/CFT infractions in Saint Lucia.

372. **Criterion 35.2** Measures in the Interpretation Act (s20(2)) include provisions relating to offences and penalties applicable to directors, general managers, secretaries or other officers for being liable for prosecution for offences, as if they had personally committed the offence, upon the direction of the Attorney General. These provisions apply to an offence under any enactment, including failure to comply with AML/CFT requirements.

**Weighting and Conclusion**

373. An appropriate range of sanctions are still not available to supervisors to apply in a proportionate manner when they identify failure to comply with the AML/CFT requirements. In addition, while the Interpretation Act includes provisions for offences under any act coming into force after 2003, which can be applied to senior management, neither the MLPA or the ATA, as Saint Lucia's primary AML/CFT legislation, explicitly feature sanctions that can be extended to legal persons and, including no provision which makes directors or senior management of FIs or DNFBPs liable for their entity's offence/breach. It is therefore recommended that the legislative framework be reviewed e.g. the MLPA and ATA to address these shortcomings and strengthen the available powers of competent AML/CFT supervisors. **Recommendation 35 is rated partially compliant.**

### Recommendation 36 – International instruments

374. Recommendation 36 (formerly R. 35 and SR. I) was rated 'NC in Saint Lucia's 3<sup>rd</sup> MER as the Palermo and Terrorist Financing Conventions were not ratified, there was no Anti-Terrorism Act and the UNSCRs were not fully implemented. As noted in Recommendation 3, the Palermo Convention has since been ratified and as noted in Recommendation 5, the ATA has now been brought into force. Saint Lucia has also acceded to the United Nations Convention against Corruption and the Terrorist Financing Convention on November 18, 2011.

375. **Criterion 36.1** - Saint Lucia has been a party to the Vienna Convention since August 27, 1986. Saint Lucia ratified the Palermo Convention on July 16, 2013. The United Nations Convention against Corruption (the Merida Convention) and the Terrorist Financing Convention were acceded to by Saint Lucia on November 18, 2011.

376. **Criterion 36.2** - Saint Lucia has implemented most of the articles of the Vienna Convention by virtue of the Drugs (Prevention of Misuse) Act, the Proceeds of Crime Act, the Extradition Act, the Mutual Assistance in Criminal Matters Act, the Customs (Control and Management) Act, the Criminal Code, the Money Laundering (Prevention) Act, the Shipping Act and the Civil Aviation Act. Saint Lucia has however not fully implemented the article of the Vienna Convention relating to illicit traffic by sea (art.17).

377. Saint Lucia has implemented most of the articles of the Palermo Convention by virtue of the Proceeds of Crime Act, the Mutual Assistance in Criminal Matters Act, the Criminal Code, the Money Laundering (Prevention) Act and the Shipping Act. However, while the article concerning concluding agreements on the disposal of confiscated proceeds of crime or property (article 14, paragraph 3) has been implemented in relation to the United States and the French Republic by virtue of article 16 of the Mutual Assistance (Extension and Application to USA) Regulations and article 15 of the Mutual Assistance in Criminal Matters (Agreement) (Saint Lucia and the French Republic) Regulations respectively, no information was available to demonstrate that it has been implemented



in relation to other states -Saint Lucia has also not fully implemented the establishment of jurisdiction over the relevant offences in the circumstances required by article 15, paragraph 2 of the Convention.

378. Saint Lucia has not fully implemented the articles in the Merida Convention dealing with bribery of foreign public officials and officials of public international organizations (article 16), cooperation between national authorities (article 38) and special investigative techniques (article 50). Requirements of the article concerning the disposal and return of assets (article 57), such as having measures in place to return confiscated property to a requesting State Party, have been implemented in relation to the United States and the French Republic by virtue of article 16 of the Mutual Assistance (Extension and Application to USA) Regulations. This requirement as well as the requirements for the conclusion of case specific agreements and for the deduction of reasonable expenses in asset return have been implemented in relation to the French Republic by virtue of article 15 of the Mutual Assistance in Criminal Matters (Agreement) (Saint Lucia and the French Republic) Regulations respectively. No information was however available to demonstrate that the article has been implemented in relation to other states. The other articles of the Merida Convention have been implemented by Saint Lucia by virtue of the Proceeds of Crime Act, the Mutual Assistance in Criminal Matters Act, the Extradition Act, the Criminal Code, the Money Laundering (Prevention) Act and the Integrity in Public Life Act.

379. Most of the articles of the Terrorist Financing Convention have been implemented by Saint Lucia by virtue of the Anti-Terrorism Act and the Shipping Act. Saint Lucia has however not fully implemented the article concerning notification of other State Parties where a person has been taken into custody (article 9, paragraph 6).

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

380. Saint Lucia is a party to the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption (the Merida Convention) and the Terrorist Financing Convention and has implemented most of the articles of each Convention. **Recommendation 36 is rated largely compliant.**

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

381. Recommendation 37 was formerly R. 36 and SR. V. Saint Lucia received ratings of ‘PC’ and ‘NC’ respectively in its 3<sup>rd</sup> MER. The primary deficiency noted was that the condition of dual criminality resulted in a mandatory refusal of requests for assistance if dual criminality did not exist. The condition of dual criminality still exists for assistance provided under the Mutual Assistance Criminal Matters Act (MACMA).

382. ***Criterion 37.1*** - The MACMA provides a legal basis for Saint Lucia to provide a range of mutual legal assistance in relation to ML, associated predicate offences and TF investigations, prosecutions and related proceedings. The types of assistance that can be provided include: obtaining evidence, locating/identifying a person, obtaining an article/thing by search and seizure, arranging for the attendance of a person to give or provide evidence, transferring an inmate, serving documents, registering foreign orders, obtaining restraint orders. The MACMA relates to providing assistance to commonwealth countries. However, the MACMA has been extended to the United States by virtue of the Mutual Assistance (Extension and Application to USA) Regulations which gives force to the treaty between Saint Lucia and the USA on MLA and the Mutual Assistance in Criminal Matters



(Agreement) (Saint Lucia and the French Republic) Regulations, 2019, which gives force to the Agreement between Saint Lucia and the French Republic on MLA.

383. Saint Lucia also executes MLA requests from non-commonwealth countries or countries that do not have treaties with Saint Lucia by means of Letters Rogatory. The basis of the request can be by means of any of the international treaties to which Saint Lucia is a signatory. The Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters Act also provides a legal basis for Saint Lucia to provide MLA to countries that are signatories to the Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters.

384. **Criterion 37.2** - The Office of the Attorney General has been designated as the Central Authority pursuant to section 3 of the MACMA and accordingly, all requests under that MACMA are channelled through the Office of the Attorney General. For cases of requests from non-commonwealth countries or countries that do not have treaties with Saint Lucia, these are channelled through the Ministry of Foreign Affairs, through the Permanent Missions of Saint Lucia by means of Letters Rogatory, and then subsequently forwarded to the Office of the Attorney General. For both requests received under MACMA and Letters Rogatory, when a request is received, it is immediately sent to the relevant stakeholder agencies. The Office of the Attorney General has a database in place which captures all requests received and has processes for the timely prioritisation and execution of requests. A request is either assigned to the AG, the SG or Senior Crown Counsel who are required to complete a MLAT Capture Sheet with relevant information about the request such as the featured names in the request, offences, nature of request, the agency to which the request is forwarded to for execution and the action to be taken. The MLAT Capture Sheet is then forwarded to one of two secretaries from the Office of the Attorney General are assigned to undertake follow-up on the requests; follow-up is done on a case by case basis.

385. **Criterion 37.3** - Section 18(2) of the MACMA outlines the circumstances in which a request for assistance shall be refused. These circumstances are not unreasonable or unduly restrictive. Section 18(3) outlines the circumstances in which a request may be refused. The fact that this section gives the country discretion means that it does not operate to prohibit the request. Further, pursuant to section 18(5), a request can still be accepted in relation to some matters contained in the request even if sections 18(2) and 18(3) apply to other matters in the request. No information was available in relation to the circumstances in which MLA through Letters Rogatory would be refused.

386. **Criterion 37.4** - The grounds for refusal outlined in section 18 of the MACMA do not include the ground that the offence involves fiscal matters or the grounds of secrecy or confidentiality requirements of FIs or DNFBBPs. No information was available in relation to the circumstances in which MLA through Letters Rogatory would be refused.

387. **Criterion 37.5** - Section 17 of the MACMA provides that where a Commonwealth country makes a request for assistance and wishes that the request be confidential, the requesting State shall state that the request is confidential and provide reasons for same. This however does not impose a duty on Saint Lucia to preserve confidentiality. Nevertheless, MLA requests under the MACMA and by way of Letters Rogatory are handled by senior or vetted members of staff of the relevant competent authorities which is a measure that ensures confidentiality limits the number of persons who have access to MLA requests. Further, there are guidelines and circulars in place at some of the competent authorities which enforce the requirement for confidentiality. In relation to requests from the USA and the French Republic, confidentiality is further provided as confidentiality provisions

are imposed in the Mutual Assistance (Extension and Application to USA) Regulations and the Mutual Assistance in Criminal Matters (Agreement) (Saint Lucia and the French Republic) Regulations, 2019 (Article 5(5) and 19 respectively). Confidentiality requirements are also imposed in article 9 of the Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters Act. In relation to Letters Rogatory, confidentiality is further ensured by an “envelope in envelope procedure” developed by the Attorney General’s Chambers where the information requested by the requesting country is packaged, properly sealed, addressed and placed in an envelope. That envelope is placed in another envelope addressed to the Ministry of External Affairs for onward transmission to the requesting country.

388. **Criterion 37.6** - The absence of dual criminality is one of the circumstances in which a request for assistance must be refused in accordance with Section 18(2) of the MACMA. No provision is made to accept a request where the requirement of dual criminality is absent even if the request does not involve coercive actions. Article 7(4) of the Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters Act however provides that dual criminality shall not be a pre-requisite for the rendering of assistance under the Treaty. Accordingly, the absence of dual criminality would not prohibit the execution of a MLA request to non-commonwealth Caribbean countries that are signatories to the Caribbean Treaty on Mutual Legal Assistance in Serious Criminal Matters.

389. **Criterion 37.7** - The dual criminality requirement examines the actual conduct that has occurred. There is no requirement that both countries place the offence in the same category or denominate the offence by the same terminology.

390. **Criterion 37.8** - Section 34 of the MLPA empowers the FIA to provide assistance by means to include: the providing of original or certified copies of relevant documents and records, including those financial institutions and government agencies obtaining testimony, in a requesting State of persons, including those in custody; the executing of searches and seizure; and the providing of information and evidentiary items. In specific sections of the MACMA, Saint Lucia can employ limited powers and investigative techniques to obtain the information requested by a foreign state; for example, (1) section 19(3) provides that copies of records not publicly available may be produced, copied and examined to the extent that they would be produced to or examined by enforcement, prosecuting or judicial authorities in Saint Lucia, and (2) section 21 (1) provides that the AG can authorise a police officer to apply to a magistrate for a search warrant. These do not however cover all the domestic powers and investigatory techniques that are available to domestic competent authorities such as the power of the police to apply for production and inspection orders and monitoring orders under the POCA, the power to apply for an order for the gathering of information under the ATA and the power to apply under the Interception of Communications Act.

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

391. The absence of dual criminality still results in a mutual assistance request being refused under the MACMA; there is no discretion in this regard as the language imposed is mandatory. Saint Lucia cannot apply all the domestic powers and investigatory techniques that are available to domestic competent authorities to foreign mutual legal assistance requests. Limited information was available in relation to MLA requests through Letters Rogatory which had a cascading effect on the criteria. **Recommendation 37 is rated partially compliant.**

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

392. Saint Lucia was rated LC for R.38 in its 3<sup>rd</sup> round MER on account that there were no formal arrangements for coordinating seizures, forfeitures, confiscations provisions with other countries. The deficiencies regarding R.38 were addressed by the Cabinet of Saint Lucia through the ratification of the Palermo Convention which will assist in coordinating seizures, forfeitures, and confiscations provisions with other countries. Also, the Attorney General's Chambers is appointed to be the Central Authority for the purpose of receiving and processing international requests. R. 38 now has new requirements regarding request for non-conviction-based confiscation and measures for managing and disposing of confiscated property.

393. **Criterion 38.1 (a-d)** - The provisions in the MACMA make provisions for the search and seizure of any article or things in Saint Lucia, tracing of property derived or obtained directly or indirectly from the commission of an offence and is suspected of being located in Saint Lucia, restraint of property suspected to have been derived or obtained from criminal conduct and the confiscation of property derived from a specified criminal offence. The restraint and confiscation provisions also apply to property available to satisfy a confiscation order (can be considered as property of a corresponding value) (s.21, 24 and 26 of the MACMA) and proceeds or instrumentalities of offences (s.16 MACMA). Similar provisions exist within the Mutual Assistance in Criminal Matters (Agreement) (Saint Lucia and the French Republic) Regulations (Arts.14 and 16). The foregoing provisions are only applicable to Commonwealth member Countries, the USA and the French Republic. There are also seizing, freezing and forfeiture measures by the FIA on the behalf of the Court or competent authority (*section 34(3) of the MLPA*). The foregoing is nevertheless limited to ML offences.

394. **Criterion 38.2** - There are no provisions which allow assistance to requests for co-operation on the basis of non-conviction-based confiscation proceedings.

395. **Criterion 38.3 Sub-criterion 38.3 (a)** - Saint Lucia relies on Treaties, which are established on a case-by-case basis, for coordinating seizures and confiscation with other countries.

396. **(b)** Section 8 of the MPLA provides for the establishment of a forfeiture fund under the control of the Accountant General. Here 40% of the proceeds of the sale of forfeited property must be deposited for equal distribution between the FIA and the Advisory Council on the Misuse of Drugs. Apart from this, the Court when making a forfeiture order may give directions as to the disposal of the property (section 24 (6) (b)). There is no mechanism for managing property frozen or seized.

397. **Criterion 38.4** - Saint Lucian officials referenced the Treaties with the USA and the French Republic as measures which allows for assets sharing. The authorities also noted that they can enter into agreement on case-by-case basis with other countries on asset sharing.

#### **Weighting and Conclusion**

398. The measures in place are related to the Commonwealth countries, the USA and the French Republic. There is no information available to the assessment team that evidences a multi-agency co-ordinated approach on MLA requests and its seizures. There are no provisions which allow assistance to requests for co-operation on the basis of non-conviction based confiscation proceedings. There is no mechanism in place for the management of property frozen or seized. **Recommendation 38 is rated partially compliant.**

## Recommendation 39 – Extradition

399. This Recommendation was rated ‘NC’ in Saint Lucia’s 3<sup>rd</sup> MER on the basis that ML was not an extraditable offence. ML, terrorism and TF became extraditable offences by virtue of the Extradition (Amendment) Act 3 of 2010, which amended the Extradition Act, Cap 2.10. After this amendment, there have not been other changes to the extradition law.

400. **Criterion 39.1 (a-c)** - The Extradition Act includes ML and TF as extraditable offences. The Office of the Attorney General is responsible for receiving and actioning requests. The Backing of Warrants Act provides another framework for extradition based on warrants of arrest issued in a requesting country. The definition of “requesting country” is a country designated a requesting country by the Attorney General by Order published in the Gazette. Saint Lucia has outlined the process between competent authorities from the point when a request is received to the matter being placed before the court and has demonstrated that these requests are treated with priority and in a timely manner; however, there is no specific case management system in place for monitoring and following-up with the progress of extradition matters. Sections 6 and 8 of the Extradition Act outline the circumstances in which Saint Lucia may refuse extradition requests. The circumstances outlined are not unreasonable or unduly restrictive. Section 12 of the Backing of Warrants Act outlines the circumstances that the Attorney General must take into account deciding whether the person should be surrendered to the requesting country. The circumstances outlined are not unreasonable or unduly restrictive.

401. **Criterion 39.2 (a & b)** - The Extradition Act and the Backing of Warrants Act do not restrict the extradition of Saint Lucian nationals.

402. **Criterion 39.3** - Dual criminality is required for extradition under the Extradition Act. However, there is no requirement that both countries place the offence in the same category or denominate the offence by the same terminology. Extradition can also take place under the Backing of Warrants Act; dual criminality is not a requirement under this Act.

403. **Criterion 39.4** - The Backing of Warrants Act provides for extradition to take place based only on warrants of arrest and makes provision for persons to consent to extradition.

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

404. The only deficiency determined in this Recommendation is that there is no case management system for extradition matters. This is considered minor as extradition requests are nevertheless handled with priority based on the process in place between competent authorities. The Extradition Act and the Backing of Warrants Act have otherwise covered the necessary criterions.

**Recommendation 39 is rated largely compliant.**

## Recommendation 40 – Other forms of international co-operation

405. In its 3<sup>rd</sup> MER, Saint Lucia was rated ‘PC’ for this Recommendation. The deficiencies noted were that the condition of dual criminality had to be fulfilled before information could be exchanged, that the Anti-Terrorism Act (ATA) was not yet in force, that several conventions were yet to be ratified and that no MOU had been signed with any foreign counterpart. As previously noted, since the 3<sup>rd</sup> MER, the ATA has been brought into force. Saint Lucia has also since ratified several conventions such as the Palermo Convention, the United Nations Convention against Corruption and the Terrorist Financing Convention and has signed MOUs with foreign counterparts.

406. **Criterion 40.1** - There are various provisions, agreements, and arrangements that allow all of Saint Lucia's competent authorities to rapidly exchange information regarding ML/TF and associated predicate offences both spontaneously and upon request (Egmont Group; tax treaties; ATA, s.27; Interpol; MLPA, s.5 & s.34; Caribbean Customs Law Enforcement Council).

407. **Criterion 40.2 (a)** - The lawful bases for competent authorities to provide international cooperation are as follows:

- i. Saint Lucia is a signatory to the Egmont Group of Financial Intelligence Unit which provides an avenue for FIUs to exchange information spontaneously and upon request.
- ii. Saint Lucia is also a signatory to the Multi-Lateral Competent Authority Agreement and the Multi-Lateral Convention on Mutual Administrative Assistance in Tax Matters which also provide for exchange of information between countries. In relation to tax matters, the Automatic Exchange of Financial Account Information Act and the International Tax Cooperation Act provide for the exchange of tax information between Saint Lucia and other countries. Saint Lucia has also entered into tax treaties with twenty-one (21) countries under its International Tax Cooperation Act
- iii. Section 27 of the ATA provides for international cooperation in relation to terrorist groups and acts and allows the Commissioner of Police to disclose to a foreign state information in relation to terrorist groups and acts. Section 29 of the said Act allows conventions to which Saint Lucia is a party to be used as a basis for mutual legal assistance. The police also provide international co-operation through their membership with Interpol which allows the spontaneous exchange of information.
- iv. International co-operation can also be provided under the MLPA by the FIA as, pursuant to section 34, the FIA shall co-operate with a requesting State in matters concerning money laundering. Further, pursuant to section 5(2)(g), the FIA may provide information relating to suspected money laundering or information relating to a suspicious activity report to any Foreign Financial Intelligence Unit. Additionally, section 5(2)(h) empowers the FIA to enter into any agreement or arrangement in writing with any Foreign Financial Intelligence Unit which is considered by the FIA to be necessary or desirable for the discharge or performance of its functions.
- v. The CED is a member of the Caribbean Customs Law Enforcement Council. Information sharing between members is facilitated through a Memorandum of Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone.

408. **(b)** - Under section 5(2)(h) and (g) of the MLPA the FIA can enter into MOUs with foreign FIUs to facilitate its functions. Cooperation by the CED is also facilitated through an MOU. The IRD can cooperate through individual treaties which have been entered with other countries. The FIA and the police can also utilise Egmont and INTERPOL, respectively.

409. **(c)** Saint Lucia can exchange tax information within a pre-established secure framework under the Multi-Lateral Competent Authority Agreement and the Multi-Lateral Convention on Mutual Administrative Assistance in Tax Matters.-Automatic exchange of tax information occurs under the Common Reporting Standards facilitated by the OECD's Common Transmission System. Egmont and Interpol also provide secure gateways for the exchange of information. No information was available in relation to secure gateways for exchange of information under the Memorandum of

Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone

410. (d) The FIA has a SOP for managing SARs, other investigations and information sharing which includes procedures for dealing with requests sent through Egmont and provides for their prioritisation. No information was available in relation to this sub-criterion.

411. (e) - No information was available in relation to this sub-criterion.

412. **Criterion 40.3** - The FIA has entered into 11 MOUs with foreign FIUs for the exchange of information. As noted above, the CED is a party to the Memorandum of Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone and, the Automatic Exchange of Financial Account Information Act, along with the International Tax Cooperation Act, provides the legal framework for all tax information exchange agreements between Saint Lucia and other jurisdictions which are party to bi-lateral agreements or treaties. Saint Lucia therefore has several agreements to cooperate with a wide range of foreign counterparts. No hindrances to the negotiation and signing of these agreement or arrangements in a timely way were identified.

413. **Criterion 40.4** - The Egmont Group uses a feedback protocol. Examples of feedback provided by the FIA were provided. However, no information was available on whether the feedback was provided in a timely manner. Further, no information concerning feedback was provided in relation to the other competent authorities.

414. **Criterion 40.5** (a) There are no limitations placed on the provision of information on the ground that the request also involves fiscal matters (b) - No provisions which prohibit the exchange of information or assistance where the laws require FIs or DNFBPs to maintain secrecy and confidentiality were identified. Particularly, in relation to the assistance provided by the FIA under the MLPA, section 35 states that, subject to the Constitution, the provisions of this Act shall have effect despite any obligation as to secrecy or other restriction upon disclosure or information imposed by law or otherwise. Therefore, information can be shared regardless of secrecy or confidentiality provisions. (c) to (d) - No provisions creating prohibitions or restrictions were identified.

415. **Criterion 40.6** - While the Egmont group, the Memorandum of Understanding Regarding Mutual Assistance and Co-operation for the Prevention and Repression of Customs Offenses in the Caribbean Zone and Multi-Lateral Competent Authority Agreement and the Multi-Lateral Convention on Mutual Administrative Assistance in Tax Matters have provisions and guidelines which limits the use of the information exchanged, no information was available as to the controls and safeguards that competent authorities have in place to abide by these provisions and guidelines.

416. **Criterion 40.7** - Confidentiality provisions are stipulated under section 38(1) of the MLPA which states a person who obtains information in any form as a result of his or her connection with the Authority shall not disclose that information to any person as far as it is required or permitted under this Act or other enactment. Section 38(2) imposes sanctions for anyone who wilfully discloses information in contravention of subsection (1). Section 12 of the International Tax Cooperation Act provides for confidentiality in relation to a request under the Act and makes the breach of this provision an offence. Section 6 of the Customs (Control and Management) Act also imposes confidentiality requirements on customs officers and makes the breach of these requirements an offence. Article 14 of INTERPOL's Rules on the Processing Data outlining provisions concerning confidentiality which must be followed by its members.

417. **Criterion 40.8** - Section 34 of the MLPA empowers the FIA to provide assistance to a court or other competent authority of a requesting state by means to include: the providing of original or certified copies of relevant documents and records, including those financial institutions and government agencies obtaining testimony, in a requesting State of persons, including those in custody; the executing of searches and seizure; and the providing of information and evidentiary items. CED through Articles 22 and 23 of the CCLEC and an articles IV and V of an MOU signed between Saint Lucia and several Caribbean and other countries can investigate and share information. For the RSLPF, Article 10 (2), 19 and 20 of the INTERPOL Rules provide for the provision of information related to a criminal investigation or to the criminal history and activities of a person and for conducting investigation to fulfil these rules. The IRD can use section 6 and 7 of the International Co-operation Act.

418. **Criterion 40.9** - The FIA has a legal basis for providing co-operation under sections 5(1), 5(2)(g) and (h) and 34 of the MLPA.

419. **Criterion 40.10** The FIA provided two examples of feedback given to a foreign counterpart, no analytic data nor procedures are available on the feedback provided by the FIA to their foreign counterparts on the use of the information provided as well as the outcome of the analysis conducted based on the information that was provided.

420. **Criterion 40.11** - Sections 5(2)(g) and (h) of the MLPA are worded broadly enough to contain most information required to be accessible under Recommendation 29 (R.40.11a) and any other information which can be obtained (R.40.11b). Information to which the FIA has indirect access (R.40.11 a and b) can be exchanged with the use of section 6(1)(b) of the MLPA. The principle of reciprocity (R.40.11b) is addressed in section 22(b) of the Egmont principles for information exchange.

421. **Criterion 40.12** - The FIA is the primary AML/CFT supervisor however, no information was available on the legal basis for it to be able to co-operate with its foreign supervisory counterparts to exchange supervisory information related to or relevant to AML/CFT purposes. In addition to specific powers in the Banking Act (Section 32(d)(ii), the ECCB has an MOU in place with a number of supervisory authorities operating in the Caribbean region, including the FSRA, to provide mutual co-operation for the sharing of information on AML/CFT matters for institutions licensed under the Banking Act. However, the FIA at the time of the onsite had not signed the MOU on the basis that it was restricted from doing so by its governing law. The FSRA has legal arrangements in place allowing it to exchange information necessary with its foreign counterparts (FSRA Act, Section 31(1)). No information was available on legal arrangements permitting the ECSRC to co-operate with its foreign counterparts.

422. **Criterion 40.13** - The FSRA can exchange information with their foreign counterparts, including information obtained or domestically available to the FSRA, including information held by FIs, provided the FSRA is satisfied the information is for the purposes of the foreign competent authorities carrying out functions similar to foreign counterparts (FSRA Act, Section 38). Information in relation to the FIA, ECCB and ECSRC arrangements for sharing information were not available.

423. **Criterion 40.14** - No information was available regarding the FIA in its AML regulatory function being able to co-operate with its foreign regulatory counterparts. Section 38(1) of the FSRA Act also provides that the FSRA may enter into a MOU with other supervisors for the purpose of the exchange of information necessary to enable the supervisors to exercise their regulatory functions. Section 32(d)(ii) of the Banking Act also provides that the ECCB may share any information

received or any report prepared by it in the performance of its duties under the Act, with any local authority responsible for the supervision or regulation of a FI, or for maintaining the integrity of the financial system. The sections are worded broadly enough to cover the information in the criterion.

424. **Criterion 40.15** – No provisions are available to give financial supervisors, other than the FIA, the specific authority to conduct inquiries on behalf of foreign counterparts or to authorise/facilitate the ability of foreign counterparts to conduct inquiries themselves in the country in order to facilitate group supervision. However, Saint Lucia has noted that under an MOU pursuant to section 38 of the FSRA Act, a foreign supervisor may request information from the FSRA which may prompt the FSRA to investigate pursuant to section 36(4). The information obtained from this investigation may then be shared with the foreign supervisor under the MOU. Information in relation to the ECCB and ECSRC was available.

425. **Criterion 40.16** - The FSRA functions in accordance with the FSRA Act section 38(6) (a-c) which sets out the requirements for prior authorisation. The MLPA (section 34) sets out the dissemination arrangements of providing mutual assistance to a 'requesting state'. The MACMA at section 12(b) provides for the restriction of use evidence. As such, Saint Lucia must have the consent of the requested state to use the evidence for purposes of any other criminal proceedings. The ECCB complies with the Banking Act (No. 3 of 2019).

426. Information in relation to ECSRC not yet provided.

427. **Criterion 40.17** - The FIA as a LEA can exchange information pursuant to section 5(2)(g) of the MLPA. The RSLPF and the CED by being members of INTERPOL, ARIN CARIB and CCLEC can also share domestically available information with these entities. The IRD is a signatory to the MCAA and MAC conventions and Tax Information Exchange Agreement and can share domestic information with other jurisdictions.

428. **Criterion 40.18** - The RSLPF as member of INTERPOL can use its powers, and its investigative techniques, to assist its counterparts. Such engagements are governed by the rules of the INTERPOL. The CED as a member of CCLEC can provide assistance and exchange information internationally with the Customs Departments in the Caribbean. The IRD is a signatory to the MCAA and MAC conventions and Tax Information Exchange Agreement and can share information with other jurisdictions.

429. **Criterion 40.19** - There is a MOU which established of the IAIC (FIA, RSLPF, CED and IRD) that co-ordinates joint investigations and operations. There is no evidence that Saint Lucia can establish bilateral or multi-lateral arrangements to enable joint investigations.

430. **Criterion 40.20** - Section 5(2)(j) of the MLPA permits the FIA to consult with any person, institution or organization for the purpose of performing its functions or exercising its powers under the said MLPA. Additionally, the FIA by being a member of the Egmont Group, can exchange information indirectly with non-counterparts when same is requested by a foreign FIU, on behalf of that agency. The LEAs by virtue of being members of ARIN-CARIN, CCLEC and INTERPOL can utilise the information sharing gateways of these entities to exchange information directly in the Caribbean. All competent authorities are however not compliant with this criterion.

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

431. Saint Lucia is a party to international co-operation agreements and MOUs. Saint Lucia is also able to facilitate informal international co-operation, by virtue of its membership in INTERPOL.



and Egmont Group, ARIN-CARIN and CCLEC. There are built-in mechanisms which prevent the unauthorised disclosure of information. There is no express provision to allow financial supervisors, outside of the FIA, the authority to conduct inquiries on behalf of foreign counterparts or to authorise/facilitate the ability of foreign counterparts to conduct inquiries themselves in the country and to ensure that financial supervisors obtain prior authorisation of a requested supervisor for the dissemination of information. **Recommendation 40 is rated partially compliant.**

## *Summary of Technical Compliance – Key Deficiencies*

### **Compliance with FATF Recommendations**

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> <li>• No established procedures in place to ensure the NRA is reviewed and kept up to date.</li> <li>• No formal mechanism for providing the results of the risk assessments to relevant competent authorities.</li> <li>• No risk-based approach for allocating resources and implementing risk mitigation measures against ML/TF.</li> <li>• NRA did not identify higher risk scenarios to which Saint Lucia is exposed.</li> <li>• Recommendations in the NRA did not include the requirement for FIs and DNFBPs to ensure higher risks identified in the NRA are incorporated into their own risk assessments.</li> <li>• Legislation/guidance not updated following the identification of higher risk scenarios specific to Saint Lucia including.</li> <li>• Simplified CDD measures are not based on proven low risk.</li> <li>• Supervisors do not ensure in all circumstances that FIs and DNFBPs implement their AML/CFT obligations under R.1.</li> <li>• FIs and DNFBPs obligations do not require TF risk assessment be conducted.</li> <li>• Risk assessment obligations for FIs and DNFBPS do not include risks in relation to customers, countries or geographic areas.</li> <li>• FIs and DNFBPs risk mitigation requirements are not aligned to the factors that must be considered before determining the overall risk and appropriate level and type of mitigation to be applied.</li> <li>• No requirement for FIs and DNFBPs to keep their risk assessments up to date.</li> <li>• No requirement for FIs and DNFBPs to have mechanisms to provide risk information to competent authorities.</li> <li>• Internal AML/CFT policies of FIs and DNFBPs are not required to be approved by senior management and developed to manage and mitigate risks identified either by the country or by the FIs and DNFBPs (not just high risk and non-face to face).</li> <li>• No requirement for the enhancement of policies, procedures and controls if necessary.</li> <li>• MLPA obligations do not provide for simplified measures to not be undertaken where there is suspicion of ML or TF.</li> </ul>
2. National co-operation and co-ordination	PC	<ul style="list-style-type: none"> <li>• No national AML/CFT policies, informed by the risks identified in the NRA, have been established.</li> <li>• No co-operation or co-ordination mechanisms between competent authorities to combat the of financing of proliferation of weapons of mass destruction.</li> <li>• There is an absence of co-operation or co-ordination between relevant authorities to ensure the compatibility of AML/CFT requirements with data protection and privacy rules.</li> </ul>
3. Money laundering offences	PC	<ul style="list-style-type: none"> <li>• Predicate offences for ML do not extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred in Saint Lucia.</li> <li>• The ML offences of acquiring or using property are limited to property that represents “another person’s” proceeds from criminal conduct. This indicates that the predicate offence would have to be committed by another person as opposed to the person who has committed the ML offence.</li> <li>• Criminal sanctions against legal persons are not proportionate and dissuasive.</li> </ul>

4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>There are no investigative measures for LEAs, other than the FIA, to carry the functions at recommendation 4.2.</li> </ul>
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> <li>The offences under the ATA do not extend to financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose providing or receiving terrorist training.</li> <li>There are limited criminal penalties for legal persons that commit offences under the ATA, as the only criminal penalty provided in the Act that can apply to a legal person is the forfeiture of property used for or in connection with or obtained from the commission of the offence.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	NC	<ul style="list-style-type: none"> <li>The regime under the ATA as it relates to targeted financial sanctions is inadequate to meet the requirements of Recommendation 6.</li> <li>There are no mechanisms that permit Saint Lucia to propose designations or entities to the 1267/1989 and 1988 UN Committees.</li> <li>Saint Lucia can designate an entity in accordance with UNSCR 1373 in limited circumstances but there is no legal authority to action requests from other countries to designate an entity.</li> <li>There is no legal authority or guidelines to evidence the mechanisms for identifying targets for designation.</li> <li>While Saint Lucia has the ability to declare certain entities as specified entities, there is no consequence for the listing, that is, no obligation to freeze the assets of the specified entity. As a result, Saint Lucia does not have the legislative authority to freeze the funds of designated entities without delay.</li> <li>There are no competent authorities to implement and enforce targeted financial sanctions.</li> <li>No guidance is provided to FIs and DNFBNs on the obligations in taking freezing action or delisting.</li> <li>There are no provisions in place to authorise access to frozen funds in accordance with the respective UNSCRs.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>No steps have been taken by Saint Lucia to implement Recommendation 7</li> </ul>
8. Non-profit organisations	NC	<ul style="list-style-type: none"> <li>The sub-set of NPOs likely to be at risk for TF abuse has not been identified.</li> <li>The nature of threats posed by terrorist entities to NPOs at risk has not been identified.</li> <li>There has been no undertaking to review the adequacy of the measures, laws and regulations relating to the subset of the NPO sector that may be abused for TF support.</li> <li>Outside of the policy to promote financial accountability, existing measures do not promote other types of accountability, integrity and public confidence in the administration and management of NPOs.</li> <li>No educational programmes to raise and deepen awareness of the donor community about the potential vulnerabilities of NPOs to TF abuse and TF risks.</li> <li>No measures in place for authorities to work with NPOs to develop and refine best practices to address TF risk and vulnerabilities.</li> <li>Saint Lucia has not taken any steps to promote effective supervision or monitoring so that the country can demonstrate that risk-based measures apply to NPOs at risk of TF abuse.</li> <li>The FIA has not undertaken any measures to monitor NPOs for compliance using risk-based measures.</li> <li>Saint Lucia has not ensured there is co-operation, co-ordination and information sharing, at all levels, among agencies that hold relevant information on NPOs.</li> <li>The NGO Council that should be repository of information on the administration and management of NGOs has not been established.</li> </ul>

		<ul style="list-style-type: none"> <li>• No established processes or systems, for prompt information sharing in order to take preventive or investigative actions.</li> <li>• Saint Lucia has not adopted a risk-based approach regarding regulation of NPOs.</li> <li>• There is need for harmonization of all legislation regarding NPOs and NGOs and for the establishment of the NGO Council.</li> </ul>
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> <li>• The FIA is unable to do so with the other competent authority, the ECCB.</li> <li>• There are restrictions on the sharing of information relating to international trusts and international mutual funds.</li> <li>• There are no measures for the sharing of tax information by the Inland Revenue and among FIs where so required by R 13, 16 and 17.</li> </ul>
10. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• There is no express prohibition from keeping anonymous account or accounts in obviously fictitious names.</li> <li>• CDD is only required to be undertaken when there is doubt about the veracity or adequacy of previously obtained customer identification.</li> <li>• No obligation to determine if the person (agent) acting on behalf of a customer is so authorized and to identify and verify the identity of this person.</li> <li>• Existing provisions do not impose the requirement to understand the purpose of the business relationship.</li> <li>• There are no enforceable measures for identifying and verifying the identity of legal persons or legal arrangements.</li> <li>• There is no definition of beneficial owner in the MLPA therefore the natural person on whose behalf a transaction is being conducted including the persons who exercises ultimate effective control over a legal person is not covered.</li> <li>• No measures to alternately identify the natural person exercising control of the legal person or arrangement through other means.</li> <li>• No measures to alternately identify the relevant natural person who holds a senior management position.</li> <li>• No provisions which treat with the identity of persons in a similar or equivalent position for other types of legal arrangements.</li> <li>• There are no CDD measures for beneficiaries of life insurance policies.</li> <li>• No risk management procedures concerning conditions under which a customer may utilise the business relationship prior to verification.</li> <li>• The measure for the application of CDD to existing customers on the basis of materiality and risk is not mandatory.</li> <li>• The application of simplified CDD measures is not premised on lower risks identified through an adequate analysis of risk by the country or FI and do not address the unacceptability of such measures where there is a suspicion of ML/TF.</li> <li>• No requirement that requires the FI to discontinue the CDD process and instead be required to file a suspicious transaction report if they reasonably believe that performing CDD will tip off the customer.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>• The legal requirement to maintain transaction records to permit reconstruction of individual transactions to support prosecution of criminal activity is limited to ML offences. Occasional transactions should also be included in the record keeping requirements of the MLPA.</li> <li>• Transaction records are only required to be detailed enough to aid in the investigation and prosecution of ML offences in particular and not criminal activity in general.</li> <li>• FIs are legally required to swiftly provide records to the FIA, but there is no similar provision for other domestic competent authorities.</li> </ul>
12. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>• Saint Lucia considers both domestic and foreign PEPs as high risk without providing the rationale for FIs being required to apply enhanced measures. There are therefore concerns about the application of a risk-based approach to treatment of PEPs.</li> <li>• Appropriate consideration whether beneficial owner is a PEP is not evidenced.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are deficiencies in relation to enhanced measures applied in relation to paying out life insurance policies where there are PEP links.</li> </ul>
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• Respondent institutions obligations do not extend to the assessment of CFT controls.</li> <li>• No express prohibition for FIs not to enter or continue a correspondent banking relationship with shell banks.</li> </ul>
14. Money or value transfer services	PC	<ul style="list-style-type: none"> <li>• No pro-active measures taken by Saint Lucia to identify a natural or legal person carrying on money service business without a licence and apply sanctions to such person.</li> <li>• There is no clear provision for the monitoring for AML compliance.</li> <li>• No measures for MVTS providers to include their agents in their AML/CFT programmes and monitor them for compliance with these programmes.</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>• Saint Lucia has not identified the risks associated with new technologies in its NRA for FIs.</li> <li>• FIs are not required to assess ML/TF risks relating to new delivery mechanisms and the use of new or developing technologies for new and pre-existing products.</li> <li>• There are no requirements for FIs to undertake a risk assessment when introducing new technologies, and ensure appropriate measures are in place to mitigate any risks identified.</li> </ul>
16. Wire transfers	NC	<ul style="list-style-type: none"> <li>• There are no measures to ensure the capture of accurate information.</li> <li>• There is no definition of electronic transfers in the MLPA or the MLPGN, so all aspects of wire transfers as defined in the Interpretive Note to R.16 are not included.</li> <li>• There are no provisions on the requirements that bundled wire transfers must meet and FIs' obligation to include the originator account number or a unique transaction reference code.</li> <li>• No requirement for the verification of customer information where there is suspicion of ML/TF.</li> <li>• Section 178 of the MLPGN does not make it mandatory for the identity of the ultimate recipient (beneficiary) to be captured but requires "as far as possible" for this information to be obtained.</li> <li>• There are no provisions to prevent the ordering FI from executing a wire transfer where originator information is not provided as required.</li> <li>• No obligation regarding ensuring that the originator and beneficiary information to each electronic transfer is kept with the transfer.</li> <li>• The MLPGN imposes no obligations for intermediary FIs.</li> <li>• Obligations where wire transfers lack sufficient information are only applicable to FIs of the beneficiary and does not require FIs for originating transfers to have similar detection systems in place.</li> <li>• Risk-based steps which FIs of the ultimate recipient are required to undertake in determining whether to execute, reject or suspend a wire transfer lacking appropriate information are specific to FIs of the ultimate recipient and not intermediary institutions.</li> <li>• When '<i>carrying out occasional transactions above \$25,000 or that are wire transfers</i>', provisions do not place an obligation on the beneficiary FI to verify the identity of the beneficiary if the identity was not previously verified.</li> <li>• There are no stated requirements for MVTS to obtain and record the originator account number, address, national identity number or date and place of birth or beneficiary information.</li> <li>• There are no measures to ensure that accurate information is captured by MVTS.</li> <li>• No measures which address situations where MVTS providers control both the ordering and beneficiary sides of a wire transfer.</li> <li>• There are no provisions that oblige FIs to freeze funds or other assets linked to terrorism and which obliges them to comply with prohibitions from conducting</li> </ul>

		transactions with designated persons and entities in the context of processing wire transfers.
17. Reliance on third parties	PC	<ul style="list-style-type: none"> <li>Record keeping requirements are not applicable to third parties that FIs rely on for CDD or to introduce business.</li> <li>Measures do not require the FI when considering the use of third parties, specifically to have regard to information available on the level of country risk where the third party is located.</li> <li>Measures do not require the FI when considering the use of third parties, specifically to have regard to information available on the level of country risk where the third party is located.</li> <li>No requirement for home or host supervisory authorities to ensure compliance by financial groups.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> <li>FIs are required to implement AML/CFT programmes but not specifically having regard to the size of the business.</li> <li>There is no requirement to have financial groups implement group wide AML/CFT programmes</li> </ul>
19. Higher-risk countries	NC	<ul style="list-style-type: none"> <li>Saint Lucia has no measures which require FIs to apply enhanced measures for countries for which this is called for by the FATF.</li> <li>Saint Lucia also has no provisions to apply countermeasures as well as to proactively update and advise FIs of concerns about weaknesses in AML/CFT systems of other countries</li> </ul>
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> <li>There is no requirement for reporting entities to report promptly suspicion that funds may be related to criminal conduct.</li> <li>The requirement to report attempted transactions is not established in law.</li> </ul>
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> <li></li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>Dealers in precious metals and precious stones are not covered in the DNFBP regime.</li> <li>CDD requirements in line with the FATF recommended thresholds are not applicable to dealers in precious metals and stones and casinos.</li> <li>Deficiencies identified at R.11, R.12, R.15 and R.17 are applicable to DNFBPs.</li> </ul>
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> <li>Deficiencies identified at R.20, R.18 and R.19 are applicable to DNFBPs.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>Co-operative Societies, NGOs and domestic partnerships not covered, and this had a cascading effect on the Recommendation.</li> <li>No information was available as to whether the exemptions from the provision of beneficial ownership information that apply to the 5 types of companies as highlighted in criterion 24.1 are justified based on the country's assessment of its risks, as no risk assessment was conducted on the various legal persons in Saint Lucia.</li> <li>There are no mechanisms in place to ensure that up-to-date beneficial ownership information is maintained at the company registry and the registry of IPs for domestic companies, non-profit companies and IPs respectively, and that up-to-date beneficial ownership information is maintained by registered agents for IBCs.</li> <li>Companies are only required to keep a register of its "substantial shareholders" and not all shareholders.</li> <li>The ability to provide rapid international co-operation is limited.</li> <li>The fines in the Companies Act and the IBC for non-compliance are not proportionate and dissuasive.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>Trustees of domestic trusts which do not involve a business activity not covered.</li> <li>There is no requirement to hold basic information on other regulated agents of, and service providers to, the trust.</li> </ul>

		<ul style="list-style-type: none"> <li>• Law Enforcement Authorities have limited powers to obtain timely access to information held by the trustee and other parties as only the FIA and IRD, in the case of ITs, are empowered to obtain timely access.</li> </ul>
26. Regulation and supervision of financial institutions	NC	<ul style="list-style-type: none"> <li>• Role of FIA and ECCB requires clarification.</li> <li>• AML/CFT supervision of FIs not established. This includes monitoring and onsite and offsite inspections taking place on a risk-based approach.</li> <li>• Fit and proper checks not consistently in place across the licensing authorities.</li> <li>• The frequency and intensity of on-site and off-site AML/CFT supervision of FIs or groups are not determined based on R.26.5 (a), (b) and (c).</li> <li>• The assessment of the ML/TF risk profile of FIs or groups (including the risks of non-compliance) not periodically reviewed.</li> </ul>
27. Powers of supervisors	PC	<ul style="list-style-type: none"> <li>• CFT not clearly included in the FIA's supervisory powers.</li> <li>• Competent authorities are yet to agree on arrangements for carrying out supervisory functions.</li> <li>• Supervisors' powers to compel production of information are limited.</li> <li>• Limited range of sanctions available to the FIA and ECCB.</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>• Clarity needed on the license categorised as casinos.</li> <li>• The regulatory measures employed by the Gaming Authority need clarification.</li> <li>• Unclear rationale for designating financial activities as other business activities (DNFBPs).</li> <li>• No rationale for including NPOs and some FIs in Schedule 2 of the MLPA.</li> <li>• Opacity over which competent authorit(y)(ies) oversees fit and proper arrangements, particularly for those DNFBPs that are not licensed or registered (motor vehicles dealership, dealers in precious metals or real estate)</li> <li>• Deficiencies identified in relation to sanctioning powers available to supervisors.</li> <li>• Supervision not conducted on a risk-sensitive basis.</li> </ul>
29. Financial intelligence units	PC	<ul style="list-style-type: none"> <li>• No clear obligation for the FIA to receive STRs relating to TF.</li> <li>• The FIA has conducted no strategic analysis.</li> <li>• No transparent process for the appointment of the FIA Director and management.</li> <li>• No authority to enter into arrangement with other domestic competent authorities</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• There is no indication that LEA investigators can pursue cases wherever the predicate offences occurred.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• Controlled deliveries only applicable to drug offences and is a power of the Minister responsible for Health.</li> <li>• Uncertainty whether existing mechanisms permit timely identification of holders or controllers of accounts.</li> <li>• There are no provisions for searches at FIs and DNFBPs for the FIA,</li> <li>• Not clear if the RSLPF have compulsory powers to search persons and question witnesses.</li> <li>• There is no mechanism for competent authorities to request information from the FIA.</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>• The Customs (Control and Management) Act does not have a definition of exchange control permission neither does it outline the process to obtain same.</li> <li>• The Customs (Control and Management) Act does not have a definition of "prescribed amount" in Part 3, paragraph 5.</li> <li>• Custom authorities do not have express power to restrain currencies or BNIs for a reasonable time pending investigation to ascertain whether evidence of ML/TF may be found.</li> <li>• The power to seize and detain cash under the POCA pending investigations does not extend to BNIs.</li> </ul>

33. Statistics	PC	<ul style="list-style-type: none"> <li>• Lack of comprehensive statistics on confiscation and frozen funds.</li> <li>• Saint Lucia does not systematically and proactively maintain, collate, review and monitor statistics on a regular basis.</li> </ul>
34. Guidance and feedback	PC	<ul style="list-style-type: none"> <li>• No feedback has been provided to assist FIs and DNFBPs in detecting and reporting suspicious transactions.</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>• A range of sanctions, including administrative sanctions, are not available for breaches of TFS obligations.</li> <li>• Legislation is not clear that available sanctions can be applied for AML/CFT infractions.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• Saint Lucia has not fully implemented all relevant articles of each Convention.</li> </ul>
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> <li>• The wide range of MLA that can be provided by Saint Lucia under the MACMA is limited to commonwealth countries or countries with which Saint Lucia has entered into MLA treaties that have been incorporated under the MACMA.</li> <li>• The absence of dual criminality results in a mutual assistance request being refused.</li> <li>• Limited domestic powers and investigative techniques to foreign mutual legal assistance requests.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• There are no provisions which allow assistance to requests for co-operation on the basis of non-conviction based confiscation proceedings.</li> <li>• There is no mechanism in place for the management of property frozen or seized.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• There is no case management system for extradition matters</li> </ul>
40. Other forms of international co-operation	PC	<ul style="list-style-type: none"> <li>• No clear processes for the prioritisation and timely execution of requests.</li> <li>• Competent authorities do not provide feedback in a timely manner to competent authorities from which they have received assistance.</li> <li>• Only the FIA is able to conduct inquiries on behalf of foreign counterparts and exchange with their foreign counterparts all the information that would be available to them if such inquiries were being carried out domestically.</li> <li>• Apart for the FIA and CED, there are no controls or safeguards for ensuring information exchanged is used only for the purpose intended.</li> <li>• No feedback on the outcome of analysis conducted on information provided.</li> <li>• No legal basis for FIA to co-operate on AML/CFT matters with foreign counterparts.</li> <li>• FIA, ECCB and ECSRC unable to exchange with foreign counterparts' information that available to them domestically.</li> <li>• FIA unable to co-operate with foreign regulatory counterparts pursuant to its AML regulatory functions.</li> <li>• No provisions are available to give financial supervisors, other than the FIA, the specific authority to conduct inquiries on behalf of foreign counterparts or to authorise/facilitate the ability of foreign counterparts to conduct inquiries themselves in the country in order to facilitate group supervision.</li> <li>• No information on ECSRCs ability to ensure prior authorisation of requested supervisor for dissemination of information exchanged.</li> <li>• Inability to establish bilateral or multi-lateral arrangements to enable joint investigations.</li> <li>• Other the FIA and LEAs, competent authorities cannot exchange information with non-counterparts.</li> </ul>



## *Glossary of Acronyms<sup>57</sup>*

<b>AG</b>	<b>Attorney General</b>
<b>AGC</b>	Attorney General's Chambers
<b>AML</b>	Anti-money Laundering
<b>ATA</b>	Anti-Terrorism Act
<b>BO</b>	Beneficial Ownership
<b>CDD</b>	Customer Due Diligence
<b>CED</b>	Customs and Excise Department
<b>CFT</b>	Combating Financing of Terrorism
<b>CIP</b>	Citizen by Investment Programme
<b>CIU</b>	Central Intelligence Unit
<b>CPS</b>	Crown Prosecution Service
<b>DPP</b>	Director of Public Prosecutions
<b>ECCB</b>	Eastern Caribbean Central Bank
<b>ECSRC</b>	Eastern Caribbean Securities Regulatory Commission
<b>EDD</b>	Enhanced Due Diligence
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	Financial Institution
<b>FIA</b>	Financial Intelligence Agency
<b>FIU</b>	Financial Intelligence Unit
<b>FSRA</b>	Financial Services Regulatory Authority
<b>FSRB</b>	FATF-style Regional Body
<b>IAIC</b>	Inter-Agency Intelligence Committee
<b>Interpol</b>	International Criminal Police Organisation
<b>ICAEC</b>	The Institute of Chartered Accountants of the Eastern Caribbean
<b>IP</b>	International Partnership
<b>IRD</b>	Inland Revenue Department
<b>IT</b>	International Trusts
<b>LEA</b>	Law Enforcement Agency
<b>MACMA</b>	Mutual Assistance in Criminal Matters Act
<b>MCU</b>	Major Crimes Unit
<b>MER</b>	Mutual Evaluation Report
<b>MEVAL</b>	Mutual Evaluation
<b>ML</b>	Money laundering
<b>MLA</b>	Mutual legal assistance
<b>MLPA</b>	Money laundering prevention Act
<b>MLPAA</b>	Money laundering (Prevention) (Amendment) Act

<sup>57</sup> Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

<b>MLPGN</b>	Money Laundering (Prevention) (Guidance Notes)
<b>MMOU</b>	Multilateral memorandum of understanding
<b>MOU</b>	Memorandum of understanding
<b>MSB</b>	Money Service Business
<b>NAMLOC</b>	National Anti-Money Laundering Oversight Committee
<b>NIC</b>	National Insurance Corporation
<b>NPO</b>	Non-Profit Organisation
<b>NRA</b>	Nations Risk Assessment
<b>PEP</b>	Politically Exposed Person
<b>PF</b>	Financing of Proliferation of Weapons of Mass Destruction
<b>POCA</b>	Proceeds of Crime Act
<b>PSA</b>	Police Service Act
<b>ROCIP</b>	Registry of Companies and Intellectual Property
<b>RSLPF</b>	Royal Saint Lucia Police Force
<b>SAR</b>	Suspicious Activity Report
<b>SOP</b>	Standard Operating Procedure
<b>STR</b>	Suspicious Transaction Report
<b>TC</b>	Technical Compliance
<b>TF Convention</b>	International Convention for Suppression of the Financing of Terrorism
<b>TFS</b>	Targeted Financial Sanctions
<b>UBO</b>	Ultimate Beneficial Owner
<b>UN</b>	United Nations
<b>UNCAC</b>	UN Convention Against Corruption
<b>UNSCR</b>	United Nations Security Council Resolutions
<b>USD</b>	United States Dollar
<b>WCCTF</b>	White-Collar Crime Task Force
<b>XCD</b>	Eastern Caribbean Dollar

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Anti-money laundering and counter-terrorist financing measures – Saint Lucia  
*Fourth Round Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Saint Lucia as at the date of the on-site visit on-site visit September 16<sup>th</sup> – 27<sup>th</sup>, 2019. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Saint Lucia AML/CTF system and provides recommendations on how the system could be strengthened.