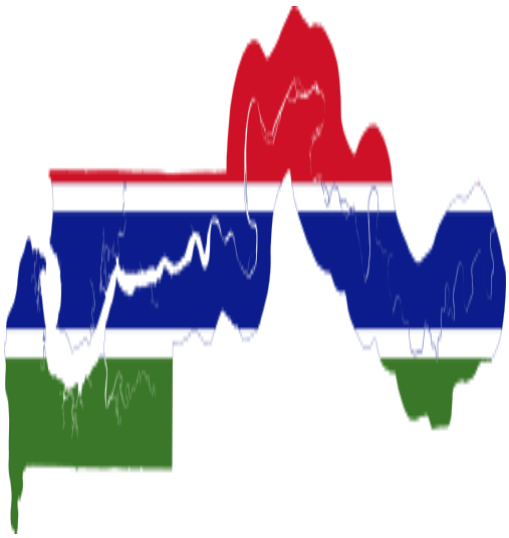
INTER-GOVERNMENTAL ACTION GROUP
AGAINST MONEY LAUNDERING IN WEST AFRICA

First Follow Up Report

Mutual Evaluation



THE GAMBIA

NOVEMBER 2009

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I. INTRODUCTION

1. A Mutual Evaluation (ME) on-site visit was conducted by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) on The Gambia from 14 to 23 April 2008. The main objective of the on-site visit was to assess the country's level of compliance with the Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) and international standards, including the FATF 40 + 9 Recommendations The review covered all aspects of economic activity in the country, with information derived from interviews with stakeholders, review of supervisory and regulatory frameworks as well as policy and legal documents.

2. The key findings from the ME were documented in a comprehensive 245 page report which was the subject of GIABA plenary session of stakeholders, held in Dakar in November 2008. The review found in place appropriate pieces of legislation pursuant to the FATF recommendations and the UN instruments in combating the social evils of money laundering and terrorism financing. In particular, the enactment of the Money laundering Act 2003 and the Anti-Terrorism Act 2002, coupled with the Government's ratification of key UN conventions have gone a long way in establishing the rudimentary measures against these menaces.

3. Regarding the regulatory framework, the Gambian authorities vide the 1997 constitution sought to centralize the supervision of all financial institutions within the Central Bank. This has resulted in the apex institution being responsible for the supervision of banking institutions, Insurance Companies, Microfinance institutions, finance companies etc. Although the findings revealed varying degrees of compliance with some of the FATF recommendations, tremendous progress was registered since then. The following measures were implemented and full compliance is being pursued vigorously:

- Establishment of a Financial Intelligence Unit (FIU) within the Financial Supervision Department of the Central Bank. Two offices currently serve this purpose and are exclusive to the FIU staff only;
- The Banks have commenced the reporting of suspicious transactions. These reports were analyzed by staff of the FIU and where appropriate, were forwarded to the police for further investigations. Up to sixteen STRs were received, of which nine were forwarded for further investigations, the outcome of which is three prosecutions and two convictions, whilst others are still under investigation.
- The Customer Due Diligence (CDD) policy has been reviewed and has incorporated provisions on terrorism financing, one off transactions, politically exposed persons and all other issues which were hitherto inadequately addressed;
- There is an on-going review of the Money Laundering Act (2003). The review is designed to address shortcomings that were highlighted during the ME. In particular, the predicate offences have been broadened compared to the previous restriction;
- During the follow-up visit by GIABA in August 2009, a stakeholder's meeting was convened to review the proposed amendments to the Money Laundering Act 2003.

- Through our collaborative efforts with GIABA, a Mentor was appointed to the Gambian FIU in the person of Dev Bikoo. The duration of appointment is one year and he will be assisting the FIU with implementation issues;
- An in-house workshop has been conducted for staff of the CBG derived from Banking Services, Microfinance, Insurance and Foreign Departments. This was aimed at creating AML/CFT awareness among other supervisory staff;
- Compliance officers have been appointed by individual banking institutions and were invited to a seminar organized by staff of the FIU. The seminar provided them with an insight into the issues of anti-money laundering and combating the financing of terrorism;
- The inter-ministerial committee now meets more regularly and is anticipated to pursue its mandate more rigorously in future.

4. However, it should be noted that despite these positive developments the FIU is yet to achieve the desired level of coverage of institutions under its purview, nor have the knowledge of money laundering and terrorism financing considered deep enough within the society in general. As part of its medium to long term strategy, the FIU will be expanding coverage of the reporting of STRs to micro-financial institutions, foreign-exchange bureaux, designated non-financial businesses and professions (DNFBP) etc. This objective will be further enhanced by the review of the Money Laundering Act 2003.

5. Please find below the full details of the developments since the ME in April, 2008.

FORTY RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATINGS	WHETHER IDENTIFIED DEFICIENCY HAS BEEN RECTIFIED	DESCRIPTION OF ACTIONS TAKEN OR BEING TAKEN TO RECTIFY THE DEFICIENCY
Legal Systems 1. ML Offence	PC	❖ The MLA does not provide for all the predicate offences specified in the FATF 40 Recommendations.	No	Money Act, 2003 being reviewed to cover predicate offences in FATF 40 Recommendations.
		❖ The threshold of two years for the predicate offences of money laundering is too high	"	"
		❖ Most predicate offences have been excluded under the ML Act	"	"
		❖ The law is ambiguous in designating the authorities responsible for the implementation and the enforcement of the ML Act	"	"
		❖ The investigators and prosecutors responsible for the implementation of the ML Act are not trained and equipped with the necessary human and material resources to enhance the effective implementation of the law	"	**Arrangements are being made to facilitate a training programme for the investigators and prosecutors**
		❖ The implementation of the law by relevant agencies has not been effective	"	The training programme is expected to address this deficiency
	LC	❖ The law is ambiguous in designating the authorities responsible of the		

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2. ML offence – mental element and corporate liability		implementation and the enforcement of the ML Act ❖ The investigators and prosecutors responsible for the implementation of the ML Act are not trained and equipped with the necessary human and material resources to enhance the effective implementation of the law ❖ The implementation of the law by relevant agencies has not been effective		
3. Confiscation and provisional measures.	LC	❖ There is no effective mechanism in place to ensure efficient tracing and identification of money laundering and terrorist financing cases ❖ The FIU do not have the capacity to receive and analyze STR to assist the LEAs in the investigation of ML/TF cases ❖ No training has been provided to law enforcement agencies, the FIU, the Central Bank, and the prosecutors on the application of freezing and confiscation measures		

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4. secrecy laws consistent with the Recommendations	LC	❖ International exchange of financial information is restricted to countries which have signed bilateral and multilateral treaties with The Gambia		The revised money laundering law will rectify this deficiency.
		❖ Secrecy provision clauses in other laws and potentially new laws may inhibit access to financial information or intelligence.		The MLA is being revised to rectify this deficiency and the provisions in the new Act will take precedence over other enactments
5. Customer Due Diligence	PC	❖ The CDD document exempts customers who conduct one-off transactions from the requirement to provide details as required by FATF 5	Yes	The CBG issued Regulations on CDD for FIs in August 2009 for FIs
		❖ The obligation under SR VII for the identification of wire transfer originators is not covered under R. 5	**Yes**	**The CDD has been revised to include SRVII on wire transfers**
		❖ There is no effective monitoring in place to determine the level of compliance by FIs with the risk based approach in the conduct of CDD measures	Yes	The FSD has adopted a risk-based supervision (on site) together with FIU staff

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		❖ The Implementation of the GCDD is ineffective	Yes	On-site examination teams verify compliance with the GCDD requirements
		The measures in the GCDD do directly not cover terrorist financing	**Yes**	**The revised GCDD now covers Counter Financing Terrorist**
6. Politically Exposed Persons		❖ Neither the MLA nor the CDD require FIs to obtain senior management approval before establishing a business relationship with a PEP	**Yes**	**The revised GCDD now requires Senior Management approval prior to any business relationship with PEPs.**
		❖ The requirement to obtain senior management approval to continue the business relationship entered into with a PEP before the person became a PEP is not directly stated in the ML Act or in the GCDD	**Yes**	**Now stated in the Revised GCDD**
		❖ The definition of PEPS should be included in the ML Act so that there will be a direct obligation for the FIs to act	**Yes**	**ML Act is under review**
			"	

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		❖ There is no effective implementation of the risk based approach in the identification of PEPs by FIs		BSD and FIU will verify during future on-site examinations
7. Correspondent Banking		❖ The ML Act and the GCDD document does not clearly and directly require FIs to documents the respective AML/CFT responsibilities of each institution	**Yes**	**Now cover in the revised CDD guideline**
		❖ The existing law and guidelines do not address the measures FIs are required to take where a correspondent relationship involves the maintenance of "payable through account		"
		❖ The measures under R.7 are not being effectively implemented by the FIs		**Now covered in the revised CDD**
8. New technologies non-face-to-face business	LC			
9. Third parties and introducers	NA	❖ The MLA requires the FIs to identify and verify all applicants before establishing business relationship with them. Reliance on third parties is not permitted under the MLA.		
10. Record keeping	PC	❖ The Assessors were not able to review examination manual for insurance industry to ascertain that the coverage include record keeping;	No	The FIU is preparing a CDD manual for insurance and microfinance sectors

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		❖ The MFI supervision Unit in the Central Bank showed limited knowledge of the MLA requirements	**Yes**	**In-house training was organised for other supervisory departments/units in the Central Bank**
		❖ The implementations of the record keeping requirements do not cover all reporting entities		This will be addressed after the training programme
		❖ There is no effective implementation of the record keeping requirements of the ML Act		"
11. Unusual transactions	LC		**Yes**	**Now covered in the CDD guideline**
12. DNFBP – R5, 6, 8 – 11	NC	Applying R. 5 ❖ Those DNFPBs included in Schedule 1 of the Money Laundering Act 2003 are not required to have KYC/CDD procedures in place	No	The FIU is preparing KYC/CDD procedures for DNFBPs
		❖ They are not applying the wide range of CDD measures under R5		The FIU is preparing a policy paper to the Minister for Finance and

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		❖ Lack of regulatory control, guidance and enforcement means that there has not been any effective implementation of CDD measures in this sector. ❖ The rest of the DNFPBs are under no obligation to have AML/CFT procedures in place and do not.		Economic Affairs to authorise a special unit to handle DNFBPs
		Applying R.6. ❖ No requirements for DNFBPs to monitor PEPs and apply risk based approach in dealing with them.		The FIU is preparing KYC/CDD procedures for DNFBPs
		Applying R.8. ❖ For DNFPBs, there is no obligation to have policies in place or take such measures as may be necessary to prevent the misuse of technological developments in AML/CFT.		The FIU is planning a training programme for all DNFBPs.
		Applying R.9	NA	

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		❖ For DNFPBs, there are currently no enforceable obligations with regards to introduced business.		
		Applying R.10. ❖ Only some of the DNFPBs are required to keep records for more than five years subject to the deficiencies noted under R10.		
		Applying R. 11. ❖ The DNFPBs are under no obligation to pay specific attention to complex or unusually large transactions, unusual patterns of transactions, or those that have no apparent economic or lawful purpose. ❖ There has been no attempt to implement the provisions of Recommendation 12 by The Gambian Authorities to all designated non-financial businesses and professions. ❖ There is no threshold for reporting obligations for Casinos		The FIU is preparing KYC/CDD procedures for DNFBPs

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		❖ The FIU has not developed any guidance for the covered entities There has not been any assessment of the threats and risks of ML/FT in the DNFBP Sectors ❖ The DNFBPs which are covered by the Money Laundering Act 2003 are not under AML/CFT regulatory control or provided with any guidance or meaningful training.		
13. Suspicious transaction reporting	NC	❖ Not all predicate offences required under recommendation 1, have been included as a predicate offence under the Act;		The MLA is being reviewed to resolve the deficiency
		❖ There is no guidance or directive from the FIU to the FIs and DNFBPs to report STRs linked to FT;		The FIU is preparing guidelines and training on STRs for all FIs and DNFBPs
		❖ No training has been provided to most of the reporting entities, particularly the DNFBPs to report STRs		"
		❖ A few FIs have commenced reporting to the supervisory authorities. In august, the FIU reported the receipt of 10 reports out		The FIs have been submitting STRs since March 2008

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		of which 4 were forwarded to the Police for further investigations		
		❖ The reporting of STRs is ineffective due to lack of supervision of the process by the FIU		This is to be addressed after the training programme
R. 15 Internal controls, compliance and audit	NC	❖ The CBG is not efficient in the monitoring of the extent to which the FIs are implementing the internal control measures and the compliance requirements	Yes	FIs have appointed compliance officers who are senior management personnel
		❖ There is no direct obligation to appoint compliance Officers at Senior Management Level		"
		❖ Staff may not always have access to customer records		"
		Training on AML/CFT measures has not been provided for most staff of FIs		*A training programme has been planned for CBG*
		❖ The overall implementation of the Recommendation across the FIs, NFIs and DNFBPs is ineffective		The FIU has planned a training programme to address this

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16. DNFBP – R13 – 15 & 21	NC	❖ There has been no action to implement the provisions of Recommendation 16 by The Gambian Authorities.		The FIU is preparing a paper requesting the Minister for Finance to designate a specialised unit to handle DNFBPs
		Applying R.13 & 14. ❖ Only some of the DNFPBs are obliged to comply with R13 subject to its deficiencies as noted under R13. ❖ Only the same select DNFPBs are covered by the provisions of R14.		The FIU is preparing guidelines and training on STRs for DNFBPs
		Applying R. 15. ❖ DNFPBS are not obliged to establish internal controls to forestall money laundering or to take steps to train their staff on AML/CFT matters ❖ There is no requirement to appoint a compliance officer at senior management level.		The FIU is planning a training programme for DNFBPs
		Applying R.21. ❖ DNFPBS are not obliged to pay special attention to businesses with countries		The FIU will issue a directive to DNFBPs

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		that do not sufficiently apply the FATF Recommendations		
17. Sanctions	PC	Authorities are not implementing the relevant sanctions. ❖ No FI or NFI have been sanctioned for non-compliance with AML/CFT measures ❖ Sanctions are not broadly applied across all sectors ❖ There no available statistics on previous sanctions imposed on NFIs and other FIs		
18. Shell banks	NC	❖ Neither the MLA nor any other financial institutions' legislation or regulation prohibits the setting up of shell banks. ❖ There is no provision in the MLA or rules that prohibits FIs from entering into a correspondence banking with shell banks. ❖ Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.		**The revised CDD guideline now covers the prohibition of the establishment of shell banks.**
19. Other forms of reporting	C			

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20. Other NFBP and secure transactions techniques.		❖ There has been no assessment of the level of ML and TF risk posed by other DNFBPs. ❖ No requirement for the covered ones to report to the FIU ❖ No mechanism in place to monitor pawn shops and gambling business for AML/CFT matters. ❖ Non-implementation of provisions to limit the use of cash in the economy.		
21. Special attention for higher risk countries		❖ There is no provision to apply appropriate counter-measures where a country continues not to apply the FATF Recommendations. ❖ There are no effective measures in place to ensure FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. ❖ There is no effective implementation of the provisions of the MLA with regards to countries that do not apply AML/CFT measures		The CBG will issue a directive on this

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22. Foreign branches and subsidiaries	NC			The CBG will provide for this in a manual
23. Regulation, supervision and monitoring	NC	❖ There has not been an effective implementation of money laundering and terrorist financing supervision regime		**An in-house training of the other supervisory departments of the Central Bank was conducted**
		❖ Some MVTS and foreign exchange dealers who operate outside the city are not covered under the supervisory regime		The CBG has commenced supervision FIs regarding ML and will extend to MVTS and dealers in foreign exchange
		❖ The CBG has not reviewed or conducted any risk assessment in any of the financial sector or informal sector to determine the level of supervision that would be required in a low risk sector		
		❖ Resources available to supervision authorities are limited		
24. DNFBP – regulation and monitoring				See R. 12 above
25. Guidelines and feedback				
26. The FIU		❖ The ML Act does not provide a clear mandate regarding the operational autonomy of the FIU.		The MLA is being reviewed to among others provide for governance of the FIU

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		❖ There is no dedicated personnel and budget for the effective functioning of the FIU.		Staff and budget requirements to be communicated to relevant authorities for immediate action
		❖ The FIU does not have skilled personnel to analyze STRs	"	"
		❖ There is no secured environment for the receipt and storage of STRs	"	• **Two offices have been designated to the FIU and exclusive to FIU staff.** • **A new work procedure adopted to ensure confidentiality of data is maintained.** • **STRs received are now under lock and key in one of the two offices.** • **Staff of the FIU now maintain a clean desk policy.**
		❖ The FIU did not include the DNFBPs covered in the Act as reporting entities in their strategy plan.		
		❖ FIs were not instructed to submit STRs related to Financing of Terrorism		The MLA is being reviewed
		❖ FIs have not received detailed guidance and training regarding their reporting obligations and the use of the newly circulated reporting formats.		

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		❖ The FIU is not functional, as it lacks the human and material resources to efficiently and effectively discharge its primary roles of receiving, analyzing and disseminating STRs		
		❖ There is no coordination mechanism in place with other government agencies.	Yes	The AML/CFT inter-Ministerial Committee has been expanded and the Ministers for Justice, Finance and Interior preside over IMC meetings.
		❖ The sharing of financial intelligence with other FIUs may be inhibited as a result of the requirement under Section 36 of the ML Act for a formal bilateral or multilateral treaty to be in existence between The Gambia and another country before the information can be shared;		MLA is being reviewed
27. Law enforcement authorities	C			
28. Powers of competent authorities	LC			
29. Supervisors	NC	❖ There has been no effective implementation of supervisory powers under the ML Act.	Partially	CBG has commenced supervision of FIs and will extend to NFIs . FIU plans

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		❖ Supervision of FIs, NFIs and DNFBPs for AML/CFT compliance has not commenced		to issue guidance for DNFBPs through their supervisory bodies and SROs
		❖ There is no measure in place for ongoing supervision and monitoring of AML/CFT compliance by FIs		
30. Resources, integrity and training		❖ The ML Act does not provide for the operational autonomy of the FIU.	No	The MLA is being reviewed to rectify this deficiency
		❖ There is no dedicated personnel and budget for the effective functioning of the FIU.	No	CBG intends to provide budgetry assistance for the FIU on a temporary basis while personnel from AML/CFT stakeholder public institutions like the Police, Customs, Finance and NDEA will be seconded to the FIU
		❖ The FIU does not have the skilled personnel to analyze STRs.	"	"
		❖ The FIU does not have adequate skilled staff to provide guidance and training to reporting entities.		"
		❖ There is no funding committed to the development and implementation of AML/CFT strategy in the country.	-	

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		❖ Training has not been provided to staff of the different supervisory and law enforcement agencies to enable them commence proactive implementation of the ML Act and the AT Act	Partially	Some staff of the NDEA, Police, Justice, Finance and CBG have benefited from GIABA AML/CFT training. NDEA and Justice have increased their budgets for training
		❖ There is no coordination framework for LEAs exchange of information and intelligence.		
		❖ The FIU does not have the capacity to coordinate efforts related to the development of guidance, training programs, and policy for the relevant agencies.		
		❖ The prosecution office of the AG's Chambers has not been trained on skills needed for the prosecution of terrorist financing		
31. National co-operation	NC	❖ There is no operational cooperation amongst national institutions and law enforcement agencies.	Yes	Membership of the IMC has been expanded

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		❖ The Inter-ministerial committee does not cover the broad range of key government institutions such as the police, Customs, immigration and supervisory units for insurance, MFIs, and foreign exchange and SROs for DNFBPs.		
		❖ The FIU has not commenced the development of cooperation mechanism with other national institutions and has not developed any policy in this regard.		
32. Statistics	NC	❖ No statistics were provided on STRs received by the FIU	**Yes**	**A database has been created and statistics on STRs received by the FIU is now readily available**
		❖ There is no data system for the recording of receipted data on STRs	**Yes**	**A register is now in place for the recording of STRs received**
		❖ There is no data system for the collection of CTRs		
		❖ No annual report has been published by the FIU		
		❖ There is no information related to prosecution and investigation of money laundering cases under the ML Act or the Drug Control Act		
		❖ There is no available record on assets seized, frozen, confiscated and forfeited		

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		❖ There is no record on mutual legal assistance and extradition matters initiated and concluded by the SOSFA or SOS for Justice Department		
33. Legal persons – beneficial owners	PC	❖ There is no requirement for the verification of the information filed in the registrar.		The MLA and Companies Act are being revised to provide for requirement for verification of information filed at the company registry
		❖ The records of companies are manually□driven, not well kept and data is not easily□available and adequate.		A capacity building programme has been put in place while some computers have been installed for storage of information and ease of access to information
		❖ There is no secured storage system for information in the registry.		"
		❖ Information on companies is not available on a timely and accurate manner		"
		❖ Some information has been declared missing or lost in the process of moving around paper documents.		
34. Legal arrangements beneficial owners		❖ Information on beneficial owners are not available on a timely and accurate manner		Same as 33 above

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		❖ The RG's office is under-staffed and lack the necessary equipment and resources to set up a database for legal arrangements and beneficial owners		
		❖ There is no verification process to validate information submitted on beneficial owners		
35. Conventions				
36. Mutual legal assistance (MLA)	PC	❖ There is no comprehensive Mutual legal assistance legislation.		The MLA is under review
		❖ There are no MLA guidelines or procedures for the law enforcement agencies.		
		❖ The time currently required for the processing of MLA requests is lengthy and does not facilitate effective response.		
		❖ There is excessive restriction on the process related to granting of MLA requests under the ML Act only to countries that have signed bilateral or multilateral treaties with The Gambia can be granted MLA under the ML Act.		
		❖ The MLA process in The Gambia is not effective.		
38. MLA confiscation and freezing	PC	❖ Predicate offences do not include all the minimum designated categories of offences in the FATF glossary.		The MLA is under review

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		❖ The response to MLA requests is not timely and effective ❖ The Gambia has not considered establishing an asset forfeiture fund for or authorizing the sharing of assets with other countries Generally, international cooperation in ML/TF cases is not effective.		
39. Extradition	PC	❖ The restriction of extradition requests to the list of extraditable offences inhibits cooperation ❖ It is not possible to request for extradition based on warrants ❖ Every request for extradition must go through the AG and through the courts. ❖ There is no simplified process to executing extradition requests.	Yes	The Extradition Act has been reviewed
40. Other forms of co-operation	PC	❖ There is no rapid and effective mechanism for granting of cooperation to other counterparts		

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		❖ Exchange of information is not spontaneous		
		❖ The exchange of information is required to be channelled through the SOSFA in most cases.		
		❖ Tax offence is not a predicate of money laundering and international cooperation cannot be obtained in that regard.		MLA is being reviewed
SR.I Implement UN instruments	PC	❖ The FT Convention has not been ratified		
		❖ The implementation of SR III is not effective.		
		❖ There is no coordination mechanism in place for the implementation of Anti-Terrorism Act.		
SR.II Criminalize Terrorist financing	LC	❖ The agencies responsible for the implementation of the law are not aware of their responsibilities under the Act and this has inhibited effective implementation. ❖ No training has been provided to the Police on the investigation of terrorist financing		Anti-Terrorism Act is being reviewed

FORTY RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATINGS	WHETHER IDENTIFIED DEFICIENCY HAS BEEN RECTIFIED	DESCRIPTION OF ACTIONS TAKEN OR BEING TAKEN TO RECTIFY THE DEFICIENCY
		❖ There is no national strategy or coordination mechanism for the implementation of the legal framework. ❖ There is lack of effective implementation of the law		
SR.III Freeze and Confiscate terrorist assets	PC	❖ The financial institutions have not received any guidance on how to identify and freeze terrorists' funds ❖ The police and CBG staff are not trained on how to implement SR III ❖ There is no effective measure in place to ensure prompt response to requests from other countries. ❖ There is no monitoring system in place to ensure compliance by reporting entities		
SR.IV Suspicious transaction reporting				

FORTY RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATINGS	WHETHER IDENTIFIED DEFICIENCY HAS BEEN RECTIFIED	DESCRIPTION OF ACTIONS TAKEN OR BEING TAKEN TO RECTIFY THE DEFICIENCY
SR.V International Co-operation				
SR.VI AML requirements for money/value transfer services				
SR.VII Wire transfer rules				
SR.VIII Non-profit Organizations				
SR.IX Cross Border Declaration & Disclosure				