



Anti-money laundering and counter-terrorist financing measures

Trinidad and Tobago

**3rd Enhanced Follow-up Report &
Technical Compliance Re-Rating**

June 2019





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TRINIDAD AND TOBAGO: 3rd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The mutual evaluation report (MER) of Trinidad and Tobago was adopted in November 2015. This is Trinidad and Tobago's 3rd Enhanced Follow-up Report (FUR). This FUR analyses Trinidad and Tobago's progress in addressing certain technical compliance deficiencies which were identified in Trinidad and Tobago's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Trinidad and Tobago's progress in implementing new requirements relating to FATF Recommendations which have changed since the country's assessment: R. 2, 5, 7, 8, 18 and 21. This report does not address what progress Trinidad and Tobago has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MER AND 3rd FUR

2. The MER rated Trinidad and Tobago as follows for technical compliance:

Table 1. Technical compliance ratings, November 2015

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

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Trinidad and Tobago's Mutual Evaluation Report, June 2016,

<https://cfatf-gafic.org/index.php/documents/4th-round-meval-reports/6841-trinidad-and-tobago-4th-round-mutual-evaluation-report/file>

3. Given these results and Trinidad and Tobago's level of effectiveness, the CFATF placed Trinidad and Tobago in enhanced follow-up¹. The following experts assessed Trinidad and Tobago's request for technical compliance re-rating with support from Deputy Executive Director Carlos Acosta and the CFATF Secretariat's Mutual Evaluation Team:

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the CFATF's policy that deals with members with significant deficiencies (for technical compliance and/or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.



- *Kisha Sutherland, Regional Financial Investigation Adviser, Regional Security System - Asset Recovery Unit (RSS-ARU).*
- *Caritza Schoot, Insurance Examiner, Institutional Investors General Supervision Department, Centrale Bank van Curaçao en Sint Maarten, Curaçao.*

4. Section 3 of this report summarises Trinidad and Tobago's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Trinidad and Tobago's progress to improve its technical compliance by:

- a) addressing certain technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since Trinidad and Tobago's assessment (R. 2, 5, 7, 8, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

6. Trinidad and Tobago has made progress to address the technical compliance deficiencies identified in the MER and requested a re-rating (including the revised standards) in relation to the following Recommendations:

- R. 7 and 8 which were rated NC;
- R. 1, 6, 19, 24, 26, 32, 33, 35, 37 and 40 which were rated PC;
- R. 2, 10, 16, 21, 22, 23, 29 and 39 which were rated LC; and
- R. 5 and 18 which were rated C.

7. As a result of this progress, Trinidad and Tobago has been re-rated on Recommendations 1, 6, 8, 10, 16, 19, 22, 23, 24, 26, 29, 32, 33, 37, 39 and 40. Based on the revisions to Recommendations 7 and 21, re-ratings have also been granted and for Recommendations 2, 5 and 18, the ratings remain. The CFATF welcomes the steps that Trinidad and Tobago has taken to improve its technical compliance with Recommendation 35; however, insufficient progress has been made to justify a re-rating of this Recommendation.

3.1.1. Recommendation 1 (originally rated PC)

8. In its 4th Round MER, Trinidad and Tobago was rated PC with R.1. The technical deficiencies related primarily to not having fully identified or assessed the money laundering (ML) and terrorist financing (TF) risks of the jurisdiction, neither fully understanding these risks or sharing the results; the AML/CFT policies, controls and procedures were based on the limited understanding of risk and were being updated based on the preliminary outcome of the NRA and not fully applied a risk-based approach to allocated resources or implementing measures to prevent or mitigate ML or TF risks.

9. In order to address the deficiencies noted, Trinidad and Tobago completed its 2011-2013 ML/TF NRA in 2016 using the World Bank analytical tool. The risk assessment took into consideration threats such as TF and vulnerabilities. The NRA considers several challenges such as lack of data and statistics may have an impact on the findings of the

NRA. Although Trinidad and Tobago completed its NRA in 2016, the assessment only considered data from the period 2011-2013, which therefore means that the ML/TF risks which may have evolved or changed during the past five years (2014-2019) were not factored in this process, however, the jurisdiction has updated its ML/TF risks in a sectorial manner.

10. Based on the findings of the NRA that were finalised in 2016, Trinidad and Tobago made one exemption. The non-life insurance sector was exempted from AML/CFT requirements save for mandatory reporting and TFS requirements for TF and proliferation financing (PF).

11. Trinidad and Tobago has cited several examples of mechanisms and activities used to consider risks and has explained what ML/TF risks have been identified and assessed from a sectorial approach.

12. As part of the NRA process, Trinidad and Tobago held its final NRA workshop in 2016. One of the objectives of the workshop was “to discuss the risk assessment results in order to further clarify, refine and calibrate the findings, as appropriate”. A cross-section of private and public sector officials that were involved in the NRA attended the workshop. Based on the objective of the workshop cited above, the calibration was specifically for the written version of the final report. The jurisdiction has provided several mechanisms to share information with the private sector and has elaborated the mechanisms for sharing among competent authorities after the NRA was completed.

13. The authorities have taken some strategic decisions to implement some measures based on the identified ML/TF risk. Some of these decisions include legislative amendments and enactments, increase of guidance and training, institutional enhancement such as increase trainings and resources for law enforcement and judicial authorities and the allocation of resources to law enforcement to address some of the ML/TF risks.

14. Nevertheless, while examples have been provided, the AML/CFT policy or action plan is not prioritised and there is no indication that a risk-based approach to the allocation of resources is applied across all sectors.

15. While there has been identification, assessment and understanding of ML/TF risks as indicated above, a risk-based approach to the allocation of resources based on evolved or changes in ML/TF risks has not been conveyed. **On this basis, Trinidad and Tobago is largely compliant with R.1.**

3.1.2. Recommendation 6 (originally rated PC)

16. In its 4th Round MER, Trinidad and Tobago was rated PC with R.6. The technical deficiencies related primarily to not having a specific provisions for proposing persons or entities to the 1267/1986 Committee to be designated; not having a mechanism for identifying targets for designation as required by the United Nations Security Council Resolutions (UNSCRs); no provisions to facilitate UNSCR 1373 listing based on requests from other countries; no specific measures to facilitate the collection or solicitation of information to identify persons and entities who meet the criteria for designation pursuant to UNSCRs 1267, 1988 or 1373.

17. There was also a weakness in not having covered in the Anti-terrorism Act (ATA) all requirements and procedures for freezing funds or assets; not having provisions expressly prohibiting its nationals or persons or entities from within the jurisdiction from making any funds or other assets, economic resources, or financial services available for the benefit of designated persons and entities. The rights of bona fide third party were not fully covered

and there were also no measures for submitting de-listing request to the UN Sanctions Committees – 1267, 1989, 1988.

18. In order to address the deficiencies, the Anti-Terrorism (Amendment) Act 2018 (ATAA), identifies the Attorney General (AG) as the competent authority responsible for proposing names to the 1267/1989 and the 1988 Committee for designation. The Mechanism for identifying targets for designation is provided for generically under section 22B, 22BD and 22BE of the ATAA. The AG receives information which may then be forwarded to the Commissioner of Police for investigations.

19. Where the AG is satisfied with the information provided, a Note Verbale is prepared by the AG and action through the Ministry of Foreign and CARICOM Affairs to the relevant committee.

20. The designation criteria set out in UNSCR1267/1989 and UNSCR1267/1988 is provided for in section 22B (1A) (b) and (c) which provides for the designation of persons who committed, participated and facilitated a terrorist act which includes all offences under Part II, Part III, Part IIIA.²

21. Section 22BD(1) incorporates the evidential threshold of reasonable grounds when designating persons under the criteria set out in UNSCR 1267/1989 and UNSCR 1267/1988.

22. The mechanism detailed in the law for making designations provides a comprehensive framework for making such designations. The procedural narrative and examples of designation done by Trinidad illustrates that the country follows the UN procedure (list and forms) when making a designation in compliance with sub-criterion 6.2(d) and is obligated to provide sufficient/ detail information in compliance with sub-criterion 6.2(e).

23. The Competent authority for designating persons based on the criteria set out under UNSCR 1373 is the Court. The criteria are set out under section 22B (1A)(b) and section 22BE of the ATAA which makes specific provision for facilitating domestic listing based on requests from other countries.

24. The mechanism is provided for under section 22B(1) which is utilised for domestic and foreign referrals to the AG. The evidentiary standard for making the application and designation is reasonable grounds as outlined in section 22B(1A)(b).

25. The legal authority which outlines the mechanism to be adopted when proposing or considering a designation in accordance with UNSCRS 1267,1988 is outlined in section 22BD(1), 22BD(1-2) and 22BE(1). The operational mechanism utilised for soliciting and collecting information for 1267, 1988 designations is the same and is done through the Anti-Terrorism Desk and Task Force Charlie. The legislative provisions are coined on the basis that the AG receives information and shall cause an investigation to which end he may refer the matter to the Commissioner of the Police.

26. Upon receipt of information, the AG (pursuant to Section 22B(1)(a)(i-iii) and (b)) may refer a matter to the COP who can order an investigation. The country has taken a further measure to establish two bodies “Task Force Charlie and the Anti-Terrorism Desk” which are described as operational units that provide or collect information and cause investigations to be carried out.

27. There is no specific legal authority cited which speaks to the ability to collect or solicit information, the mechanism utilised for designation, however, allows for collecting

² Please see Interpretive Note for Rec. 6 paragraph 13 of the FATF Recommendations.

and soliciting information to identify persons and entities who meet the criteria for designation under UNSCR 1373.

28. Sections 22B(1A), (3)(b), (3A), (3C), (5A), (5B) & (12), Section 22B 22BA & Section 22BB of the ATA and ATAA, provide for the following mechanisms:

29. Upon receiving information, the AG may cause an investigation to be carried out. The AG may apply for an order of the Court (subsection 3). The AG is required within seven days after the date of the order (subsection 5) to have the matter publicised. The Freezing Order is only effected when communicated to the FIs and DNFBPs. The requirement of the FIU to serve as expressed in section 22AA(2)(e) is dependant on a request, however, they can also immediately communicate designations as provided for in section 22AA(c). Section 22AA(3) allows for circulation of new additions and listed persons immediately. This procedure does allow natural and legal persons to freeze without prior notice and this process can be achieved “without delay”.

30. The obligation to freeze funds is set out in in section 22B of the ATA and the obligation extends to a listed entity or person as provided in section 22B(1A)(b-c). The section provides for the freezing of property which is consistent with criterion 6.5 (b) (i-iv)).

31. There is a mechanism provided under section 22AA for communicating designations to the financial institutions (FIs) and DNFBPs through the Financial Intelligence Unit and publications in the Gazette and the newspapers. The legal provisions however make no reference for the provision of “clear guidance” to the FIs and DNFBPs in relation to their obligations in taking action under freezing mechanisms. The FIU has however published guidance on the reporting requirements of FI’s and LBs.

32. Sections 4 and 5 of the ATA makes provision for the prohibition of services or collection or provision of property used by a listed entity or by a person or entity acting on behalf, or at the direction of a listed entity (section 4(1)(d-e) and 5(1)(d-e) respectively. These both sections read in the context of section 22AA which provides a framework that prohibits nationals or person or entities within in the jurisdiction from making financial services and property available for the benefit of designated persons and entities.

33. There is no definition of financial or related services in the ATA. Property or funds is defined in section 2 of the ATA is consistent with the International Convention for the Suppression of the Financing of Terrorism and extends further to include “economic resources which may be used to obtain funds, goods or services”. This all-encompassing definition cover all possible means of funding under criterion 6.5(c).

34. Section 22B(3A) of the ATA provides for the serving of a person who is likely to be affected with a copy of the Order obtained by the AG in section 22B(1) freezing the funds of a person or entity. A person who is likely to be affected includes a person or entity with a similar name. These procedural provisions are bolstered by the specific provision at section 22B(4)(d) for the court to take into consideration making “provisions to preserve the rights of a bona fide third party acting in good faith”. Furthermore, the AG is obligated to review Freezing Orders made pursuant to section 22B(3) to determine if the conditions still exist for listing under and apply for a revocation or variation where he is satisfied that the circumstances for listing no long exist. This represents a comprehensive framework for giving effect to the rights of bona fide third parties consistent with the sub-criterion 6.5(f).

35. Section 22BD(3) of the ATA makes provision for the delisting of persons through the petition of the AG to the relevant UNSCR Committee where he is satisfied that an individual or entity listed no longer meets the criteria under the relevant UNSCRs. Section

22BD(4) requires the AG as far as practicable to inform an individual or entity listed of the availability of the UN office of the Ombudsman or focal point for delisting for the purpose of petitioning the removal from the relevant lists. Section 45(2) of the Interpretation Act, Chap 3:01 allows the AG to follow the procedures laid out under UNSCR 2368(2017). The Office of the AG published guidance on de-listing procedures via different mediums.

36. Sub-criterion 6.6(b) - Section 22B(9A)(a) provides a mechanism where the AG can delist and unfreeze funds of an individual or entity that no longer meets the criteria for listing under UNSCR 1373.

37. Sub-criterion 6.6 (c) - Section 22B(6) allows the listed entity to review a designation based on the decision of the court, where the judge has the prerogative where he/she is satisfied to revoke the order. The AG can also review to determine whether the designated person continues to meet the designations criteria (section 22B(9A)). No express provisions are made for an appeal of the judge's decision. However, the common law system under which Trinidad and Tobago operates allows for an appeal of any order of the court.

38. Sections 22B(3A) and (3C) provides for persons affected to apply to a Judge for review of the order. A person affected may include a person with the same or similar name to a designated entity. Furthermore, the AG may review an order to determine whether the person or listed entity continues to meet the criteria under UNSCR 1373 (section 22B(9A)).

39. Section 22B(10) makes provision for the publication of revoked orders by the AG via the gazette and two daily newspapers and subsection (11) makes provision for the communication of a de-listing immediately by the FIU via facsimile or other electronic means. The responsibility rest with the FIU as provided for under section 22AA(2)(a-e) and (3) to ensure that the de-listing is communicated immediately. The FIU has also published limited guidance on its website in relation to reporting and delisting procedures for FIs and LBs

40. **On this basis, Trinidad and Tobago is re-rated as compliant with R. 6.**

3.1.3. Recommendation 10 (originally rated LC)

41. Trinidad and Tobago was rated LC with R.10. The technical deficiency was that FIs and LBs “may file” an STR rather than should as required by criterion 10.20.

42. Trinidad and Tobago, through Regulation 11(8) of the Financial Obligations Regulations made pursuant to the Proceeds of Crime Act, Chap 11:27 (POCA) was amended by the Financial Obligations (Amendment) Regulations, 2018 in order to address with the requirements of Criterion 10.20.

43. **Trinidad and Tobago is therefore re-rated as compliant with R.10.**

3.1.4. Recommendation 16 (originally rated LC)

44. Trinidad and Tobago was rated LC with R.16. The technical deficiency related to not having requirements for the intermediary institution to maintain records where technology limitations prevent the required originator or beneficiary information from being maintained as required under criterion 16.10.

45. The Financial Obligations (Amendment) Regulations, 2018 amended Regulation 33 by inserting a new sub-regulation (7) which fulfils the deficiency.

46. In addition, it included in the amendment that record keeping should be required for at least 6 years, in accordance of Regulation.

47. **Trinidad and Tobago is therefore re-rated as compliant with R.16.**

3.1.5. Recommendation 19 (originally rated PC)

48. Trinidad and Tobago was rated PC with R.19. The technical deficiencies related to not having a requirement for countermeasures to be applied independently and that FIs and LBs were not advised of weaknesses in the AML/CFT regime of countries not included in the FATF advisory.

49. The deficiencies were specifically addressed by Section 17(1) allows for applying counter measures against higher risk countries when called upon by the FATF. Section 17(3) of the FIUTTA provides for applying measures against countries that have been identified by an FSRB as having strategic anti-money laundering (AML) and TF deficiencies. The country also provided that section 4(8) of the ESA provides for the application of economic sanctions against a country where a “grave breach of international peace and security” has occurred that is likely to result in a serious international crisis.

50. Section 17 of the FIUTT Act as amended by section 4(d) (ii) of the Miscellaneous Provisions Act outlines the counter measures that would be adopted by the country through the FIU in relation to countries identified by the FATF as non-compliant or insufficiently complaint with its Recommendations and financial institutions and listed businesses against whom an order is in effect under the ATA. The FIU is also statutorily required to provide periodically, information on trends and typologies on ML and Financing of Terrorism to FIs and LBs and set out the measures that may be applied against countries by FIs and LBs (section 17(1)(b) and (2). Subsection 3 makes provision for the publishing of countries identified by an FSRB as having strategic AML and TF deficiencies. Holistically, the cumulative effect of sub-sections 17(1), (2) and (3) of the FIUTTA obligates the country to advise via publication of countries with weaknesses in their AML/CFT system.

51. **Trinidad and Tobago is therefore re-rated as compliant with R.19.**

3.1.6. Recommendation 22 (originally rated LC)

52. In its 4th MER, Trinidad and Tobago was rated LC with R.22. The same deficiency noted for FIs for compliance with Recommendation 10 were also applicable to LBs.

53. The deficiency identified in Recommendation 10 applicable to both FIs and LBs was addressed by an amendment to the Financial Obligations Regulations requiring both FIs and LBs to file a suspicious transaction report if performing the CDD process could result in tipping-off the customer as discussed above.

54. **Trinidad and Tobago is therefore re-rated as compliant with R.22.**

3.1.7. Recommendation 23 (originally rated LC)

55. In its 4th MER, Trinidad and Tobago was rated LC with R. 23. The reason was that the same deficiencies noted for FIs in Recommendations 19 and 21 applied equally.

56. According to recommendation 19, FIs and LBs were not advised of weaknesses in the AML/CFT regime of countries not included in the FATF advisory, which has now been addressed as described above.

57. The deficiency for Recommendation 21 has also been addressed, as described below.

58. **Trinidad and Tobago is therefore re-rated as compliant with R. 23.**

3.1.8. Recommendation 24 (originally rated PC)

59. Trinidad and Tobago was rated PC with R.24.

60. The NRA as provided details the ML/TF risk treatment of incorporated legal persons and the context and vulnerability of each category of legal persons. The assessment done though pages 25-37 shows that the country has assessed the ML/TF risk associated with the incorporated legal persons captured by this Recommendation. It is notable that five (5) years have elapsed since the publishing of the NRA, however, the country has demonstrated that through the supervisors of legal entities it has continually assessed and identified its risk and adopt mitigating measures in response.

61. Trinidad and Tobago assented the Companies (Amendment) Act (CAA) on April 4th, 2019. Notably, section 2 of the CAA indicates that it comes into effect on such date as is fixed by the President by Proclamation. By Legal Notice number 112 dated May 29th, 2019, sections 1-10 and 11 of the Act have been proclaimed and is now in force in its entirety.

62. Through the CAA, Trinidad and Tobago adopts a system at section 5 amending section 177 of the Companies Act (CA) where the company is required to obtain and hold information on the companies' beneficial ownership as comprehensively defined in section 337A(2). Section 337(5) specifies that the information on record at the companies' registry should be verified annually and ss.337(1-2) shareholders should make written declarations annually to the company. Sections 337C(4) provides for the submission of a declaration to the company within 30 days of any change to the beneficial interest in the shares of a company.

63. This new provisions under the CAA ranging from 337A-337D makes provision for the keeping of updated and adequate beneficial ownership and control information. Persons are required to file with the company within 30 days of acquisition and any changes to their beneficial interest, a statutory declaration, and are liable for not doing so. Companies are required within 12 months of the commencement of the CAA to ascertain and obtain BO information and regularly thereafter. Further, they should issue a prescribed form requiring shareholders to submit a declaration annually. This bolsters the requirement to update where there are any changes in the interest, shareholding etc by a shareholder. The information is therefore regularly updated through the said procedures. Verification takes place annually as provided for in section 337A(5), however, the person is also required to submit a declaration with the Registrar within 30 days (section 377C(1-2)). The process therefore allows the Registrar to verify the BO information upon submission by the person and Company whether annually or more regularly, within 30 days.

64. The mechanism identified under the amended sections of the CA does provide for companies obtaining and holding updated information on beneficial ownership. The external companies are required under section 323 (1) to appoint a power attorney to act on their behalf in receiving process. The country made reference to section 194 which provides for the submission of annual returns by the company to the Registrar, which includes information in relation to beneficial ownership. These mechanisms sufficiently assign the responsibility to companies to share information and foster cooperation with competent authorities.

65. Regulation 12 and 18 of the FOR stipulates that FIs and LBs have an obligation to keep beneficial information. This is bolstered by Regulation 31 which makes provision to keep all account files and business correspondence and identification data for a period of six years. Further, section 455 speaks to the fact that the company has an obligation to keep the books until five years after winding up.

66. Section 4 of the CAA provides for the prohibition of bearer share warrants and registration of warrants previously issued.

67. The CA provides for the cancellation of the registration of an external company, a fine of ten thousand dollars and to imprisonment of three years and a daily fine for failure to submit a declaration of beneficial interest or to file a return for the issue or transfer of shares. This in conjunction with the offences detail in section 510, 513 provides sanctions that are sufficiently dissuasive. Further sanctions are provided under the Financial Institutions Act s.33(12) and the Securities Act. Together, the country has a broad spectrum of sanctions that are dissuasive.

68. Competent authorities such as the FIUTT, Law enforcement and others can access basic and BO information and foreign counterparts can access information online through payment of a fee. This provide good basis for providing international cooperation via MLATS and other means of international cooperation.

69. The country submits that its FIU receives feedback through the Egmont Group. Further, the Companies registry receive online feedback though customer feedback, which can be reviewed for quality assistance in order to assess that the information provided is accurate and relevant. There is no need for a formal structure by the country. The process engaged appears to allow for monitoring quality assistance.

70. In Trinidad and Tobago there is no provision in the Company Act to allow for the concept of nominee directors. Section 79(2) of the Company Act provides for alternative directors to be appointed who can only act in the absence of a Director. The alternative directors are subjected to the obligations outlined in section 99 of the companies Act that provides for Directors to act in honest and good faith and the best interest of the Company. Therefore, the obligations of criterion 24.12 do not apply in relation to domestic companies.

71. Section 179(2) makes provision for disclosure of nominee shareholders holding interest for directors in relation to public companies. Section 148 makes provision for the disclosure of the nominee shareholder to the company and the relevant registry in compliance with criterion 24.12 b or c. Section 179(1) makes provision for the registration of a Director's interest in shares in a public company and the disclosure of this information to the commission. Section 182 of the Companies Act prescribes an obligation on substantial shareholders (person holding 10% or more of the shareholders) to give notice within 14 days detailing the full particulars of the shares held by the shareholder or his nominee. Further, section 183 outlines that the obligation to give notice applies where a person ceases to be a substantial shareholder. Section 184 provides that the company should keep a record of its substantial shareholders and provide said records to the Company Registrar upon request. Section 185 makes it an offence to contravene the stipulations detailed in 182-184.

72. **Therefore, Trinidad and Tobago is re-rated as compliant with R.24.**

3.1.9. Recommendation 26 (originally rated PC)

73. In its 4th MER, Trinidad and Tobago was rated PC with R. 26. The technical deficiencies were that except for the regime undertaken by the Central Bank of Trinidad and Tobago (CBTT), the registration regime was not sufficiently robust to prevent criminals and



their associates from abusing FIs or mitigating ML/TF risks and that the regulation and supervision of the sector was not fully conducted using a risk-based approach.

74. In addition, except by the CBTT and to a limited degree the FIUTT, the frequency and intensity of off-site and on-site supervision is not based on the ML/TF risks, policies or internal controls of institutions as assessed by the supervisory authority. Also, the ML/TF risks in the jurisdiction did not guide the supervisory regime. Further, the ML/TF risk profile of financial institutions was not reviewed, especially where the institution is not subject to group-wide supervision.

75. In order to address the deficiencies, Trinidad and Tobago made legislative amendments through Sections 51(2) and 54 of the Securities Act which introduced strong fitness and propriety requirements for senior officers, directors and senior management of registrants which must be met prior to registration of entities. The jurisdiction also demonstrated that the FIU as AML/CFT supervisory authority for the money remittance sector and credit unions monitors the implementation of stringent fit and proper requirements for persons seeking to hold senior positions within these entities.

76. The deficiency identified related to the absence of a risk-based approach to the supervision of the financial sector. The TTSEC has demonstrated its use of a Composite Risk Assessment (CRA) in 2013 and 2016 to assess the riskiness of its registrants; this assessment captured quantitative (2013) and then qualitative information which is used to inform the development of the authority's inspection programme. In addition, TTSEC has also implemented through its Micro and Macro Prudential Reporting Framework (MMRF). The TTSEC supplements its risk analysis and rating of its registrants using data collected through this method. The most recent MMRF Report was issued by the TTSEC in September 2018. The regulation and supervision of other FIs and the money transfer services (that conduct international transfers) by the CBTT was found to be risk-based at the time of the onsite in 2015 with the MER noting that "*Off-site and on-site examinations process of supervisors has been undertaken on a risk-sensitive basis*" and that "*the CBTT has demonstrated that priority is being given to high risk areas.*"

77. The frequency and intensity of on-site and off-site AML/CFT supervision of FIs in T&T are on the basis of ML/TF risks and the policies, procedures and internal controls of the FI, their characteristics and ML/TF risks in the country.

78. TTSEC's execution of on-site and off-site AML/CFT supervision is based upon its use of a Composite Risk Assessment (CRA) to assess the riskiness of its registrants. This is supplemented by the authority's use of a Micro and Macro Prudential Reporting Framework (MMRF). TTSEC captures quantitative and qualitative information which is used to inform the development of the authority's inspection programme and based on the information collected from the CRA over the period 2013 to 2018, (which includes the registrant's ML/TF risks, policies and internal controls) the TTSEC has conducted onsite inspections which included examination of AML/CFT Compliance; In relation to other FIs, the CBTT's

79. The FIUTT in its conduct of AML/CFT compliance examinations scope, frequency and intensity of the supervision, examines the entity's business models and the adequacy of AML/CFT internal controls, policies and procedures relative to ML/TF risk. Risk Based Questionnaires (RBQs) are issued to the entities by sector and the country ML/TF risks have been taken into account following the outcome of the risk assessment.

80. As noted in the MER, since the time of the onsite, the CBTT's supervisory regime (off-site and on-site) adequately addresses the requirements of C. 26.5.

81. The deficiency noted referenced the lack of review of risk profiles of institutions which are not part of a financial group; however, the criterion requires the review of the risk profile of an FI or group. Further, based on the above description of the supervisory regime within T&T, the TTSEC reviews the outcomes of its CRA and MMRF reports which capture/indicate the risk profiles of the licensees. The FIUTT supervisory regime is also informed by Risk-Based Questionnaires – a mechanism capable of detecting and responding to changes in the risk profile of entities. The periodic dissemination of the RBQs (to all its supervised entities, including credit unions) is also considered a sound mechanism of review of the risk profile of entities. With respect to the CBTT, in addition to risk-based AML examinations, the ML/TF risk profile of all institutions is reviewed annually through a review of the annual statutory AML/CFT external audit reports. The Bank also meets at least quarterly with the larger institutions to discuss regulatory matters including AML/CFT and on a semi-annual basis, the Bank also reviews Board minutes and papers of regulated entities and these include those related to AML/CFT.

82. **Trinidad and Tobago is therefore re-rated as compliant with R.26.**

3.1.10. Recommendation 29 (originally rated LC)

83. Trinidad and Tobago was rated LC for R.29. The deficiencies were that the FIUTT SOP made provision for the FIUTT to conduct strategic and operational analysis only to ML and not TF. In addition, the FIUTT's ability to effectively deploy its resources can be affected as a result of budgetary constraints. The budget of the FIUTT was less than what was budgeted at most times during the period under review.

84. In order to address the deficiencies, the FIUTTA section 8(3)(c)(ii) provides that the FIU shall collect information as required for tactical analysis in order to generate activity patterns, trends and typologies, investigative leads and identify possible future behaviour. Contextually, trends and typologies are products of strategic analysis therefore the amendment fixes the gap discerned.

85. The FIUTT as a division within the Ministry of Finance has its own budgetary allocation which has been increased significantly over the last few years. The FIUTT as with all other Ministry/Department is required by the Ministry of Finance to submit its proposed budget for the preceding year to the Budget Division. The Budget Division submits the draft expenditure to the Minister of Finance which is discussed at Cabinet and then laid in Parliament and debated and passed.

86. The Minister of Finance's power is however limited and does not interfere with the operational independence and autonomy of the FIU.

87. **Therefore, Trinidad and Tobago is re-rated as compliant with R.29.**

3.1.11. Recommendation 32 (originally rated PC)

88. Trinidad and Tobago was rated PC with R. 32. The technical deficiencies were that civil and administrative sanctions that were applicable to failing to declare were dissuasive but not proportionate; there was limited coordination and cooperation between Customs and other LEAs regarding the implementation of R. 32 and that there were no legal or other measures mandating the Customs and Excise Division to maintain records relating to declarations.

89. While the Customs Act was in effect at the time of the MER, section 224 of the Customs Act, Chapter 78:01, which was not cited in the MER, is instructive as it permits the Comptroller of Customs, in relation to civil and administrative sanctions, to impose a

fine, penalty and forfeiture but not the term of imprisonment and not exceeding that prescribed for the offence.

90. Section 212 of the Customs Act establishes the offence of making a false declaration which shall incur a penalty of TTD125,000. By virtue of section 224 of the Customs Act, the Comptroller of Customs can impose the same penalty for a breach of section 212 up to the maximum penalty of TTD125,000.

91. Further, the offence of failing to declare can also trigger an offence under section 213 of the Customs Act which carries a penalty of TTD50,000 or treble the value of the goods, whichever is greater, and to imprisonment for a term of 8 years for a first offence and a penalty of TTD100,000 or treble the value of the goods, whichever is greater, and to imprisonment for a term of 15 years for a second or subsequent offence. As such, by virtue of section 224 of the Customs Act, the Comptroller of Customs can impose a penalty of TTD50,000 or treble the value of the goods, whichever is greater, for a first offence and a penalty of TTD100,000 or treble the value of the goods, whichever is greater, for a second or subsequent offence. The Comptroller of Customs however is not empowered to impose the term of imprisonment prescribed in the offence.

92. In effect, the Comptroller of Customs is empowered to apply the same level of sanctions as a criminal court, with the exception of a term of imprisonment.

93. Coordination and cooperation is now addressed through the establishment of an MOU which focuses on maximising interdiction efforts of cross-border threshold BNIs and cash by Customs, FIU, the FIB and the immigration department.

94. Section 5 (f) of the Miscellaneous Provisions (Mutual Assistance in Criminal Matters, Proceeds of Crime, Financial Intelligence Unit of Trinidad and Tobago, Customs and Exchange Control) Act, No. 2 of 2018 refers.

95. By that amendment, a new section (274 A) was inserted in the Customs Act and subsection (4) which creates a legal obligation for all records, which includes declarations, to be maintained for at least six (6) years.

96. **On this basis, Trinidad and Tobago is re-rated as compliant with R.32.**

3.1.12. Recommendation 33 (originally rated PC)

97. Trinidad and Tobago was rated PC with R.33. The technical deficiencies were, among other, that while the Authorities in Trinidad and Tobago maintained some statistics, some of the statistics could not be used to demonstrate the effectiveness and efficiency of the AML/CFT systems. In addition, some of the statistics provided by the different agencies did not sync with each other.

98. The recommendation mandates that comprehensive statistics on matters that are relevant to the effectiveness and efficiency of their AML/CFT system, which somewhat touches and concern some level of effectiveness and is therefore required to be rated under the Recommendation. Trinidad and Tobago has provided detailed and comprehensive statistics regarding the four areas required.

99. **On this basis, Trinidad and Tobago is re-rated as compliant with R.33.**

3.1.13. Recommendation 35 (originally rated PC)

100. Trinidad and Tobago was rated PC with R.35. The technical deficiencies, among others, were that the sanctions to address non-compliance with AML/CFT obligations, in

some cases, were not proportionate to the infraction or sufficiently dissuasive to discourage reoccurrence; except for TTSEC, there were no monetary administrative penalties for AML/CFT breaches.

101. In addition, FIUTT has a limited range of sanctioning power and there were deficiencies in the sanctions regime for R.6 and 8-23.

102. Criminal penalties ranging from TTD500,000 to TTD3,000,000 and imprisonment for 2 years to 7 years for non-compliance with the FORs.

103. The CBTT's measures include the issuance of regulatory directives requiring institutions to remedy deficiencies noted by on-site examinations and requesting action plans demonstrating timely remediation; downgrading of institutions' risk ratings; issuance of Compliance Directions compelling institutions to cease and desist or take appropriate action; and applying for injunctive relief and restriction.

104. The CBTT and TTSEC (sec. 23 FIA; sec. 57/58 SA) can also revoke licenses for non-compliance. Other remedial and sanctions available to the TTSEC not provided.

105. The Supervisors all have progressive sanctioning powers which range from the issuing of a notice to court action (sec. 86 FIA; sec. 90 SA; sec. 18G FIUTTA).

106. R.35 speaks to administrative and civil sanctions. Therefore, whilst criminal sanctions appear to be proportionate and dissuasive, the civil and administrative sanctions are not.

107. This deficiency is not addressed on the basis of the administrative sanctions are not proportionate and dissuasive. The deficiency was pointing to the lack of financial penalties for administrative breaches.

108. The CBTT has the widest range of sanctions although it is not able to impose financial penalties. The measures available are considered to be proportionate and dissuasive.

109. The FIUTT has a limited range as it can impose compliance directions which if not complied with can be Court enforced. There have been not additional measures provided to the FIUTT since the mutual evaluation.

110. There are still no monetary administrative penalties for AML/CFT breaches. **On this basis, the rating of partially compliant with R.35 remains.**

3.1.14. Recommendation 37 (originally rated PC)

111. In its 4th Round MER, Trinidad and Tobago was rated PC with R.37. The technical deficiencies were mainly related to the Mutual Assistance in Criminal Matters Act (MACMA) not making any express provision on the need to provide rapid assistance to satisfy a request for assistance and that no formal case management system was in place.

112. Section 39 (1) of the MACMA establishes an overall provision which allows the AG to make regulations "prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect" to the Act. The AG has since, issued Legal Notice No.1 (The Mutual Assistance in Criminal Matters (requests for Mutual Assistance) Regulations), which makes provisions at regulation 2 for the prioritization and prompt execution of request by the Central Authority.

113. A fully electronic online case management system was developed in November 2016 with the assistance of the Information and Technology Department as well as the Central Authority's Research and Planning Assistant. The Central Authority has a dedicated

scanner for its own use and files continue to be uploaded into the system on a daily basis, therefore a functional case management system is now in place addressing the deficiency included in the MER.

114. The deficiency identified in the MER of Trinidad and Tobago regarding the general discretion to refuse a request and under the tax laws, a request could have been refused. In relation to this criterion appears to have rested squarely on the presence of section 22(2) (k) which expressly stated that the AG “Shall refuse...if the request relates to a criminal offence under the tax laws of a Commonwealth Country” without allowing for the exercise of discretion. The country has since deleted the sub-section 22(2)(k) by the Miscellaneous Provisions Act, No. 2 of 2018. These provisions have significantly cured the deficiency as identified in the MER. There is no prohibition or unduly restrictive conditions in the legal framework of Trinidad and Tobago to provide mutual legal assistance.

115. **On this basis, R.37 is re-rated as compliant.**

3.1.15. Recommendation 39 (originally rated LC)

116. In its 4th MER, Trinidad and Tobago was rated LC with R.39. The technical deficiencies were the lack of formal case management system.

117. In order to address the deficiency noted, Trinidad and Tobago a functional case management system that addresses all the essential elements of a filing system.

118. **On this basis, Trinidad and Tobago is re-rated as compliant with R. 39.**

3.1.16. Recommendation 40 (originally rated PC)

119. Trinidad and Tobago was rated PC with R.40. The technical deficiencies were, among other, that

120. The spontaneous exchange of information by the Competent Authorities was not adequately provided for; the FIUTT was the only competent authority with a clear and secure gateway to information. There was no clear indication as to whether besides the FIUTT any other law enforcement or supervisory agency had written policies on prioritisation and timely processing of requests; LEAs had no clear process in place to ensure the security of information received and no indication that the CBTT could enter into bilateral and multilateral agreements to cooperate.

121. In addition, there were no apparent measures requiring requesting CAs to provide timely feedback upon request to CAs that they have received information from; there was no safeguard and control in place for LEAs to ensure that information shared was only used for the purpose for which the information was sourced or provided unless authorization was given.

122. In order to address the deficiencies noted, an MMOU was negotiated with a limited range of foreign counterparts and thus provides for the spontaneous exchange of information, by the CBTT and TTSEC with some Regional Regulatory Authorities. There are no legal impediments for the CBTT and TTSEC to spontaneously exchange information and has done so upon request of foreign counterparts.

123. Spontaneous dissemination by the FIUTT is addressed by s.4(1)(b)(ii) of the Miscellaneous Provisions (Mutual Assistance in Criminal Matters, Proceeds of Crime, Financial Intelligence Unit of Trinidad and Tobago, Customs and Exchange Control) Act, No. 2 of 2018. The FIB’s revised 2018 Information Sharing Policy specifically provides for

the spontaneous exchange of information and also articulates clear processes to facilitate such exchanges.

124. However, it remains unclear how the CCLEC and CMAA addresses spontaneous sharing by Customs.

125. In order to address the deficiency regarding the clear and secure gateway to information, for the CBTT, the Information Security Policy apparently creates the foundation upon which a secure information gateway can be built. The policy was not provided since it is considered confidential, therefore it has not been reviewed. However, the handling of confidential information is addressed in the Financial Institutions Act, Insurance Act and Central Bank Act; for TTSEC, Section 19 of the Securities Act 2012 provides a clear and secure mechanism for the exchange of information with international counterparts. It is provided at section 19(6) of the Securities Act 2012 that any information provided and received by the TTSEC pursuant to section 19 shall be confidential. This legislation was already in place at the time of Trinidad and Tobago's assessment, however, it appears that it was not factored for the purposes of the sub-criteria since it is not reflected in the MER.

126. The FIB's secure gateway is available through INTERPOL. Where the FIB is sharing information (external to INTERPOL), its International Information Sharing Policy contains a paragraph on information processing and confidentiality, which refers to, inter alia, a File Transfer Protocol Server which is exclusive to the FIB and cannot be accessed by any other Division, Branch, Section or Unit and Customs, through the Customs Act, addresses the confidentiality obligation regarding the information under their remittance.

127. Regarding the prioritisation and timely processing of requests, the FIB's revised 2018 Information Sharing Policy reflects that an investigator is immediately assigned to treat with the incoming request; time periods are stipulated where a Production Order is required to obtain the information; there is an established period for the investigator to provide status reports; and that responses are sent immediately upon the approval of the FIB Director.

128. TTSEC and CBTT are able to exchange information with foreign counterparts. TTSEC addresses the prioritization based on the time frame within the requesting authority indicates, based on the IOSCO MMOU. The legislation set out in Trinidad and Tobago's response allows for a timely processing of the request.

129. For the CBTT, while an MMOU and MOU with Canada pre-date the assessment period (2011 and 2010, respectively), it is not apparent that the information included in the MER was factored in, however, for the purposes of this re-rating process, there is no clear Policy other than the documents referenced, which remains as a deficiency.

130. The deficiency where LEAs have no clear process in place to ensure the security of information received, page 9 of the FIB's SOP as provided is insufficient because it does not speak to a process but is a statement regarding the protection of information and sources of information. The scope of the text "As far as practicable..." is also unclear. The SOP also pre-dates Trinidad and Tobago's assessment.

131. The FIB's International Information Sharing Policy (revised December 2018), however, clearly indicates that the confidentiality of information processed at the FIB is determined according to the risks linked to its disclosure to those who are the subject of cooperation. Information being shared by the FIB should only be accessible to persons authorized to know such information, therefore addressing the deficiency.

132. The FIA Section 8(3) and IA Section 16(4) provide for the CBTT to enter into MOUs with various agencies with respect to sharing information and also states that “*the absence of such Memorandum of Understanding shall not prevent the disclosure of information by the Central Bank...*”. provisions in law and the multilateral and bilateral MOUs that have been established in practice therefore demonstrate that the CBTT can enter into MOUs (of which there are several bilateral, trilateral or otherwise)

133. The absence of impediments to the provision of timely feedback permits timely feedback to be provided (see analysis for the FIB under criteria 40.2 (d), section 19 of the SA 2012 TTSEC and section 8 (2) of the FIA for the CBTT). The provision are wide enough to cover feedback upon request by foreign counterparts for Competent Authorities.

134. The FIUTT is a member of the Egmont Group of FIUs since July 2013 and abides by the October 2013 Egmont Group of Financial Intelligence Units “Principles for Information Exchange” among Financial Intelligence Units. Item 19 of that document states, “Upon request and whenever possible, FIUs should provide feedback to their foreign counterparts on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided”. FIUTT should receive a request for feedback or they can provide the feedback spontaneously.

135. TTSEC, as set out in section 6(h) of the Securities Act 2012 is to “co-operate with and provide assistance to regulatory authorities in Trinidad and Tobago and elsewhere.” Section 7(n) of the SA 2012 gives the TTSEC the power to “do all things and take all actions which may be necessary, expedient, incidental or conducive to the discharge of any of its functions and the exercise of its powers under the Act.” This overarching function and overarching power gives the TTSEC the explicit ability to co-operate and assist via any means with regulatory authorities without limiting the generality of the information which can be shared pursuant to such co-operation and assistance.

136. For the CBTT, section 8(2) of the FIA provides for the CBTT to share information with other local or foreign regulators, the DIC and the FIU once the CBTT that the information will be treated confidentially. The information to be shared includes prudential and AML/CFT information such as information regarding the affairs of a licensee or its affiliates, or information regarding a depositor, customer or other person dealing with the licensee obtained in the course of its duties. In this regard, the Consolidated Supervision Framework and MMOU (already referenced) speak specifically to sharing of information among regulators with shared responsibility for a financial group and which permits that sharing of the relevant information.

137. In addition, the FIA Section 8(3) and IA Section 16(4) allow the CBTT to enter into MOUs with various agencies and also states that “*the absence of such Memorandum of Understanding shall not prevent the disclosure of information by the Central Bank...*”. Consequently, the CBTT is able to share information with other foreign regulators even where no MOU exists.

138. The deficiencies included in the MER referenced that the “provisions are not specific enough to ensure free flow of information”, however, as indicated under the analysis above, the provision are wide enough to cover the requirements under the criterion.

139. Trinidad and Tobago had no measures to allow foreign counterparts to conduct their own inquiries within the jurisdiction, and this deficiency has been addressed. For the CBTT, s. 8(2),8(3), 8(4) and the Fifth Schedule allow for foreign counterparts to conduct their inquiries within the jurisdiction. For the TTSEC s. 150(1)(b) of the SA sufficiently address this deficiency.

140. Regarding the deficiency noted in the MER, where there were no measures on the receipt of prior authorisation of the requested supervisor for the dissemination of information, under section 4.3 of the MOU between the CBTT and the TTSEC, the request will include inter alia, whether any other authority, governmental or non-governmental is cooperating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary. Provisions in sections 7 and 8 of the MOU stipulate that the Requesting Authority may not use the information provided other than for the purpose indicated in the request and that the information will not be disclosed to third parties without prior written consent of the Requested Authority. Similar provisions are contained in the MOU with the FIU and in the MMOU with regional regulators.

141. In accordance with the IOSCO MMOU, supervisors are required to use requested information solely for the purposes specified or within the general framework for use, unless prior consent is obtained from the requested authority.

142. There was no provision for Income Tax officials to exchange information with their foreign counter-parts in relation to ML, TF, predicate offences and tracing the proceeds and instrumentalities of crime. Taking into consideration as well that the Mutual Assistance in Criminal Matters Act was amended to delete section 22 (2) (k) which was a restriction on the applicability of the legislation vis à vis tax matters (*see analysis under Rec. 37*), there is no prohibition against a country making a request for tax information in accordance with the TIEA Act and, the MACMA. Requests may also be channelled through the FIUTT and Law Enforcement.

143. There is still not sufficient evidence to confirm agreements with foreign counterparts. Trinidad and Tobago submits that the relationship with INTERPOL is governed by the INTERPOL Constitution. Due to the confidential nature of the CCLEC, Trinidad and Tobago was unable to provide a copy of this MOU to the Assessment Team, however a letter dated June 5, 2015 from the Comptroller of Customs was provided and it sets out, inter alia, the purpose of the MOU. The letter of June 5, 2015 provided some details which attests to an MOU being signed by thirty-six countries with the aim of formalising mutual assistance, spontaneous assistance and assistance upon request among the signatories. The triggers for such assistance are sufficiently wide to include the use of Customs powers at the behest of the signatories to the MOU, in furtherance of inquiries and to obtain and share information. The limited reach of this MOU should however be flagged.

144. Section 5 of the Mutual Assistance in Criminal Matters (MACMA) Act, Chap. 11:24 provides that nothing in the Act shall prevent other forms of international cooperation, therefore, not prohibiting joint investigations by specifically providing that the Act does not derogate from such existing forms of international cooperation. Trinidad and Tobago has provided information regarding joint investigations with foreign counterparts.

145. There are no legal impediments for sharing information indirectly with non-counterparts through one or more domestic or foreign counterpart as indicated by Trinidad and Tobago.

146. **On this basis, Trinidad and Tobago is re-rated as largely compliant with R. 40.**

3.2. Progress on Recommendations which have changed since Trinidad and Tobago's Mutual Evaluation Report

147. Since the adoption of Trinidad and Tobago's MER, the FATF has amended Recommendations 2, 5, 7, 8, 18 and 21. This section considers Trinidad and Tobago's compliance with the new requirements and how the country is addressing the deficiencies included in the MER.

3.2.1. Recommendation 2 (originally rated LC)

148. In its 4th MER, Trinidad and Tobago was rated LC with R.2. The technical deficiencies related primarily to not fully develop AML/CFT policies which were informed based on identified ML/TF risks and that the National Anti-Money Laundering Committee (NAMLC), the co-ordinating body for AML/CFT needed to be properly constituted in law to create more stability for that entity.

149. The Methodology was amended in October 2018 in order to reflect the February 2018 amendments to the FATF Standards (R.2) which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules and build on the conclusions of RTMG's report on inter-agency CT/CFT information sharing.

150. Section 57A (1) of the Proceeds of Crime Act (as amended by the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act No. 20 of 2018) addresses this deficiency by establishing a committee known as the NAMLC and endowing it with specific functions, such as (ii) implementing the coordination of national AML, CFT and PF policies.

151. Trinidad and Tobago has the framework that allows the authorities that comprise NAMLC to co-operate, and where appropriate, co-ordinate and exchange information domestically with each other concerning the development and implementation of AML/CFT policies and activities. Such mechanisms should apply at both policymaking and operational levels.

152. Since there are no Data Protection and Privacy Rules laws in effect, there are no impediments to national AML/CFT efforts to cooperate, coordinate and share information.

153. There is information on the specific strategic priorities out of which the actions articulated (*see analysis under Rec.1 above*). A risk-based approach on the policies after the adoption of the NRA has not been clearly conveyed by Trinidad and Tobago since the strategic areas, while identified, have not been conveyed in a structured manner that would demonstrate that the current AML/CFT policies are aligned with the identified ML/TF risks

154. While there is no overarching policy is "The Implementation Overview on the National Risk Assessment", it indicates the actions adopted by Trinidad and Tobago based on the NRA results, which uses data from 2011-2013. The document was provided in draft form, although the authorities consider it is "draft" based on the fact that it requires continuous updating. **On this basis, Trinidad and Tobago remains largely compliant with R.2.**

3.2.2. Recommendation 5 (originally rated C)

155. R. 5 was amended since Trinidad and Tobago's assessment and criterion 5.2 *bis* was included so that TF offences should include financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the

perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

156. The Anti-Terrorism (Amendment) Act, 2018 (No.13 of 2018) criminalises the offence of travelling for the purpose of planning, committing or supporting a terrorist act or facilitating the commission of a terrorist act. Section 22(7) makes an offence to take preparatory steps to commit any offence under section 22(A) including section 22(A)(1) (d). Section 13 creates the offence of providing instruction or training to persons engaging in or preparing to engage in the commission of a terrorist act. Section 2 (1) allows for the extension of the offence in section 15(A) to cover section 13. The training provided does not include for the purpose of perpetration and planning or preparation. While the offence of attending or receiving of training for the purpose of carrying out a terrorist act is criminalised by section 13A, this does not directly include travel for receiving training to participate and plan or prepare. However, the definition of “terrorist act” in section 2 includes all offences listed under Part II, III, IIIA and therefore covers travelling for the purpose of committing the offences under section 13 and 13A, thereby covering the purposes of participating and planning. Section 15G provides that the taking of preparatory steps under that part shall be an offence with liability to the penalty of the offence.

157. **As a result, Trinidad and Tobago remains compliant with R.5.**

3.2.3. Recommendation 7 (originally rated NC)

158. Trinidad and Tobago was rated NC for Rec. 7. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the PF related UNSCRs.

159. Trinidad and Tobago has enacted 2 Orders pursuant to the ESA in relation to the DPRK and Iran, those being the Economic Sanctions (Implementation of United Nations Resolutions of the Democratic People’s Republic of Korea) Order, 2018, hereinafter referred to as the ‘DPRK Order’ by Legal Notice No. 184 dated December 14, 2018 in relation to UNSCR 1718 on DPRK; and the Economic Sanctions (Implementation of United Nations Resolutions on the Islamic Republic of Iran) Order, 2018 hereinafter referred to as the ‘Iran Order’ by Legal Notice No. 185 dated December 14, 2018 in relation to UNSCR 2232 on Iran.

160. Both the Iran and DPRK Orders are subsidiary legislation enacted in accordance with section 4(1) of the ESA. The operative provisions of both the DPRK and Iran Orders have been extended indefinitely in accordance with section 4(5) of the ESA by Motions of the House of Representatives.

161. Section 3 of the Orders (No. 184 and 185 of 2018) allows for the AG to apply for an order which shall be heard *ex parte* in 18 hours. The AG is able to apply for an order where persons are added to the list before the amendment of the list provided in the schedule by the Minister. The mechanism allows for the freezing of property upon the granting of the Order by the High Court.

162. The Orders designate the AG as the Competent Authority (CA) responsible for implementing and enforcing targeted financial sanction pursuant to UNSCR 118 (2006) on DPRK and UNSCR 2231 (2015) relating to Iran.

163. Section 4(7) of the Orders provides a mechanism for communicating designations to the FIs and Listed Businesses (LBs) within seven days after the date of the order. There is no equivalent provision which mandates a CA to provide clear guidance to FIs and LBs holding targeted funds or other assets on their obligations under the freezing mechanisms.

164. Section 9(1) of the Orders mandate FIs and LBs, upon notification, to inform the FIU of any property or any transaction being conducted by a listed entity including an attempted transaction. The FI or LB is prohibited from entering or continuing a transaction or business relationship with a listed entity.

165. Section 4(3)(D) of the Orders specifies that an Order may make such provisions as is just in the circumstances to preserve the rights of any bona fide third-party acting in good faith. Subsection (7) provides for the service of the order and subsection 8 for a biannual review of the order by the AG to determine whether the criteria under the respective UNSCRs still apply to the listed entity. Subsection 9 and 10 makes provision for the variation of the order by the AG. Section 6(1) and 7 of the Orders make provision for the review upon application by an affected person.

166. Section 4 (5) provides upon service of an order to an individual or entity immediate action shall be taken to restrict the availability of property in accordance with the order. Section 9(1) of the Orders (The Orders) makes provision for FIs and LBs to inform the FIU upon notification, of any property they hold in the name of a listed entity and subsection 2 prohibits a FI or LB from entering into or continuing a transaction or business relationship with a listed entity or person as detailed in the respective Schedules II.

167. Clause 4(1)(a)(i) of the Orders specifically provides that the property to be frozen need not be tied to a particular act, plot or threat of proliferation.

168. Clause 4(1)(ii) of both Orders specifically outlines that the order obtain by the AG under Clause 3 extends to property that is wholly or jointly owned or controlled, directly or indirectly, by the listed.

169. Clause 4(1)(iii) of both Orders specifically outlines that the order obtain by the AG under Clause 3 extends to property that is derived from property owned or controlled directly or indirectly by the listed entity.

170. Section 12-section 13 of the Orders prohibits any person from making available to or for the benefit of a listed entity financial services or property. Section 12 provides that “no person shall knowingly provide or make available financial or other related services whether directly or indirectly” while clause 13 prohibits the provision or making available property. Property is defined to include asset of any kind at clause 2 of the Orders.

171. Clauses 4(6-7) in both Orders makes provision for the communication of designations to FIs and LBs. Clause 8(1) (d) and (2) provides that the AG shall circulate orders immediately at intervals of three months and when new information has been obtained, even before the expiration of those three months, circulate any additions to the list or a new list immediately by facsimile or other electronic means. The country has provided documented proof to show that guidance has been provided by supervisors, the Office of the AG and through media publications.

172. Clause 9(1) of the Orders mandate FIs and LBs to inform the FIU of any property or any transactions being conducted by a listed entity including an attempted transaction. There is also a prohibition from entering or continuing business with the listed entity.

173. Clause 4(3)(d) of the Orders makes provision for the preservation of the rights of bona fide third parties. Provision is also made at clause 6(1) and 7 for the affected third party to initiate a review.

174. Clause 10(2)(a-b) of the Orders provides that a listed individual or entity may apply to the AG to petition or apply directly to the respective Focal Point for De-listing from the 1718 or 2231 List. Subclauses 3-4 provides for the AG to petition the Focal Point on his

own motion on behalf of the listed entity where they no longer meet the criteria for listing and imposes a duty on the AG to inform the listed entity or individual of the availability of the Focal Points.

175. Clause 5(1-4) of the Orders makes provision for the varying of an Order to provide access to funds consistent with article 9(a-c) of S/RES/1718. Clause 4(6) of the Orders provide for the adding of interest earned or payments due on accounts under contract, agreements or other obligations, that arose prior to the accounts becoming subject to the provision of the Order with any earnings deposited into account as directed by the Court.

176. Clause 5(2)(f) makes provision for an individual or entity making any payment due under a contract on the basis of Clause 7.5(b)(i) and 7.5(b)(ii). Clause 5(5) provides for prior notification to the Security Council of the AG's intention to apply for a variation within ten working days.

177. There are deficiencies regarding Clause 8 (1) (c-d) and 2 of the Orders, which make provision for the AG to maintain a list and provide information immediately to the FIs and LBs upon request. Section 18F(1)(F) of the FIUTTA as amended makes provision for the FIU to monitor compliance of non-regulated FIs and LBs for which it is the supervisory authority to secure compliance with any other written law including the ESA and the subsequent Orders. There is no mention of a measure which the FIUTT utilise to monitor compliance, for example, requiring FIs and LBs to regularly screen names and addresses against the consolidated list of designated person/entities. Notably, a similar measure for monitoring is not maintained for FIs that are not supervised by the FIU. There are appropriate and adequate sanctions available against persons for no compliance (clause 28 of the Iran and 39 of DPRK Orders).

178. Clauses 7(3) of the Orders make provision for the publication (publication in the Gazette and at least two daily newspapers in circulation) of a successful application to set aside a freezing order. Clause 7(3)(b) of the Orders provide for a mechanism to communicate the delisting to the Financial intelligence Unit with a requirement to serve the order in accordance with the Civil Procedure Rules. The FIU immediately communicates de-listings in accordance with section 22AA(2) (a-e) and (3) of the ATA. Furthermore, clause 8(1)(d) provides that the AG is obligated to circulate orders to FIs and LBs immediately at intervals at three months and clause 8(2) requires that any new information is communicated immediately to the LBs and FIs. The operation of the law provides no positive obligation, when a delisting has taken place, on the FIs and LBs and other persons. A notice is provided which stipulates that FIs and LBs are no longer prohibited from entering into transactions with the delisted person and there are no further restrictions. The public guidance stipulates that when an order is revoked the funds are no longer frozen and there are no longer any restrictions on transactions involving the property of the individual or entity. In these circumstances, the notice that would be issued by the court combined with the public guidance issued by the AG's Office sufficiently meets the requirement of providing guidance.

179. **As a result, Trinidad and Tobago is re-rated as largely compliant with R.7.**

3.2.4. Recommendation 8 (originally rated NC)

180. Trinidad and Tobago was rated NC for Rec. 8. In October 2016, R.8 was substantially amended. The revised Recommendation requires a more systematic understanding of the risk in the Non-Profit Organisations (NPOs) sector.

181. Trinidad and Tobago has enacted the Non Profit Organisations Act, 2019, which was assented on April 23rd, 2019. The Act provides for the registration of non-profit organisations, the establishment and maintenance of a register of non-profit organisations, the obligations of non-profit organisations and for related matters Section 2 indicates that this Act comes into operation on such date as is fixed by the President by Proclamation. However, this has not occurred yet, therefore, when the analysis for this Rec. was conducted the legislation was not in force since the commencement order was not in place, therefore it has not been considered for re-rating purposes. Consequently, the information included for criteria 8.3 and 8.4 is for information purposes only and has not been considered for re-rating purposes.

182. Trinidad and Tobago in a policy paper prepared by the Non-Profit Organisations Team (NPOT) completed a preliminary review of the NPO sector. The paper identified some of the main challenges in developing a risk-based system for NPOs to meet the obligations of Rec. 8. In reviewing the sector, the paper's only conclusion with regard to identifying the subset of organizations that fall within the FATF definition of NPOs is that registered NPOs sending or receiving moneys overseas are at risk of TF abuse. While the report is, as noted preliminary, the conclusion is rudimentary at best with no given rationale. There is no further indication regarding features, types, activities and characteristics of at risk NPOs. The policy paper does not identify the nature of threats posed by terrorist entities to NPOs which are at risk as well as how terrorist actors abuse those NPOs.

183. The review of the legislative framework for NPOs as set out in the policy paper identified registration, reporting, record-keeping and supervision challenges. The review covered all NPOs generally since there are no specific laws and regulations that relate to the identified subset of NPOs sending or receiving moneys. Since the paper did not identify the nature of threats posed by terrorist entities to these NPOs no proportionate and effective actions against such threats could be formulated.

184. The authorities have advised that the work of the NPOT and the NAMLC (and its working groups) on the vulnerabilities and threats to the NPO sector is ongoing and allows for periodic reassessment of the sector. However as noted the first review is preliminary and as indicated above there is more to be done to complete a first full assessment of the NPO sector. As such the authorities have not been able to do a reassessment of the sector as yet.

185. The authorities have conducted six (6) outreach sessions, held during 2018 on April 18, April 30, July 5, July 24, September and in January 2019. Information regarding the number of participants and the NPOs represented during these outreach sessions has been presented. The sessions dealt with registration requirements and raising awareness about potential vulnerabilities of NPOs.

186. No evidence has been presented by the authorities to demonstrate that they have been working with NPOs to develop and refine best practices and no measures have been taken to encourage NPOs to conduct transactions via regulated financial channels.

187. The FIU is mandated to supervise the NPO's with the assent of the Non-Profit Organisations Act on April 23rd, 2019. However, the legislation was not in effect at the time of the analysis as indicated in paragraph 179 above. In addition, sanctions for violations by NPOs have not been assessed for the same reason.

188. While the authorities advise that there are mechanisms in place for effective co-operation, co-ordination and information-sharing among all levels of appropriate authorities, these have not been described. While one of the functions of the NPOT as stated

is the continuous co-ordination of information sharing on NPOs, details on how this is implemented have not been provided.

189. No evidence of investigative expertise and capability with regard to examining NPOs suspected of either being exploited or actively supporting terrorism has been presented. It is noted that referenced pages of the CFATF CRTMG Typology Report on ML and TF deal with the funding of Jihadi fighters, however it is not related to NPOs.

190. The authorities advise that information at the Companies Registry is accessible via an online search with minimum payment fee and that law enforcement can obtain this information via MOU arrangement. The information available at the Registrar would be incorporation and basic ownership information, however, the requirement also calls for access to information on administration and management including financial and programmatic information.

191. The measures as indicated by the authorities include the STR/SAR regime as set out under S.22C of the ATA requires FIs and LBs to report to the FIU where there is reasonable grounds to suspect that a client NPO is involved in any of the activities set out in C.8.5(d). Law enforcement may also apply the investigative powers set out in Part IV of the ATA including monitoring orders under S.24C which specifically refer to non-profit organizations, as well as the power to gather information (S.24); authority for search (S.24A); and customer information order (S.24B). All of these provisions incorporate the “reasonable grounds” standard required by C. 8.5(d). The above measures fully comply with the requirements of the sub-criterion.

192. Section 33 of the ATA provides that the FIUTT can disclose to an appropriate authority any information in its possession relating to any terrorist property and also provide information through the Egmont Group.

193. **As a result, Trinidad and Tobago is re-rated as partially compliant with R.8.**

3.2.5. Recommendation 18 (originally rated C)

194. Trinidad and Tobago was rated C with R.18.

195. The country has addressed the revised requirement with amendments in the Financial Obligations (Amendment) Regulations, No. 73 of 2019 regarding group-level AML compliance and branches and subsidiaries.

196. **Trinidad and Tobago remains compliant with R.18.**

3.2.6. Recommendation 21 (originally rated LC)

197. Trinidad and Tobago was rated LC in its 4th Round MER. The technical deficiency was that that the offence of tipping off is only applicable when an STR/SAR has been reported and not when an STR/SAR has been filed. In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

198. Section 2(b) of the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act, No. 20 of 2018 amends section 51 of the POCA to include a new subsection (1A), which provides for tipping off to be applicable when an STR/SAR has been filed.

199. The revised requirement has been addressed by Trinidad and Tobago by virtue of the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial

Intelligence Unit of Trinidad and Tobago) Act, No. 20 of 2018, section 51 (4) subsection (4A) and Legal Notice No. 73 of 2019 refers as it amends Regulation 7 of the Financial Obligations Regulations by inserting after sub regulation (4) the new sub regulation (4A).

200. **Trinidad and Tobago therefore is re-rated as compliant with R.21.**

3.3. Brief overview of progress on other Recommendations rated NC/PC

201. Trinidad and Tobago reported progress in the other Recommendation rated NC/PC. For Recommendation 25 (PC), progress is noted based on the CAA; Proceeds of Crime Act, Chapter 11:27 and other instruments, which are expected to cover the deficiencies.

4. CONCLUSION

202. Overall, Trinidad and Tobago has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on 18 Recommendations.

203. 4 Recommendations remain PC (25, 28, 35 and 38) and none NC. Trinidad and Tobago fully addressed the deficiencies in Recs. 6, 10, 16, 19, 21, 22, 23, 24, 26, 29, 32, 33, 37 and 39 which are re-rated as C. Trinidad and Tobago has also addressed most of the technical compliance deficiencies identified on Recommendations 1, 7, and 40 such that only minor shortcomings remain, and these Recommendations are re-rated as LC. Recommendation 8 is upgraded to PC, Recommendations 5 and 18 maintain the rating of C while Recommendation 2 maintains the rating of LC.

204. In light of Trinidad and Tobago's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, May 2019

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

205. Trinidad and Tobago will remain in enhanced follow-up on the basis that it had a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes (11 in total) (CFATF Procedures, para. 83(a)). According to the enhanced follow-up process, Trinidad and Tobago will continue to report back to the CFATF on progress to strengthen its implementation of AML/CFT measures.





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Anti-money laundering and counter-terrorist financing measures in Trinidad and Tobago

3rd Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Trinidad and Tobago's progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of November 2015.

The report also looks at whether Trinidad and Tobago has implemented new measures to meet the requirements of FATF Recommendations that changed since its 4th Round Mutual Evaluation assessment.