INTER-GOVERNMENTAL ACTION GROUP
AGAINST MONEY LAUNDERING IN WEST
AFRICA

Fifth Follow Up Report

Mutual Evaluation



THE GAMBIA

NOVEMBER 2012

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1. INTRODUCTION

1. The table below will be filled by the country and then submitted to GIABA two months before the plenary.

Partially Compliant (PC)	**Non-Compliant (NC)**
Legal Systems 1. ML Offence	12. DNFBP – R5, 6, 8 – 11
5. Customer Due Diligence	13. Suspicious transaction reporting
6. Politically Exposed Persons	15. Internal controls, compliance and audit.
7. Correspondent Banking	18. Shell banks
10. Record keeping	20. Other NFBP and secure transactions techniques.
17. Sanctions	22. Foreign branches and subsidiaries
21. Special attention for higher risk countries	23.Regulation, supervision and monitoring
33. Legal persons – beneficial owners	24. DNFBP – regulation and monitoring
34. Legal arrangements beneficial owners	25. Guidelines and feedback
36. Mutual legal assistance (MLA)	26. The FIU
37. Dual criminality	30. Resources, integrity and training
39. Extradition	31. National co-operation
40. Other forms of co-operation	32. Statistics
SR.I Implement UN instruments	

II. SUMMARY OF THE PROGRESS MADE BY (COUNTRY) SINCE (MUTUAL EVALUATION DATE)

2. A Mutual Evaluation was conducted on the Gambia between April 14 and 23 2008. The report of the on-site visit, which was adopted by plenary in November 2008, highlighted a number of weaknesses in the AML/CFT regime of the country. Of particular concern were the inadequacies of the law. Other key areas of growing concern were the slow nature of the law review process, the absence of a National Correspondence and the inactivity of the inter-ministerial committee.

3. Since the fourth follow-up report, a lot of progress has been made:

- Enactment of the new AML/CFT Act 2012 and all other deficiencies that were observed by the Assessors
- Appointment of Mr. Essa Drammeh as the GIABA National Correspondent
- Reactivation of the Inter-ministerial Committee
- Acquisition of an AML/CFT analytical software with the assistance of GIABA

III. CONCLUSION

4. Following the passage of the new law, the country is now working on implementation strategies, particularly the operational autonomy of the FIU. With assistance of GIABA a strategic implementation workshop is also expected to be carried out to formulate a National Strategy.

FORTY RECOMMENDATIONS	RATING	SUMMARY OF FACTORS UNDERLYING RATINGS	WHETHER IDENTIFIED DEFICIENCY HAS BEEN RESOLVED	DESCRIPTION OF ACTIONS TAKEN OR BEING TAKEN TO RESOLVE DEFICIENCY
Legal Systems 1. ML Offence	PC	The MLA does not provide for all the predicate offences specified in the 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. The implementation of the law by relevant agencies has not been effective.		• The MLA 2003 has been revised; a new AML/CFT Act 2012 has been passed into law by National Assembly and assented to by the President. • All the predicate offences have now been included. • The operational structures have been clearly specified in the law. • Various stakeholders have benefited from trainings organized by GIABA; however, more training is need to enhanced capacities.
2. ML offence – mental element and corporate liability	LC	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. The implementation of the law by relevant agencies has not been effective.		• The new law concisely spelt out the various structures and committees for the full implementation of a robust AML/CFT framework. • The FIU is given power to implement the new law in collaboration with the other state agencies. • A number of investigators and prosecutors have gone through some training but TA is need in this area. • With the enactment of the new law, its implementation is a high priority to stakeholders. • The inter-ministerial committee is now functional.

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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 does 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 personnel of law enforcement agencies, the FIU, the Central Bank, and the prosecutors on the application of freezing and confiscation measures.		• The AML/CFT Act 2012 • The FIU staffs, LEA, and other supervisory staff of CBG have under gone series of training programmes and this is expected to continue particularly with the support of GIABA.
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. The obligation under SR VII for the identification of wire transfer originators is not covered under R. 5 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. The implementation of the GCDD is ineffective. The measures in the GCDD does not cover terrorist financing directly.		• The GCDD has been revised and all the deficiencies have been addressed.
6. Politically Exposed Persons	PC	Neither the MLA nor the CDD require FIs to obtain senior management approval before establishing a business relationship with a PEP. The requirement to obtain senior management approval to continue the business relationship entered into with a PEP before the		• This has been factored in the new GCDD and AML/CFT Act. • The definition of PEP is directly stated in AML/CFT Act 2012 and in the GCDD.

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		person became a PEP is not directly stated in the ML Act or in the 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. There is no effective implementation of the risk based approach in the identification of PEPs by FIs.		• FIs and NFIs are required to apply RBA as relating to their internal AML/CFT controls.
7. Correspondent Banking	PC	The ML Act and the GCDD document do not clearly and directly require FIs to document the respective AML/CFT responsibilities of each institution. 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.		• Duties of reporting entities now stated in the AML/CFT Act 2012.
8. New technologies non-face-to-face business	LC	The GCDD is not being effectively implemented. The FIs have not commenced full and broad application of the measures and policies under the Guidelines on Electronic and Internet Banking in the GCDD.		• Implementation of the GCDD is being enforced and monitored during on-site examinations.
10. Record keeping	PC	The Assessors were not able to review examination manual for insurance industry to ascertain that the coverage include record keeping;		• Record keeping requirements are now incorporated in the AML/CFT Act 2012.

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		□ The MFI Supervision Unit in the Central Bank showed limited knowledge of the MLA requirements. □ The implementations of the record keeping requirements do not cover all reporting entities. □ There is no effective implementation of the record keeping requirements under the ML Act.		• Capacity building is on-going.
11. Unusual transactions	LC	□FIs are not required to keep records of their findings related to unusual transactions □ There is no effective implementation of the requirements of the MLA provisions for monitoring of complex and unusual transactions.		• These deficiencies have been addressed in the new AML/CFT Act 2012 and the revised GCDD.
12. DNFBP – R5, 6, 8 – 11	NC	<u>Applying R.5</u> □ Those DNFPBs included in Schedule 1 of The Money Laundering Act 2003 are not required to have KYC/CDD procedures in place. □ They are not applying the wide range of CDD measures under R5. □ Lack of regulatory control, guidance and enforcement has meant 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. <u>Applying R.6.</u>		• The reporting requirements of DNFBPs now clearly state in the law • Following the passage of the AML/CFT Act 2012, the FIU is now working on the necessary guidelines.

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		□ No requirements for DNFBPs to monitor PEPs and apply risk based approach in dealing with them. 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. Applying R.9 □ 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 longer 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. Recommendation 12		

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		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 the Casinos. The FIU have 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 designated 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. There is no guidance or directive from the FIU to the FIs and DNFBPs to report STRs linked to FT. No training has been provided to most of the reporting entities, particularly the DNFBPs on the reporting of STRs. Few FIs have commenced reporting to the supervisory authorities. In August, the FIU reported the receipt of 10 reports out of which 4 were forwarded to the Police for further investigation. The reporting of STRs is ineffective due to lack of supervision of the process by the FIU.		• AML/CFT Act 2012 now carries a list of all the predicate offences • Some reporting entities have received trainings, however, more training will be carried out for DNFBPs.
14. Protection and no tipping-off	C			

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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 □ 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. □ The overall implementation of the Recommendation across the FIs, NFIs and DNFBPs is ineffective.		• The CBG has conducted series of on-site examinations; which extensively cover internal control measures of FIs • The FIs have appointed Chief Compliance Officers at management level following a directive from the CBG. • A Chief Compliance Officers' Forum has also been established. • With the assistance of GIABA, a national training was organised for staff of FIs on AML/CFT measures
16. DNFBP – R13 – 15 & 21	NC	There has been no action to implement the provisions of Recommendation 16 by The Gambian Authorities. <u>Applying R.13 & 14.</u> □ 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. <u>Applying R. 15.</u> □ 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.		• All these have been factored in the AML/CFT 2012 and in the revised GCDD 2012.

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		Applying R.21. □ DNFPBS are not obliged to give special attention to businesses with countries 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.		• The relevant sanctions have been included in the law and in the GCDD. The full implementation will be addressed soon.
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.		• In the new law and revised GCDD, the issue of Shell Banks have been addressed. The FIs and DNFBPs are required to fully implement them.
19. Other forms of reporting	C			
20. Other NFBP and secure transactions techniques.	NC	□ 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 the pawn shops and the gambling business for AML/CFT matters.		• All matters relating to this recommendation has been included in the new legislation. All the deficiencies to be addressed. • National coordination will be heightened to address them.

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		□ Non-implementation of provisions to limit the use of cash in the economy.		
21. Special attention for higher risk countries	PC	□ 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.		• These are addressed in the law and GCDD. The implementation issues will be addressed as soon as possible.
22. Foreign branches and subsidiaries	NC	□ The MLA does not require the FIs to apply AML/CFT measures in foreign branches and subsidiaries when they are established. □ There are no requirements for communication with home country supervisor about the ability or inability of the FI to comply with AML/CFT measures consistent with home country requirements.		• This has been included in the new law and in the revised GCDD.
23.Regulation, supervision and monitoring	NC	□ There has not been an effective implementation of money laundering and terrorist financing supervision regime. □ Some MVTS and foreign exchange dealers who operate outside the city are not covered under the supervisory regime. □ 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.		• AML/CFT compliance assessment now forms part of on-site and off-site bank examination • The new Act and GCDD addressed these concerns.

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		□ Resources available to supervision authorities are limited.		
24. DNFBP – regulation and monitoring	NC	□ Casinos are not under a comprehensive regulatory and supervisory regime for AML/CFT purposes. □ The other DNFPBs are not subject to effective systems for monitoring and ensuring their compliance with the FATF Recommendations. □ No measures in place for the implementation of the provisions of Recommendation 24 by The Gambian authorities.		• Revised AML/CFT Act 2012 and necessary Guide lines are being developed for implementation..
25. Guidelines and feedback	NC	□ The authorities have issued no guidance to DNFPBs with regards to making STRs. □ As the STR system is not yet implemented in The Gambia and the FIU not functional, no feedback or specialized training has been provided to DNFPBs in order for them to detect suspicious transactions. □ There has been no effort to implement the provisions of Recommendation 25 by The Gambian authorities.		• Following enactment of the new law, CDD guidelines for DNFBPs are being developed.
26. The FIU	NC	□ The ML Act does not provide a clear mandate regarding the operational autonomy of the FIU. □ There is no dedicated personnel and budget for the effective functioning of the FIU. □ The FIU does not have skilled personnel to analyze STRs.		• ML/CFT Act 2012 gives a clear mandate for the FIU and provides for operational autonomy.

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		There is no secured environment for the receipt and storage of STRs. 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. FIs have not received detailed guidance and training regarding their reporting obligations and the use of the newly circulated reporting formats. 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. 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.		
27. Law enforcement authorities	C			
28. Powers of competent authorities	LC	The powers of LEAs are not being properly applied. Investigations of money laundering and terrorist financing are not effectively implemented according to the laws.		• Investigations are being effectively carried out.
30. Resources, integrity and training	NC	The ML Act does not provide for the operational autonomy of the FIU.		• The AML/CFT Act 2012 provides for an independent FIU with provision for

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		There is no dedicated personnel and budget for the effective functioning of the FIU. The FIU does not have the skilled personnel to analyze STRs. The FIU do 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. 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. There is no coordination framework for LEAs exchange of information and intelligence. The FIU do 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.		different funding source. These will form part of the implementation stages of the law. • New staff have been employed for the FIU. • More training is required for relevant stakeholder personnel.
31. National co-operation	NC	There is no AML/CFT coordinating mechanism or national strategy in place in The Gambia. There is no operational cooperation amongst national institutions and law enforcement agencies. The Inter-ministerial committee do not cover the broad range of key government institutions such as the police, Customs, immigration and		The Inter ministerial Committee is now functional with an broader coverage of stakeholder institution as prescribed by the new law. GIABA's assistance is needed to formulate a national strategy and to build capacities of stakeholders.

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		supervisory units for insurance, MFIs, and foreign exchange and SROs for DNFBPs. There is no ongoing consultation with 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. There is no data system for the recording of receipted data on STRs. 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 There is no record on mutual legal assistance and extradition matters initiated and concluded by the SOSFA or SOS for Justice Department		STR statistics are available. An AML/CFT analytical tool has now been installed with the assistance of GIABA Efforts are under way to fully implement the AML/CFT Act 2012 to address the remaining deficiencies.
33. Legal persons – beneficial owners	PC	There is no requirement for the verification of the information filed in the registrar. The records of companies are manually driven, not well kept and data is not easily available and adequate.		

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		There is no secured storage system for information in the registry. Information on companies are 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	PC	Information on beneficial owners are not available on a timely and accurate manner. 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.		• More consultation is needed on this.
35. Conventions	LC	The FT Convention has not been ratified. The implementation of the ML Act, Antiterrorism Act, and the Drugs Act is not effective across all the agencies.		• It was discovered that the Gambia was not a signatory to the conventions. The matter was referred to the Ministry of Justice for Legal Advice • Inter-agency coordination and cooperation is now strengthened.
36. Mutual legal assistance (MLA)	PC	There is no comprehensive Mutual legal assistance legislation. There are no MLA guidelines or procedures for the law enforcement agencies. The time currently required for the processing of MLA requests is long and do not make for effective response.		• AML/CFT Act 2012 addresses all these.

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		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.		
37. Dual criminality	PC	Dual criminality is required in for the granting of assistance under the ML Act The ML Act provisions related to money laundering is too restrictive in the granting of MLA requests. The threshold set for predicate offences of money laundering is too high and is not in conformity with FATF standards. The threshold for predicate offences is inhibiting international cooperation.		• All these deficiencies have been factored in the AML/CFT Act 2012.
38. MLA confiscation and freezing	PC	Predicate offences do not include all the minimum designated categories of offences in the FATF glossary. 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.		• The predicate offences have been expanded to include all the designated 20 predicate offences. • The remaining deficiencies should be addressed in earnest as enshrined in the new law.

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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.		• More Coordination and cooperation is needed as spelt out by the AML/CFT Act 2012.
40. Other forms of co-operation	PC	There is no rapid and effective mechanism for granting of cooperation to other counterparts. Exchange of information is not Spontaneous. The exchange of information is required to be channeled through the SOSFA in most cases. Tax offence is not a predicate of money laundering and international cooperation cannot be obtained in that regard.		• More Coordination and cooperation is needed as spelt out by the AML/CFT Act 2012.

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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 Antiterrorism Act.		• It was discovered that the Gambia was not a signatory to the conventions. The matter was referred to the Ministry of Justice for Legal Advice • Efforts to ratify the FT Convention are at advanced stage.
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. There is no national strategy or coordination mechanism for the implementation of the legal framework. There is lack of effective implementation of the law.		• The deficiencies have been captured in the AML/CFT Act 2012. Efforts are under way to coordinate national efforts for the effective implementation of a robust counter terrorism financing regime.
SR.III Freeze and Confiscate terrorist assets	PC	There is no coordination of freezing measures by various agencies involved in the implementation of freezing measures. There is no procedure in place for the implementation of the obligations under SR III. 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.		• This will be addressed soon as required by the new AML/CFT Act.

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		There is no monitoring system in place to ensure compliance by reporting entities.		
SR.IV Suspicious transaction reporting	NC	There is no obligation in law or regulation requiring reporting entities to submit STRs on transactions linked to terrorists financing. Terrorist financing is not directly referred to as a predicate offence of money laundering.		• This has been incorporated in the new AML/CFT Act 2012. Some reporting entities have reported STRs but their mandates should be broaden as stipulated by the new Act.
SR.V International Co-operation	LC	Response to MLA requests in terrorism cases is not timely and effective. There is no comprehensive MLA legislation or procedure in the country. The law enforcement agencies should put a mechanism in place for coordinating asset seizure and confiscation with other countries. Cooperation is only restricted to those who have signed treaties with The Gambia.		• A comprehensive AML/CFT law is now in place and all pending issues will be resolved soon.
SR.VI AML requirements for money/value transfer services	NC	The CBG/FIU has not issued any guidance note to MVTs regarding their obligation under the ML Act. The MVTs have not been monitored for AML/CFT compliance. No MVT has been sanctioned for noncompliance with the ML Act.		• This has not been addressed yet however the new legislation covers the MVTs. The implementation of this recommendation will follow soon.

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		□ There is no effective implementation of the SR VI obligations by the SA/FIU.		
SR.VII Wire transfer rules	NC	□ No legislation or guidance has been issued by the authorities to ensure compliance with Special Recommendation VII. □ No procedures have been put in place for the implementation of SRVII. □ The NFIs' implementation of the SR VII is not supervised by the CBG. □ R.5 and other CDD measures do not apply to one off transactions relating to wire transfers.		• These have been addressed in the GCDD and the AML/CFT Act 2012.
SR.VIII Non-profit Organisations	PC	□ Outreach programmes have not been conducted to educate NGOs about threats and risks associated with terrorist financing. □ NGOs remain largely vulnerable to terrorists and terrorist groups. □ The NGO Agency is not aware of the nexus between its mandate and that of the FIU and other law enforcement agencies in the combating of terrorism and terrorist financing □ The coordination between Government agencies is not effective.		• This is expected to be addressed with the reactivation of the Inter-ministerial committee. • The FIU to engage all stakeholders on AML and CFT.
SR.IX Cross Border Declaration & Disclosure	NC	□ There is no effective disclosure/declaration system in operation for cross border currency transportation. □ There is no co-ordination between the relevant authorities as how to deal with cross border currency detections.		• More consultations are required. The AML/CFT Act 2012 requires currency declarations at the border posts.

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		Customs staff are not trained, equipped or directed to look for cross border currency transportation. There is no effective implementation of SR IX as provided under the ML Act. Customs department do not maintain statistics on declarations made at the borders. There is no interface between the Customs and the FIU. No guidance has been issued regarding the implementation of SR IX.		