

Inter-Governmental Action Group Against Money Laundering in West Africa

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

18 September 2008

Gambia

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Attorney General
AML	Anti Money Laundering
ATA	Anti-Terrorism Act
AU	African Union
BDCs	Bureaux-de-change
BOFI	Banks and other Financial Institutions
BSD	Banking Supervision Department
BSIC	Banq Sahelo-Saharienne L'Investissement et le Commerce
CBG	Central Bank of The Gambia
CBs,	Community Banks
CDD	Customer Due Diligence
CDF	Customs Declaration Form
CFT	Combating of Financing of Terrorism
CGG	Corporate Governance Guidelines
CISSA	Conference of Intelligence and Security Services of Africa
CTRs	Currency Transaction Reports
DCA	Drug Control Act
DEA	Drugs Enforcement Agency
DFIs	Development Finance Institutions
DIG	Deputy Inspector General of Police
DNFBPs	Designated Non-Financial Businesses and Professions
DOFEA	Department of State for Finance and Economic Affairs
ECOWAS	Economic Community of West African States
ERP	Economic Recovery Program
FATF	Financial Action Task Force
FED	Foreign Exchange Department
FIA	Financial Institutions Act
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GAB	The Gambia Accountants Board
GDP	Gross Domestic Product
GIABA	Groupe intergouvernemental d'action contre le blanchiment d'argent en afrique (Inter Governmental Action Group Against Money Laundering in West Africa)
IA	Insurance Act
IGP	Inspector General of Police

IMF	International Monetary Fund
INTERPOL	International Police
KYC	Know Your Customer
LAN	Local Area Network
LEAs	Law Enforcement Agencies
LTD	Limited –Company Limited by Shares
LTD/GTE	Company Limited by Guarantee
MFIs	Micro Finance Institutions
MLA	Money Laundering Act
MLAA	Mutual Legal Assistance Act
MOU	Memorandum of Understanding
MVTs	Money Value Transfer services
NCPI	National Consumer Price Index
NBFI	Non Banking Financial Institutions
NG	National Guard
NGAA	Non Governmental Affairs Agency
NGOs	Non Governmental Organizations
NIA	National Intelligence Agency
NPOs	Non Profit Organizations
OAU	Organization for African Union
OFAC	Office of Foreign Assets Control
OFI	Other Financial Institutions
PCA	Prompt Corrective Action
PEPs	Politically Exposed Persons
PLC	Public Limited Company
PSI	Policy Support Instrument
RG	Registrar General
SA	Supervisory Authority
SAR	Suspicious Activity Report
SG	Solicitor General
SOSF	Secretary of State for Finance
SOSFA	Secretary of State for Foreign Affairs
SRA	Supervisory Regulatory Authority
SRO	Supervisory Regulatory Organization
STRs	Suspicious Transaction Reports
TANGO	The Association of NGOs
TCSP	Trust Company and Service Providers
TI	Transparency International

UK	United Kingdom
UK SOCA	United Kingdom Special Organized Crime Agency
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Commission for Trade and Development
UN/SC/RES	United Nations Security Council Resolutions
US	United States
USAID	United States Agency for International Development
US-CIA	United States - Central Intelligence Agency
USD	United States Dollars
VISACAS	Village Savings and Credit Associations
WAISEC	West African Internal Security Conference
WB	World Bank

PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of The Gambia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing, 2001 of the Financial Action Task Force, and was prepared using the AML/CFT Methodology, 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by the Republic of The Gambia, and information obtained by the evaluation team during its onsite visit to The Gambia from 14 to 23 April, 2008, and subsequently. During the onsite, the evaluation team met with the officials and representatives of all relevant Gambian government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the GIABA Secretariat, GIABA regional experts, and a member of the Offshore Group of Banking Supervisors, with expertise in criminal law, law enforcement, finance and regulatory issues. They are Ms. Juliet U. Ibekaku, Legal Expert (GIABA Secretariat); Ms. Yeabu Kamara, Banking Supervision Department, Bank of Sierra Leone, (Financial expert); Ms. Estelle Appiah, Ministry of Justice, Ghana (Legal expert); Mr. H. Amazu, Banking Supervision Department, Central Bank of Nigeria (Financial expert); Mr. Paul Heckles, Financial Supervision Commission, Isle of Man, (Financial/law enforcement expert) and Mr. Mohammed Tukur, Financial Intelligence Unit, Nigeria (FIU assessor). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in The Gambia as at the date of the onsite or immediately thereafter. It describes and analyses those measures, sets out The Gambia's level of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects could be strengthened (see Table 2).

[1] As updated in June, 2006

1. GENERAL

1.1 General information on the country and its economy

1. The Gambia is a country on the Western Coast of Africa surrounded by Senegal. The country extends eastwards for about 320km from the Atlantic Ocean. The estimated population of The Gambia is 1,640,000 with a population growth of 2.84 percent and an area of 11,300 sq km. The port city of Banjul is the capital of The Gambia but Serrekunda is the largest city. The Gambian currency is the Dalasi (D). The Gambia is a former British colony which attained full independence on 18 February, 1965.

Economy

2. The Gambia's economy is largely dependent on agriculture, with peanuts being the main export crop. The coastal villages of The Gambia engage in fishing which is also exported. The Gambia's tourist industry is the key source of foreign exchange. The Gambia's yearly import is usually much more than export earnings. The main trading partners for export are Japan, Belgium, Luxembourg, Senegal, Guinea, France and United States. Principal partners for imports are China, Cote d' Ivoire, Hong Kong, United Kingdom, Germany, Senegal, Thailand and United States of America. The Gambia's heavy reliance on groundnut production, exports and tourism makes it inherently vulnerable to vagaries of the weather and adverse external shocks.

3. Until mid 1970s, The Gambian economy experienced high and non-volatile growth and low inflation. However, a shift in public sector finances from a position of overall surplus to continuing deficit caused imbalances in the economy, fuelled by the severe and prolonged Sahelian drought that precipitated a sharp decline in agricultural output. To restore growth and prosperity, in August 1985, the Government of The Gambia adopted a comprehensive and far reaching economic adjustment programme - the Economic Recovery Programme (ERP) which was initiated without external support at the early stage. The ERP later received financial support from the IMF and the World Bank in August 1986. The ERP was aimed at liberalizing trade and price policies, establishing a flexible exchange rate

regime, streamlining credit and expenditure policies and privatizing public enterprises.

4. The implementation of these reform measures contained in the ERP were broadly successful and helped to achieve low inflation, stable exchange rate, non-volatile economic growth and renewed confidence in The Gambian economy. However, owing to monetary and fiscal policy slippages aggravated by inadequate rainfall in 2002, economic performance deteriorated again and resulted in large fiscal deficit, sharp depreciation of the Dalasi and high inflation.

Macro-economic Developments 2003 – 2007

5. To rejuvenate growth and stability, the Government of The Gambia and the Central Bank implemented various measures to improve the economy, enhance output, increase employment and reduce poverty. These measures included the implementation of prudent monetary and fiscal policies consolidated by long-term structural reform measures. Following the implementation of solid macroeconomic policies, economic growth rebounded from a drought-induced decline in 2002 to an annual average of 6.4 per cent during 2003 – 2006, comfortably above the estimated annual population growth rate of 2.8 percent. Economic growth is estimated at 6.9 percent in 2008 supported by 11.3 percent increase in value-added of the services sector.

6. The thrust of the monetary policy continued to be the achievement of low and non-volatile inflation. As a result, the restrictive monetary policy that started in 2003 slowed the growth rate of money supply from 43 percent in 2003 to 26.2 percent and 7.9 percent in 2006 and 2007 respectively. Reflecting the slow growth in money supply, inflation remains low and non-volatile while inflationary expectations were subdued. End-period inflation, measured by the National Consumer Price Index (NCPI) declined from 18 percent in January 2003 to 8.0 percent and 6.0 percent in December 2004 and December 2007 respectively.

7. On the basis of improved macroeconomic fundamentals, the Central Bank was able to cut its policy interest rate and the rediscount rate, from 33 percent in December 2004 to 15.0 percent as at December 2007. In line with these developments, the benchmark for 91-day Treasury bills rate also fell from 31 percent to 10.6 percent during the same period. This resulted in a

significant drop in interest payments on the domestic debt, thus, providing more fiscal space for PRSP-related expenditures.

8. The Gambia's trade and current account deficits continued to improve with the narrowing of the current account deficit from 12.9 per cent of GDP in 2006 to 10.1 per cent in 2007. The overall balance of payment is estimated at a surplus of US$3.99 million in 2007, relative to a deficit of US$4.55 million in 2003. Gross official reserves stood at US$62 million in 2003 compared to US$142.48 million as at end-December 2007.

9. The relative solidity attained in the external sector in the recent past, which was attributable to the implementation of prudent monetary policies, with some fiscal consolidation, have facilitated the stability and strengthening of the Dalasi against other internationally traded currencies. Year-on-year, the performance of the Dalasi was at a 4-year high. As at end-December 2007, the Dalasi appreciated against the US dollar, Pound sterling and Euro by 19.5 percent, 17.1 percent and 9.4 percent respectively.

10. Transaction volumes in the inter-bank foreign exchange market as at end-December 2007 rose to US$1.7 billion or 41.7 percent reflecting strong inflows from inward remittances, travel income, foreign direct investment and re-exports.

System of government

11. The Republic of The Gambia operates a multi-party system of Government. The Constitution of the Republic of The Gambia was approved by a national referendum on 8th August, 1996 and came into effect on 16th January, 1997. The executive power of The Gambia is vested in the President. The President is the Head of State and Government, and the Commander-in Chief of the Armed Forces. The legislative power is vested in the National Assembly. The Gambia operates a unicameral National Assembly. There are fifty three seats in the National Assembly. Forty eight members are elected by popular vote while five members are appointed by the President. Members of the National Assembly are elected to serve a five-year term. The Judicial branch is headed by the Chief Justice of The Gambia, who is also the head of the Supreme Court.

Good governance and measures against corruption

12. Corruption matters in The Gambia are handled by The Gambia Police and the National Intelligence Agency. The Gambian government has not developed an anti-corruption strategy. The 1997 Constitution provides for the establishment of institutions that are vital for the promotion of good governance. The system of separation of powers between the executive, legislature and the judiciary is meant to act as a check within the different arms of the government. While it is widely acknowledged that the Constitution requires government officials to discharge their responsibilities with high level of commitment to transparency and accountability, this is not always the case as political expediency and personal interests have significantly affected the ability of the enforcement and regulatory bodies to perform their oversight functions. The Gambia is not a signatory to the United Nations Convention Against Corruption (UNCAC), 2005.

Legal system and hierarchy of laws

13. The legal system of The Gambia is based on a composite of English common law, Islamic law, and customary law. The hierarchy of legislation in The Gambia is specified in article 7 of the Constitution as follows:

"In addition to the Constitution, the laws of The Gambia consist of-

- Acts of the National Assembly made under the Constitution and subsidiary legislation made under those Acts;
- Orders, Rules, Regulations or other subsidiary legislation made by a person or authority under a power conferred by the Constitution or any other law;
- Existing laws including all decrees passed by the Armed Forces Provisional Ruling Council;
- Common law and principles of equity;
- Customary law so far as concerns members of the communities to which it applies;

- The sharia as regards matters of marriage, divorce, inheritance among members of the communities to which it applies.

14. The legislative power is exercised by Bills enacted by the National Assembly and approved by the President. A Bill may emanate from a Ministry or may originate as a Private Member's Bill. The Attorney-General's Chambers is responsible for drafting Government Bills. This enactment process is also applicable to the ratification of international treaties.

The Judicial System

15. The powers of the Courts of The Gambia are specified in article 120 of the Constitution as follows: (a) The Superior Courts comprising of:

(i) the Supreme Court,

(ii) the Court of Appeal,

(iii) the High Courts and the Special Criminal Court, and

(b) The Magistrate Courts, Cadi Court, District Tribunals and other lower courts that may be established by an Act of the National Assembly.

16. The judicial powers are vested in the courts and are exercised by the courts according to the powers conferred on them by the Constitution. The courts work with the Attorney-General's Office and other law enforcement institutions on issues related to the control and prevention of money laundering and terrorist financing. The Chief Justice is the head of the judiciary and is responsible for the administration and supervision of all courts. The Supreme Court is the highest court. Appeals lie to the Supreme Court as of right from any judgment of the Court of Appeal. Appeals also lie as of right from the High Court to the Court of Appeal. The High Court has unlimited jurisdiction in all civil and criminal proceedings, and in the interpretation and enforcement of the fundamental rights and freedoms under the Constitution.

17. The High Court has supervisory jurisdiction over all lower courts in The Gambia. The Constitution provided for the establishment of a Special Criminal Court to hear and determine criminal offences related to theft,

misappropriation and other similar offences in which public funds and public properties are affected. The Special Court has not been established due to the concerns expressed by the civil society that a Special court may be used to target opposition groups.

18. Judges are appointed by the President – in the case of the Chief Justice, the President appoints him/her after consultation with the Judicial Service Commission and in the case of all other judges, the President appoints them based on the recommendation of the Judicial Service Commission. Though the Constitution guarantees judges' security of tenure and provides that they can only be removed for misconduct, and inability to perform their functions arising from infirmity of body or mind, recent cases of dismissal of judges did not follow the Constitutional led down procedures and this has led to friction between the executive arm of government and the civil society.

The Attorney- General's Chambers:

19. The Attorney General (AG) is also the Secretary of State for Justice and is appointed by the President. The AG's Chambers is responsible for the prosecution of all criminal matters in The Gambia. The Police and the National Intelligence Agency (NIA) are responsible for the conduct of investigations on money laundering and terrorist financing. Case files on concluded investigations are sent to the Attorney-General's Chambers by the Police for legal advice. The AG may assign certain case files to the Police or the Drugs Law Enforcement Agency (DEA) when the matter is related to drug trafficking to prosecute, but may take over the prosecution of complex cases and cases that go on appeal. The AG also has the power to issue "fiats" on criminal matters to law enforcement agencies to prosecute criminal matters. State counsels in the AG's Chambers handle both criminal and civil cases. The Solicitor General is the administrative head of the AG's chambers. The Director of Public Prosecution reports to the AG and the Solicitor General.

1.2 General Situation of Money Laundering and Financing of Terrorism

20. Proceeds of crime are generated through illicit activities but the source of illicit funds varies from country to country. With regard to The Gambia, proceeds of crime are mainly derived from drug trafficking, bribery and corruption, the tourism industry, foreign exchange transactions, and real

estate. The Gambia Drug Control Agency (DEA) in its 2007 Annual Report stated that there has been an increase in the number of arrests of drug traffickers since 1986. The 2007 statistics received from the DEA indicated the magnitude and trends of drug trafficking in The Gambia. Offences range from possession to trafficking in drugs and narcotic substances such as cannabis, cocaine, and hashish. In total, about 1,270mgs of drugs were seized from the 54 cases reported in 2007.

21. With the enactment of the Money Laundering Act (ML Act) in 2003, it was expected that the scope of offences from which illicit funds can be seized would be broadened in order to cover predicate offences that were not previously considered as source for illicit funds, however, this was not the case. In The Gambia, a predicate offence is defined as any offence that is punishable by imprisonment term of not less than two years. The list of 13 prescribed predicate offences under the ML Act does not cover the 20 minimum designated categories of offences in the FATF Recommendations. The minimum penalty of two years does not meet the FATF threshold requirements and tends to preclude the designation and reporting of some offences that would otherwise be predicate offences for the purpose of money laundering prosecution.

22. The Gambia was declared an open economy in 1986 and this has led to influx of cash and an increase in investment in the real estate and tourist industry. While laundering of illicit funds may not be at an all time high in The Gambia, when compared with other countries in the region and based on statistics from the United States 2008 International Narcotics and Law Enforcement (INL) report, there is, however a sense of unease amongst the banks, private sector operators and even the regulators that there is so much cash in the economy – most of which is not passing through the financial system due to the cash-based economy of The Gambia. The Gambia Customs Service is yet to implement the cross border declaration or disclosure procedure. As such, there is no mechanism in place to monitor the movement of cash and other negotiable instruments into and out of the country.

23. Though the CBG has taken measures to supervise Bureau de Change Operators (BDCs), more than 70% of the operators of the BDCs are unregulated and are not under any legal obligation to register with the The Gambia Association of BDCs. It was evident that the BDCs were operating

without adequate supervision from the CBG. Other sources through which illicit funds may come into The Gambian economy are through wire transfers, and other forms of alternative remittance systems.

24. No risk assessment has been conducted by the supervisory authorities to determine the sectors of the economy that are most vulnerable to money laundering and the level of resources required to deal with the threat. No AML strategy has been developed at the national level. In the absence of a functional FIU, the banks are not able to report suspicious transactions.

25. In the absence of effective implementation of the AML regime, and the weak supervisory regime – characterized by low capacity in the CBG's department of supervision, and a non-functional FIU, The Gambian financial system remains vulnerable to the activities of organized criminal groups and terrorists.

Confiscation, freezing and seizing of proceeds of crime

26. The ML Act provides for seizing, freezing and confiscation of proceeds of crime. However, due to non-implementation of the law, the authorities could only report two cases where an attempt was made to freeze the assets of non-nationals who were alleged to have brought illicit funds into The Gambia. One of the cases reported made it to the court and the other one led to the extradition of a German national to Germany without trial. The other case is still pending in the court.

Terrorist financing

27. The Gambia has ratified 11 out of the 13 United Nations Conventions against Terrorism. The Convention for the Suppression of the Financing of Terrorism is yet to be ratified. Terrorist financing is criminalized by virtue of Sections 6, 11(a) and 11(2) (b), 12, 13, 14, 16, 18 and 21 of the Anti-Terrorism Act, 2002. The provisions of the terrorism Act extend to both legal and natural persons, who are subject to civil and criminal sanctions. The National Intelligence Agency (NIA) and the Police are responsible for gathering intelligence regarding terrorism and terrorist financing while the Attorney General is responsible for the prosecution of terrorists.

28. The Gambia has not experienced any terrorist attack and none have been launched from the country. However, intelligence reports indicate that

the country is vulnerable to terrorism given its location in the Saharan region surrounded by countries that terrorists have used in the past to launch attacks. Its nationals are also vulnerable and cases of attempted funding of certain religious groups and NPOs were reported in the past but preemptive actions taken by the NIA prevented the funds from reaching the beneficiaries. The NIA prides itself as being alert and ready to suppress any case of terrorism or terrorist financing. The Gambia has approached the combat of financing of terrorism through its international and regional networks. The NIA and the Police cooperate with the INTERPOL and other international security agencies in the exchange of intelligence information.

Confiscation, freezing and seizing of terrorist funds

29. Section 17 of the ATA 2002 permits the Inspector General of Police (IGP) to seize terrorist funds used for terrorist financing. Funds can be seized as soon as a reasonable suspicion is established about the source of the fund. The IGP is required to apply to the court for the detention of the funds in an interest- yielding account. The court may unfreeze the funds if it is of the view that the IGP cannot prove that the funds were proceeds of a terrorist act. The Act also permits the attachment of all moneys, and properties due to or belonging to, or held on behalf of the person who is being charged or about to be charged for an offence under the for Act. Once the person is convicted, the court will make a forfeiture order. An order for forfeiture will cease to have effect if the person is discharged. There has been no prosecution under the terrorism Act.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)

Overview of financial and non-financial institutions

Financial Institutions

30. As described in Schedule 1 of the ML Act, the following financial and non- bank financial institutions are present in The Gambia and are covered for money laundering and terrorist financing supervision purposes:

1. Bank and financial business as defined in the Financial Institutions Act, 1992 or in any other law replacing the Act;
2. International off-shore banking business;
3. Venture risk capital;
4. Money transmission services;
5. Issuing, selling, or redeeming credit cards, traveler's cheques, money orders or similar instruments, dealing in bullions, collecting, holding or delivering cash as part of providing payroll services;
6. Guarantees and commitments;
7. Underwriting and participation share issues;
8. Safe custody services;
9. Credit references services;
10. Safe-keeping and administration of securities;
11. Trading for own account or for account of customers – e.g.
    a money market instruments, such as, (cheques, bills, certificates of deposits, and commercial papers);
    b foreign exchange transactions;
    c financial and commodity-based derivative instruments, e.g. futures, options interest rate and foreign exchange instruments; and
    d transferable or negotiable instruments
12. Money brokering;
13. Money lending and pawning;
14. Money exchange and transfer;
15. Real estate business;
16. Credit union;
17. Building societies;
18. Gambling house and casino and lottery;

19. Trust business;
20. Insurers, insurance intermediary, securities dealer and broker; and
21. Such other business or activities as the Secretary of State may by order in the Gazette specify

31. The ML Act categorizes all the institutions listed above as financial and non-bank financial institutions. There is no definition of designated non-financial businesses and professions (DNFBPs) in the Act, however, some DNFBPs were listed under the Schedule 1 of the MLA as financial institutions.

32. Financial Institution is defined in the Financial Institutions Act (FIA), 2003 (which replaced the 1992 Financial Institution Act) as: *"Any individual, body, association or group of persons whether corporate or incorporate which carries on the business of banks, discount houses, financial companies and money brokerage firms and whose principal objects include project financing, equipment leasing, debt administration, fund management etc''*.

33. The FI Act defines "Bank" to mean the Central Bank of The Gambia and "bank" as a financial institution whose operations include the acceptance of deposits transferable by cheque or other means of third party transfer. Banking business means *"the business of receiving deposits on current, saving, or other account, paying or collecting cheques drawn by Customers, provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investment on behalf of any person, and the provision of insurance marketing services and capital market business or such other services as the Secretary of State for Finance may by regulations designate"*.

34. The banking sector is composed of ten banks, namely nine conventional banks and one Islamic bank. In the case of banking institutions, responsibility for their supervision is discharged through the implementation of the Financial Institutions Act (FIA) 2003 by the CBG. The FIA 2003 has provisions on the licensing and operation of banking institutions, from which was derived a detailed set of guidelines on the licensing of banks. The Central Bank issues guidelines on a number of supervisory issues. The power to issue guidelines to FIs flows from the FIA 2003.

35. Actual supervisory work takes the form of on-site examination of financial institutions, and off-site analysis of data sourced from statutory returns. Prudential visits to banks are occasionally undertaken by the CBG supervisors. The onsite visits take the form of examinations to review targeted aspects of the bank's operations.

36. The total asset base of banks rose to D10.4 billion (US$462.6 million) in December 2007 or 88.6 per cent. Owing to the increase in minimum capital requirement and the number of commercial banks, capital and reserves increased from D0.6 billion (US$19.5 million) at end-December 2003 to D1.2 billion (US$54.1 million) at end-December 2007. The average industry capital adequacy ratio stood at 23.2 percent, more than the minimum requirement of 9 percent. The CAMEL rating parameters showed that all the banks are sound. The ratio of non-performing loans, to total loans stood at 13.1 percent as at end-September 2007. High, non-performing loans have been adequately provisioned by all banks.

37. The low level of financial intermediation remains a concern. The loan to deposit ratio, at 39.0 percent is low, thus, indicating potential for expanded lending by banks. Interest rate spreads are relatively high compared to other developing countries, thus, contributing to the low level of financial intermediation. To address this structural bottleneck, the Central Bank has undertaken initiatives to broaden and deepen the financial sector to smoothen the intermediation process through efficient allocation of resources for increased output, employment and poverty reduction.

38. The financial sector continues to grow and to deepen as new banks and foreign exchange bureaus are licensed to operate. The number of deposit money banks increased to ten following the granting of an operating license to Banque Sahelo – Saharienne L'investissement et le Commerce (BSIC). The growth in the number of banks is expected to increase competition, lead to the introduction of a variety of banking products and services, enhance the intermediation processes, and reduce the cost of borrowing as well as increase the number of branches across the country.

39. The Guidelines on Customer Due Diligence (GCDD) and the ML Act provides for the application of "risk-based approach" in the monitoring of FIs with regards to their compliance with the AML/CFT measures in the country. As at the time of the onsite visit, the CBG has not implemented the risk based approach and AML/CFT issues have not been included in its onsite examination manual. The CBG has also not conducted any threat or risk assessment in any of the financial sectors. As such, it was difficult to determine which sector of the economy or financial products may pose money laundering and financing of terrorism threats. Supervision is currently conducted based on prudential guidelines with minimal consideration for AML/CFT compliance.

40. Islamic banking business was introduced in The Gambia for the first time under the Financial Institutions Act, 2003. It is defined under the FIA to mean the practices of all banking activities in conformity with Sharia and mainly avoiding all types of interest deals (usury or riba) as a lender or borrower. Usury is used with reference to Islamic banking and includes any payment of interest at any rate, whether the rate is excessive or not. (Interpretation Note to the FIA, 2003).

The Insurance Industry

41. The insurance industry comprises of ten (10) insurance companies and six (6) registered brokers. All the insurance companies underwrite only **Non-life** insurance business. The only life insurance company in the country, Gamstar Life and Health Assurance Company stopped operation due to inability to meet the deadline set by the authorities to provide the new minimum capital. The Gambia National Insurance Company Ltd, the only composite insurer also had to stop the provision of life insurance coverage at the end of 2006.

42. Following the enactment of the new Insurance Regulations in 2005, 31 March 2007 was set as deadline for all insurance companies to comply with the statutory capital requirement. Under the new law, new monthly and quarterly reporting requirements were implemented and new guidelines on these reporting requirements were also issued. As at end of 2006, nine insurance companies complied with this requirement. Only one company, Capital Insurance Company - failed to meet the new minimum capital

requirement. As a result, the company had its operating license withdrawn by the Central Bank.

43. Prescribed under the Insurance Regulations 2005 are new prudential requirements including:

- Minimum Capital Requirement of D15 million and D100 million for insurers and reinsurers respectively;
- Insurance funds/Provision for unearned premium of at least 50% of the Retained Premium (i.e. Total Premium income *less* Premium refunded and reinsurance);
- New registration renewal fees of D25, 000.00, D5, 000.00, D1, 000.00 and D100.00 for reinsurers, insurers, brokers and agents respectively; and
- Minimum Statutory Deposit requirement for each class of insurance business of D300, 000.00.

The Bureaux de Change (BDCs)

44. There are 40 bureaux de change under the supervision of the Foreign Exchange Department (FED) of the Central Bank. Since 1990, a licensing process, which is regularly reviewed, was put in place for all foreign exchange bureaux. The Foreign Exchange Department is responsible for the monitoring and supervision of BDCs. There are guidelines regarding their licensing and operations.

Micro Finance Institutions

45. The Gambia Poverty Reduction Strategy Paper (PRSP II) has identified microfinance as one of the cornerstones for poverty reduction. In The Gambia, micro-finance institutions (MFIs) provide financial services to the poor by providing them with opportunities to acquire financial assets. The Central Bank is entrusted with the responsibility of supervising and regulating micro-finance institutions. The Bank has licensed 63 Village Savings and Credit Associations (VISACAs), and five finance companies to offer quality and sustainable financial services to the poor and vulnerable groups in The Gambia. These organizations currently serve 78,660 depositors and borrowers. Their loan portfolios reached D216.1million with deposits of D271.9 million.

Types of Banks and Other Financial Institutions

Reporting Entities	Total	Regulatory and Supervisory Institution
Commercial Banks	9	CBG
Islamic Commercial Bank	1	CBG
Micro Finance Institution	63	CBG
Finance Companies	5	CBG
Bureau de Change	40	CBG
Total	**118**	

Banks Operating in The Gambia

BANKS	LOCAL	FOREIGN	SUBSIDIARY
Standard Chartered			✓
Trust bank	✓		
IBC/PHB		✓	✓
Arab Islamic Bank	✓		
FIB		✓	
GTB		✓	✓
ICB		✓	✓
ACCESS		✓	✓
ECOBANK		✓	✓
BSIC		✓	✓
TOTAL	**2**	**6**	**7**

Types of Insurance Companies

Type of Institution	Total	Regulatory and Supervisory Institution
Non-Life Insurance Companies	9	CBG
Insurance brokers	6	CBG
Islamic Insurance Company	1	CBG
Total	**16**	

Overview of Designated Non-Financial Businesses and Professions (DNFBPs)

Basic legal obligations

46. Not all the categories of DNFPBs as defined by the FATF Methodology are operating in The Gambia. Amongst the ones that are present, not all of them are covered by the Money Laundering Act 2003. Some of the DNFPBs that are covered by the Money Laundering Act 2003 are under no regulatory control for AML/CFT purposes. The covered DNFPBs include casinos, real estate agents, and trust companies and service providers. The MLA does not cover lawyers, notaries, accountants, dealers in precious metals and dealers in precious stones.

Casinos

47. The Money Laundering Act 2003 applies to casinos by virtue of their inclusion in paragraph 19 in Schedule 1 to the ML Act. The Ministry of Tourism is responsible for regulation of Casinos in designated tourist areas. The Gambian Revenue Authority regulates the casinos in all other areas. There is no requirement for the supervisory entities to ensure compliance with AML/CFT measures.

Real Estate Agents

48. The Money Laundering Act 2003 applies to real estate agents by virtue of their inclusion in paragraph 15 in Schedule 1. However they are totally unregulated and the Authorities have not issued any guideline to the sector with regards to their obligations under the AML/CFT legislation.

Trust Company & Service Providers (TCSPs).

49. The Money Laundering Act 2003 applies to Trust Company Service Providers (TCSP) by virtue of their inclusion in paragraph 20 in Schedule 1. However the Authorities stated that there are no businesses in Gambia operating a Corporate or Trust Service Provider business. The creation of Trusts in The Gambia is extremely minimal and would most likely be conducted by a lawyer. However, in the absence of any law prohibiting the establishment of TCSPs, there is need for the business to be regulated and

guidelines issued for this purpose for proper implementation and supervision.

The Legal Practitioners and The Gambia Bar Association

50. The Legal Practitioners Act, CAP 7 (01) established a General Legal Council with the mandate to undertake the following tasks: (i) make provision for the admission of persons to practise as legal practitioners before the courts of The Gambia; (ii) provide for professional discipline of legal practitioners; (iii) regulate admission to legal practice; (iv) be responsible for upholding standards of professional conduct; and (v) make provision for legal education in The Gambia. The General Council is the SRO for lawyers in The Gambia.

51. The Council shall consist of: (i) the Chief Justice, who shall be the Chairman; (ii) the Attorney-General, who shall be the Vice Chairman; (iii) Justice of the Supreme Court, to be appointed by the President; (iv) one legal practitioner in the service of the Government, to be nominated by the Attorney-General; (v) four legal practitioners of not less than seven years standing to be nominated by The Gambia Bar Association; and (vi) a lay person, to be appointed by the President.

52. The Legal practitioners are not covered under the ML Act, 2003 and therefore do not currently have any reporting obligation under the AML/CFT measures in The Gambia.

1.4 Overview of the commercial laws and mechanisms governing legal persons and arrangements

53. The Registrar of Companies is located within the Department of Justice and is accountable to the Attorney General and Secretary of State for Justice through the Solicitor General. The registration of companies and other legal entities are governed by the Companies Act 1955.

54. The Registrar is responsible for the registration of legal persons, arrangements, business names, partnerships, trusts, foundations and Non-Profit Organizations (NPOs) or Charities. Trustees can be formed in The Gambia and the Registrar is responsible for the registration of deeds, and trusts even though the process of management of trusts resides with legal practitioners.

1.5 Overview of strategy to prevent money laundering and terrorist financing.

55. In order to combat Money Laundering and the Financing of Terrorism,(ML/CFT), The Gambia has developed legislative and institutional framework through the enactment of the Money Laundering Act, 2003, the Anti-Terrorism Act 2002, the Financial Institution Act 2003 and the Drug Control Act 2003. In addition, the Government of The Gambia has given approval for the establishment of the FIU, which is currently located at the Financial Supervision Department (FSD) of the Central Bank of The Gambia (CBG) and under the leadership of the Director of the FSD.

56. Following the enactment of the Money Laundering Act (MLA) 2003, the Central Bank was appointed as the Supervisory Authority in 2006 with the responsibility to implement the ML Act 2003 and to establish the FIU. The measures put in place towards the setting up of a functional FIU include the identification of a space for the FIU in the CBG office premises, issuance of Suspicious Transaction Reporting (STRs) formats, guidelines on Customer Due Diligence and provision of training for some reporting entities. The submission of suspicious transaction reports was previously scheduled to commence at the end of March 2008 but could not commence due to logistic problems.

57. An inter-ministerial committee was set up in 2008 to coordinate all activities related to the fight against money laundering (AML) and combating of terrorist financing (CFT) in The Gambia. The Committee comprises of the Department of State for Finance, Department of State for Interior, Department of State for Justice, Drug Enforcement Agency and the Central Bank. The Committee was inaugurated officially by the Secretary of State for the Interior in February 2008. There are plans to expand the Committee to include the Police, Customs, Foreign Affairs, NIA, and the Registrar General's office.

58. The Gambian Government considers the following financial intermediation and services as being vulnerable to money laundering: banking, foreign exchange transactions, trading in money market instruments such as cheques, bills, certificates of deposits, and commercial papers for oneself or for the account of customers, trading in transferable or negotiable instruments, the tourism industry and the real estate business.

59. The Gambian Government has taken steps to prevent the financial system in The Gambia from being used as conduit for the transfer and retention of illicit funds but the various agencies involved in anti-money laundering activities have not been allocated adequate resources for the implementation of the AML measures already in place in the country. The CBG and the FIU lack the required technical and operational personnel to supervise and monitor financial institutions compliance with the MLA. Additionally, the Financial Supervision Department (FSD) is understaffed and is not likely to function effectively as the FIU given the fact that its primary role of supervising financial institutions (FIs) and Non-Bank Financial Institutions (NBFIs) for prudential purposes is considered a priority at the moment. With fourteen staff members, the FSD is barely meeting its primary obligation to the FIs.

60. The Anti-Terrorism Act, 2002 provides for the measures to combat terrorism and for other related matters. The primary objective of the AML/CFT measures is to ensure that The Gambia is free from all forms of financial crime and terrorism. This is realisable through domestic and international cooperation and collaboration with international development partners. The national strategy involves the broadening of knowledge on the nature of organized crime among The Gambians. The strategic measures put in place by the Government include the sensitisation of the public on the dangers of organized crime. Participation in international seminars on the prevention of terrorism has contributed to increased knowledge about terrorism by Government officials.

61. The mechanisms put in place for an effective implementation of the Money Laundering Act (2003) include the setting up of an inter-ministerial Committee, which would work closely with the Financial Intelligence Unit. The housing of the FIU within the Central Bank is designed to leverage on the trust and cordial relationship already in existence with regulated institutions and to ensure that the integrity and security of suspicious transactions reports received from reporting entities are maintained.

62. Other related legislation which impact on the effective combating of terrorist financing and money laundering include the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990. The Criminal Code has criminalized some of the predicate offences such as extortion, counterfeiting, smuggling. In addition, the revised Financial Institutions Act, the Central Bank Act and

the regulations on customer due diligence play important roles in the AML/CFT strategy framework.

The institutional framework for the combating money laundering and terrorist financing

(i) Financial sector bodies & associations

63. The Gambian Financial Sector comprises of the regulators and the regulated entities (operators). While the operators apply the provisions of the money laundering laws as a guide to their operations, the regulators, mainly government institutions, enforce compliance with the laws and regulations. The regulators also perform various examination and assessments to detect possible contraventions and impose appropriate sanctions for non-compliance. However, the financial supervisory authority is yet to develop AML/CFT "threat assessment reports or a risk based approach" in their supervisory process.

64**.** **The Central Bank of The Gambia (CBG):** The CBG is responsible for the implementation of monetary policy, and supervision of financial institutions through the application of the FIA 2003 and other financial guidelines. It is also responsible for the supervision of other financial institutions. The Bank has different departments that are responsible for the supervision of financial and non-financial institutions, which include the insurance commissioner, the micro-finance department, and the foreign exchange department. However, the Financial Supervision Department is responsible for the supervision of all the FIs and NFIs for AML/CFT compliance. To improve CBG's corporate governance and independence, a new Central Bank Act became effective in January 2006. The new Act contains provisions that are aimed at strengthening the operational independence of the CBG. The new CBG Act conforms to international best practices. The Act requires the CBG to implement monetary policies more effectively if it is to be shielded from political interference.

65. Amongst other things, the new Central Bank Act imposes stricter quantitative and duration limits on Government borrowing from the Bank. Government and the Central Bank have prepared a plan for gradual phasing out of Central Bank advances to Government in order to comply with the requirements of the Act by December 2007. A memorandum of

understanding to improve policy co-ordination between the Central Bank and Department of State for Finance and Economic Affairs (DOSFEA) in the area of debt management and monetary operations was recently signed by both parties.

66. To improve the smooth functioning and stability of the banking sector as well as increase the efficiency of financial intermediation, the Central Bank revised its on-site examination procedural Manual. In addition, the supervisory power of the Financial Supervision Department was strengthened to enable it build a safe and sound banking system. Most important is the drafting of the Prompt Corrective Action (PCA) framework to identify and address anomalies in banks' performance at an early stage, particularly in key areas such as profitability, liquidity and capital adequacy.

67. In order to reduce credit risks and costs for banks as well as make credit affordable at competitive prices for borrowers, the Central Bank in collaboration with commercial banks initiated the establishment of an electronic reporting system and a credit reference bureau in March 2007. Credit information sharing will strengthen commercial banks' capacity to expand lending, especially to Small and Medium Enterprises and reduce transaction costs.

68. Tenor lending in The Gambia is also constrained by slow and cumbersome judicial procedures which do not ensure speedy recovery of bad debts. A review of the Mortgages Act (1992) and the Sheriffs' Act (1992) has been initiated to enhance the efficiency of the process of enforcing judgments obtained in the courts and to strengthen creditor rights.

69. Other reform measures taken by the Central Bank to improve the smooth functioning of the financial system are; reform of the payment system infrastructure, overhaul of the Insurance Act with the inclusion of Islamic insurance, development of the guidance on corporate governance and the introduction of Islamic banking in The Gambia.

70. **The Department of State for Finance and Economic Affairs (DOSFEA): DOSFEA is** responsible for the development of economic policies in The Gambia. It also has oversight responsibility over government-owned financial institutions and the Central Bank of The Gambia. The DOSFEA is the competent authority responsible for the

implementation of the MLA, however, this responsibility has been delegated to the CBG to act as the supervisory authority.

71. **The Office of the Registrar General:** The Registry is a department of the State Department for Justice and is responsible for the implementation of the Companies Act, registration of business names, partnerships, limited liability companies and other legal persons and arrangements.

72. **Financial Intelligence Unit:** It is the unit responsible for the receipt, analysis and dissemination of suspicious transactions reports. The unit is still at the early stages of establishment. It is located in the Central Bank of The Gambia.

The Gambia Accountants Board:

73. The Accountants Board Act, 2004 established The Gambia Accountants Board as a body to exercise regulatory oversight over the accountancy profession, exercise disciplinary control over its members, and provide a statutory qualification for auditors of limited liability entities.

74. The Board is mandated: (i) to keep under review the conduct of accountancy and audit professionals in The Gambia and, in particular, with the aim of maintaining public confidence in the integrity and standards of the accountancy and audit professions in The Gambia. (ii) To ensure that only fit and proper persons act as auditors for public interest entities in The Gambia. The Gambia Accountants Board is a government body and is the SRO for accountants and auditors in The Gambia.

The Gambia Bankers Association

75. Thee Association is set up to carry out the following tasks:

- promote sound banking practices in The Gambia;
- promote and encourage public confidence in the banking system;
- encourage and promote fair, prosper and orderly practice in relation to banking transactions;
- liaise with the Government and its agencies where necessary in furthering the objects of the Association;
- protect and develop the professional interest of its members;

Membership includes banks authorised to operate as financial institutions by the Central Bank of The Gambia.

(ii) *Criminal Justice and Law Enforcement Institutions*

76. **Department of State for Justice:** The Department is responsible for drafting of legislation, issuing of legal opinions, prosecution of cases (civil and criminal), registration of companies, deeds, patents, and trade marks, and administration of estates.

77. **The Gambia Police:** Section 178 of the Constitution and the Police Act, CAP (18:3) established The Gambia Police and created the office of the Inspector General of Police (IGP) as the head of The Gambia Police Force. The Gambia Police consists of roughly over 2000 officers. The Police powers include the mandate to investigate and prosecute money laundering and terrorist financing offences.

78. **The Gambia Customs** is established by CAP 86 (1). The Customs has powers to make arrests but it lacks prosecution powers. The Customs is responsible for the enforcement of disclosures of foreign exchange at the port of entry and departure either by land, sea or air. The Customs is expected to implement the ML Act provisions in Sections 16 and 19 with regards to the transportation of currency and other negotiable instruments across the border.

79. **Drug Enforcement Agency (DEA)** is responsible for the enforcement of the Drugs Control Act 2003 as amended in 2005. It is also responsible for the prevention of drug abuse, and trafficking in the country, including the development of drug control strategy.

80. **National Intelligence Agency (NIA)** The NIA established by Decree 45 of 1995 is responsible for preventing any threats to the security of the State of The Gambia. Its task is to protect the security of the country generally and in particular from threats of espionage, terrorism, sabotage undertaken by foreigners, and agents of foreign powers or organizations. It is mandated to initiate and formulate policies that are essential to the security of The Gambia and to determine military capabilities of the country in dealing with external threats.

(iii) Ministerial bodies and coordinating committees

81. **Department of State for Interior**: The supervisory ministry in charge of law enforcement agencies like Police, Immigration and Drug Enforcement Agency.

82. **Department of State for Foreign Affairs:** The Department receives correspondence and requests for mutual legal assistance and extradition and coordinates the response to those requests.

83. **The GIABA Inter-Ministerial Committee:** The Committee is made up of representatives of the Justice, Interior, Finance, and CBG. It seeks to ensure the efficient implementation of AML/CFT measures in the country and to enhance cooperation among key ministries and institutions responsible for the enforcement and implementation of the MLA and the Anti-Terrorism Act.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 *Description and Analysis*

84. The Gambia has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and the United Nations Convention against Transnational Organized Crime, 2000. The country has made efforts to enact various national laws to implement the requirements of these Conventions in order to protect the country's financial systems from money laundering, terrorist financing and other related offences.

85. The legal framework for anti-money laundering and the combat of terrorist financing of The Gambia include the Money Laundering Act, (MLA) 2003, the Anti-Terrorism Act, (ATA) 2002, the Drug Control Act, (DCA) 2003 now referred to as the Drug Control (Amendment) Act, 2005, Trafficking in Persons Act, 2007 the Financial Institutions Act, (FIA), 2003 among others. These laws are aimed at fostering cooperation between The Gambia and the rest of the world, and enhancing mutual legal assistance between The Gambia and its international partners.

86. The MLA was enacted on the basis of the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 UN Convention against Transnational Organized Crime (the Palermo Convention).

87. The Money Laundering Act provides for the physical and material elements in line with the Vienna and the Palermo Conventions. The physical elements of acquisition, possession, conversion or transfer of property, for the purpose of concealing or disguising the illicit origin of the property is covered under the definition of money laundering offences in Sections 17 & 18 of the MLA.

88. Property is defined in the Act to include, money, investment, real or personal, movable or immovable which may have been obtained directly or indirectly from proceeds of crime.The ML offences apply to persons who knowingly or have reasons to believe that such a property was derived from

an act that constitutes an offence under The Gambian money laundering Act or any other laws.

89. Money laundering offences cover natural and legal persons. Under the Act, "Persons" include any entity, natural, or legal, corporation, partnership, trust, or joint stock Company, association, syndicate, joint venture or other incorporate organization or group capable of acquiring rights or entering into obligations.

Criminalization of Money Laundering

90. The provisions on the criminalization of money laundering in the MLA are as follows: Section 2 of the Money Laundering Act, 2003 defines money laundering as follows:

"Money laundering" includes

(a) engaging directly or indirectly in a transaction that involves property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime; or

(b) receiving, possessing or bringing into The Gambia any property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime.

91. Sections 17 and 18 of the Money Laundering Act, 2003 criminalized money laundering as follows:

''17. (1) A person commits the offence of money laundering if he or she

(a) acquires, possesses or uses a property, knowing or having reason to believe that it is derived directly or indirectly from acts of omissions-

(i) in The Gambia, which constitute an offence under this Act, or any other law of The Gambia punishable for a term of imprisonment for a term of not less than two years, or

(ii) outside The Gambia would have constituted an offence under a law of The Gambia punishable by imprisonment for a term of not less than two years; or

(b) renders assistance to another person for –

(i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of the property, or of aiding any person involved in the commission of the offence to evade the legal consequences of the offence, or

(ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of a property derived directly or indirectly from those acts or omissions.

92. *Section 18(1) provides further that "A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specific unlawful activity-*

(a) with intent to promote the carrying on of the specified unlawful activity; or

(b) where the transaction is designed in whole and in part to

(i) conceal or disguise the nature, location, the source, the ownership or the control of the proceeds of a specified unlawful activity, or

(ii) avoid the lawful transaction under a law of The Gambia,

commits an offence if he or she knows or ought to know having regard to the circumstances of the case, that the property involved in the financial transaction represents the proceeds of the unlawful activity.

93. Section 19 of the ML Act covers money laundering offences related to the transportation of monetary instruments or funds within The Gambia or to a place outside The Gambia and intended for the commission of an unlawful

activity or are the proceeds of unlawful activity with the intention to conceal the nature, location, source, ownership or control of the proceeds of a specified unlawful activity or avoid a lawful transaction under the laws of The Gambia

94. The criminalization of money laundering as described above covers three principal offences:

- Acquisition, possession and use of a criminal property (Section 17);
- Conversion, transfer, concealing, disguising of criminal property or removing such property from The Gambia (Sections 17, 19, and 22);
- Conducts that lead to assisting, aiding, concealing, disguising, the source, ownership, or the control of criminal property (Section 18).

In each of these three cases described above, the law requires that the intentional element or the knowledge that the proceeds or property was derived directly or indirectly from a specified unlawful activity would have to be established.

The Laundered Property

95. The offence of money laundering extends to any type of property, regardless of its value, if the property directly or indirectly represents the proceeds of unlawful activity. Section 2 of the ML Act defines property to include money, investment holding, asset and any other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property wherever situated in The Gambia or elsewhere.

Proving Property is the Proceeds of Crime

96. The burden of proof required for proving the knowledge, intent, purpose and belief or suspicion of any offence under the ML Act may be inferred from objective factual or circumstances. The law requires that the intentional element or the knowledge that the proceeds or property was derived directly or indirectly from a specified unlawful activity, or acts or omissions which would constitute an offence under the ML Act, or under any other law of The Gambia that is punishable by imprisonment of not less than 2years or which, if it had occurred outside The Gambia, would have

constituted an offence under the ML Act or any other law punishable by 2years imprisonment term.

97. Under Section 26 of the Act, all that the prosecutor is required to prove is that the person knows or ought to have known that the property involved in a transaction represents proceeds from some form of activity that constitutes an offence. Furthermore, Section 28 of the ML Act provides that the High Court, may on application by the competent authority, by order freeze the property in possession or under the control of a person if the Court is satisfied that a person has been charged or about to be charged with money laundering. The Assessors were informed that this application can be by exparte order to ensure that the suspect do not become aware of the freezing action before the order is obtained as this may lead to the dissipation of his assets before the determination of the case.

The Scope of Predicate Offences

98. The Gambia adopted the threshold approach by limiting predicate offences to offences with two years imprisonment term and above. The predicate offences of money laundering are specified in Schedule 2 of the ML Act. The offences are blackmail, counterfeiting, drug trafficking and related offences, extortion, false accounting, forgery, fraud, illegal deposit – taking, robbery, terrorism, theft, insider trading and such other offences as the Secretary of State may by order in the *Gazette,* specify.

99. The predicate offences listed in the Schedule do not cover the range of designated categories of offences in the FATF Recommendations. Offences excluded from the list include human trafficking, migrant smuggling, sexual exploitation, illicit arms trafficking, illicit trafficking in stolen or other goods, murder or grievous bodily harm and smuggling.

100. However, some of the predicate offences of money laundering not listed in the Money Laundering Act are found in the Criminal Code, the Tourism Offences Act, 2003 (NO.7 of 2003) and the Anti-Terrorism Act, 2002. The Gambian authorities conceded that the MLA was enacted without taking the FATF designated offences into account.

101. In order to include the widest range of predicate offences, Recommendation 1 encourages countries to apply the crime of money laundering to all serious offences. Under the ML Act, predicate offences

relates to "specified unlawful activities" which is defined in the Act to mean *"an act or activity constituting an offence under this Act with respect to a financial transaction occurring in whole or in part in The Gambia, or an offence against the laws of a foreign country involving the acquisition of property by fraud, by whatever name called"*

102. The shortcomings in the definition of money laundering under Section 17 & 18 of the MLA reiterates the concerns the Assessors expressed as regards the restrictive approach that has been adopted by The Gambia in determining underlying predicate offences. Section 17 provides that money laundering offence is committed when a person is found in possession of property "*derived from an act or omission which constitutes an offence under this Act or any other law in The Gambia punishable by imprisonment for a term of not less than two years*"

103. Additionally, Section 18 relates to laundering of funds obtained through the conduct of financial transactions which involves the proceeds of "a specified unlawful activity"

104. The provision under Section 17 was intended to be broader in terms of what would be regarded as predicate offences because it seeks to cover offences in the other laws of The Gambia which are not prescribed in the Schedule to the MLA such as the Criminal Code. However, it then goes ahead to limit such extension to offences that are punishable by imprisonment of not less than two years.

105. It is clear from the combined reading of the prescribed offences in the Schedule to the MLA, and Sections 17 & 18 that the intention of the drafters of this law is to exclude other serious offences which do not come within the 2 years imprisonment term threshold and which are not listed in the prescribed offences in the Schedule to the Act. The Criminal Code, Vol III Laws of The Gambia, the Tourism Act and the Trafficking in Persons Act have criminalized other offences in the designated categories such as smuggling, human trafficking, sexual exploitation, murder or grievous bodily harm. A list of predicate offences criminalized under The Gambian criminal and other statutory legislation is provided below.

<u>Relevant Statutes</u>

106. Statutes that the Assessors were able to verify and which were matched against FATF minimum designated categories of offences include:

	Offence	Legislation	Status
1.	Illicit traffic in stolen and other goods		
2.	Corruption and Bribery	Criminal Code, 1990	(L.R.0.1)
3.	Fraud	MLA	
4.	Counterfeiting of currency	MLA/Criminal Code	
5.	Counterfeiting and piracy of products		
6.	Environmental crime	Criminal Code	
7.	Murder and grievous body injury	Criminal Code	
8.	Kidnapping, illegal restraint and hostage taking	Criminal Code Anti-Terrorism Act	
9.	Robbery or theft	MLA/Criminal Code	
10.	smuggling		
11.	Extortion	MLA/Criminal Code	
12.	Forgery	MLA/Criminal Code	
13.	Piracy		
14.	Insider dealing and market manipulation		
15	Participation in organized criminal group and racketeering		
16.	Terrorism including terrorist financing	MLA/Anti-Terrorism Act, 2002 (NO 6 of 2003)	
17.	Trafficking in human beings and migrant smuggling	Trafficking in Persons Act, 2007 (NO. 11 of 2007)	
18.	Sexual exploitation, including sexual exploitation of children	Tourism Offences Act, 2003(NO. 7 of 2003)	
19.	Illicit trafficking in narcotic drugs and psychotropic substances	Drug Control Act, 2003 (NO. 15 of 2003)	
20.	Illicit arms trafficking		

Extraterritoriality of Committed Predicate Offence

107. Section 17 (1) (a) (ii) of the MLA provides that a person commits an offence of money laundering if that person engages in the acts or omissions specified in the Act as follows:

"(ii) outside The Gambia, which would have constituted an offence under a law of The Gambia punishable by imprisonment for a term of not less than two years;"

108. Additionally, Section 27 permits that any offence created under the ML Act shall be investigated, tried, judged and sentenced by a court of The Gambia regardless of whether the prescribed offence occurred in The Gambia or in another territorial jurisdiction. Therefore, offences committed outside The Gambia can be tried in The Gambia.

Laundering One's Own Funds

109. In The Gambia, this applies to persons who commit predicate offences as provided under Section 17(1), 18 (1), 19 (1) of the ML Act. The ML Act is a national law and it is only suspended by The Gambian Constitution in the event of a conflict between the two. However, there is no Constitutional provision that disallows the application of the offence of money laundering to those who commit the predicate offences.

Ancillary Offences

110. Ancillary offences to money laundering such as conspiracy, attempt, aiding and abetting, facilitating and counseling the commission of money laundering has been criminalized under Section 24 of the ML Act. These offences also exist as substantive offences in The Gambian Criminal Code. Specifically, Section 24 of the MLA deals with conspiracy, attempt, aiding and other ancillary offences. It provides:

"24 - A person who

(a) conspires with, aids, abets or counsels any other person to commit an offence;
(b) attempts to commit or is an accessory to an offence; or
(c) incites, procures or induces any other person by any means whatsoever to commit an offence commits an offence..."

111. Such a person is deemed to have committed the offence and is liable on conviction to the same punishment as the person who committed the

actual offence. The same common law principle applicable to conspiracy is also applicable in The Gambia. Section 24 (c) refers to incitement, procuring and inducing as an ancillary offence and is therefore a departure from the usual ancillary offences and may have been informed by national circumstances.

Additional Elements

112. Under Section 17 (ii) of the MLA, it is a money laundering offence in The Gambia where the proceeds of crime are derived from a conduct that occurred in another country where that act is not an offence. In The Gambia, the proceeds derived from a conduct that occurred in another country, which is not an offence in that other country but would have constituted a predicate offence had it occurred domestically, constitute a money laundering offence. This is provided for in section 17(1) (a) (ii) of the MLA.

Recommendation 2

Liability of Natural Persons

113. Under the MLA, persons refers to natural and legal persons. According to Section 17, 18 & 19 of the Money Laundering Act 2003, the offence of money laundering applies to any person who commits the offence. With regards to corporate persons, Section 17, 18, and specifically Section 25 (1) provides that those behind the body corporate, shall be deemed to be guilty of offence committed by the instigation, connivance, or attributable to the neglect on the part of a Director, Manager, Secretary or other officer of the corporate body and they shall be liable to any applicable punishment. The law permits the "lifting of the veil" of corporate bodies in order to make the natural persons behind the legal entity liable for their negligent actions.

The Mental Element of the Money Laundering Offence

114. Section 26 of the ML Act 2003 provides that the knowledge, intent, purpose, belief or suspicion required as an element of any offence under the Act may be inferred from objective or factual circumstances.

Liability of Legal Persons

115. Criminal liability for money laundering has no exception as described in Sections 17, 18, & 25 of the Money Laundering Act 2003. With regards to corporate persons, Section 17, 18, and specifically Section 25 (1) provides that the body corporate, shall be deemed to be guilty of offence committed by the instigation, connivance, or attributable to the neglect on the part of a Director, Manager, Secretary or other officer of the corporate body and such a corporate body shall be liable to any applicable punishment.
Furthermore, where a body corporate is convicted of an offence under the Act, the court may order that the body corporate shall be wound up by an order of the court and all its assets and properties forfeited to the Government of The Gambia.

Civil and Criminal Sanctions in respect of Money Laundering Offences

116. Corporate bodies are subject to civil and criminal sanctions. Sections 17, 18, 19, & 25 provides for sanctions ranging from fines to confiscation of properties of the corporate body and winding up. The MLA provides for a wide range of sanctions against both natural and legal persons including directors and secretaries of financial institutions or corporate bodies under sections 17, 18 and 25. Under sections 17 and 18 of the MLA, the sanctions range from fines of not less than one hundred thousand Dalasis and imprisonment between five and fifteen years in the case of natural persons.

117. As regards legal persons, the sanctions range from a fine of five hundred thousand Dalasis to forfeiture of the assets of the legal person and winding up. The MLA also provides for administrative sanctions in the form a temporary or permanent withdrawal of license to practice, (section 23(2) (b). Section 23 (3) of the MLA provides that a person who commits an offence under subsection (1) may in addition to the penalty prescribed for the offence, be banned permanently or for a period of five years from practicing the profession or carrying out the business which provided the opportunity for the offence to be committed. One money laundering case has been prosecuted in The Gambia since the enactment of the Act. This resulted in extradition before the conclusion of the case and forfeiture of assets of the suspect. Another money laundering case is pending.

118. Both natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering.

119. With regards to the effectiveness of the implementation of the ML Act, The Gambian authorities have not demonstrated that fighting money laundering is of national political importance and that it is relevant in ensuring the soundness and stability of the financial systems. There is no strategy or national policy in place to ensure the effective investigation and prosecution of money laundering cases.

120. Additionally, the institutions required for the effective implementation of the law have not been clearly identified under the law. This is evident in the lack of clarity as to the agency responsible for the implementation of the law. The Act states that the Secretary of State for Finance and Economic Affairs (SOS/DFEA) shall be the competent authority or any other persons exercising the authority on behalf of the competent authority. The supervisory authority would, according to the law, be the Department for Finance and Economic Affairs (DFEA). Since the enactment of the Act in 2003, the competent authority did not take any step to designate or delegate any of the functions in the Act till 2006, thus making the implementation of the Act very difficult.

121. The implementation of the Act commenced in 2006 after the Central Bank of The Gambia was authorised by the SOS/DFEA to act as the Financial Intelligence Unit (FIU) for the time being. This is a temporary delegation of authority, which the Assessors were able to determine was not supported by funding, personnel, nor the equipment required in the establishment of the FIU. Below is a description of how authorities devolves on different agencies under each of ML Act

Legislation	Implementing Agency	Date of Enactment
Anti-Terrorism Act, 2002 (NO. 6 of 2003) (incorporating terrorist financing offence)	• Secretary of State for Defence, Police, or National Guard • The NIA also has powers to investigate terrorism cases. • Attorney General can prosecute but may designate authority to prosecute to the	2nd January, 2003

	Police.	
Money Laundering Act, 2003 (NO. 9 of 2003)	• Secretary of State for Finance and Economic Affairs – delegated part of the Secretary's mandate to the Central Bank of The Gambia. • The Police or any other law enforcement agencies. • The NIA can also investigate money laundering offences • Attorney General can prosecute but may designate authority to prosecute to the Police.	19th June, 2003
Drug Control Act, 2003(NO. 15 of 2003)	• Drug Enforcement Agency • Attorney General can prosecute but may designate authority to prosecute to the Drug Control Agency.	2nd October, 2003 amended in 2005

122. In terms of investigation and prosecution of money laundering cases, it is also not clear whose responsibility it is to enforce the provisions of the ML Act. The Act states that "*The Gambia Police Force or any other body charged with the responsibility for performing the duties of the law enforcement agency under the Act may enforce the Act*". Personnel of the Police Service have not been trained to investigate money laundering cases. In the absence of an efficient system for the investigation of financial crimes, it is unlikely that the prosecuting authorities would ever prosecute cases involving financial crimes. The Assessors were of the view that despite the efforts made by The Gambia in enacting the money laundering legislation, not much has been done to ensure its effective implementation.

Recommendations and Comments

123. The ML Act, 2003 has provided for the physical and material elements of the offence of money laundering as required by relevant international conventions. The offence of laundering is fairly broad in scope. However, the definition of predicate offence is restrictive and the prescribed list of offences in the Schedule to the Act does not cover all designated categories of offences in the FATF glossary. In requiring that proceeds of crime must be derived from an offence under the ML Act or any other law punishable by imprisonment for a term not less than two years, most serious offences not prescribed under the Act and which fall below the two years imprisonment term have been excluded as predicate offences under the Act.

124. While the sanctions provided in the ML Act are proportionate and dissuasive, they have hardly been utilized and it appears that there is no strategy or national policy to effectively implement it. With only one concluded case since the enactment of the law in 2003, it would be necessary for the authorities to improve institutional mechanisms in place for the effective implementation of the ML Act. The Assessors recommended that the authorities should take the following steps to strengthen the ML legislation and the implementation frameworks in the country:

- The MLA should 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 and should be reduced to a term of six months imprisonment or less in order to comply with the FATF Recommendations.
- The law should clearly designate the authorities responsible for the implementation of the various elements of the Act.
- There should be a clear definition of the agency responsible for the enforcement of the ML Act.
- The investigators and prosecutors responsible for the implementation of the ML Act should be trained and equipped with the necessary human resources and funding to enhance the effective implementation of the law.

Compliance with Recommendations 1 & 2

	Rating	**Summary of factors underlying rating**

R.1	**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.
R.2	**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.

2. 2 Criminalization of Terrorist Financing (SR.II)

Special Recommendation II

Description and Analysis

The Anti-Terrorism Act (ATA) 2002.

125. The Gambia has not ratified the 1999 United Nations Convention on the Suppression of the Financing of Terrorism. However, effort has been made to criminalize the offence of terrorism and terrorist financing through the enactment of The Anti-Terrorism Act (AT Act) 2002.
The Act provides for measures to combat terrorism and other related offences**.** Terrorist Financing is criminalized in The Gambia by Sections 6, 11(a) and 11(2) (b) 12, 13, 14, 18 and 21 AT Act.

Scope of the Criminalization of Financing of Terrorism (FT) in The Gambia

126. The Gambia has ratified 10 out of the 13 United Nations Terrorism Conventions. Thus, most terrorist acts have been criminalized under the interpretative note to the Anti-Terrorism Act as required by the SFT Convention and under FATF Recommendations.

Terrorist acts is defined in the AT Act to include "any act which may seriously damage a country, or international organization, which is intended or reasonably intended to intimidate a population, seriously destabilize or destroy fundamental political, constitutional, economic, or social structures of a country or international organization or otherwise influence a government or international organization, and which involves attacks on a person's life, which may cause death, or attacks on the physical integrity of a person, including rape, forcible deprivation or taking of a person's property, with or without the use of arms including armed robbery against an individual or group of persons, including kidnapping."

127. The Act defines a terrorist to mean a "person or persons, who individually or collectively carry out an act of terrorism. Under Section 48, a terrorist also means a person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of terrorist act.

128. Section 4 of the Act further provides that "where two persons or more persons associate for the purpose of, or where an organization engages in:

- Participating or collaborating in act of terrorism;
- Promoting, encouraging or exhorting others to commit an act of terrorism; or
- Setting up or pursuing acts of terrorism;

129. Such organization may be declared a proscribed organization by a Judge in Chamber on application made by the Inspector General of Police. The Assessors were able to determine from the foregoing provisions of the law that the Act covers terrorism, terrorist acts, terrorist organizations, and individual terrorists.

Definition of funds

130. Terrorist Financing is criminalised in The Gambia under Part II of the Anti–Terrorism Act 2002 by Sections 11(a) and 11(2)(b).

131. Section (1) provides that a person who wilfully and unlawfully, directly or indirectly provides or collects funds with the intention or knowledge that they will be used in full or in part in order to –

- Commit an offence under section 10 of the Act;

- Do any act or other acts intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, civil strife, or any other terrorist activity, when the purpose of the act, by its nature or context is to: (i) intimidate the population or to (ii) compel a Government or in international organization to do or abstain from doing any act commits an offence

132. Section 10 provides that where a person is suspected to be involved in the commission of international terrorism, or belongs to an international terrorist group, or has links with an international terrorist organization or is a risk to national security, that person's citizenship would be revoked.

133. “Funds” is defined in sections 17 (10) and 48 (1) of the ATA to include, coins and notes in any currency, postal orders, traveler’s cheques, banker’s drafts, bank deposits, bearer bonds and other financial resources, including properties. Terrorist property is defined to include property which-

- has being, is being or is likely to be used for any act of terrorism;
- has been, is being or is likely to used for by a proscribed organization;
- is the proceeds of an act of terrorism,
- is gathered for the pursuit of, or in connection with, an act of terrorism.

134. The Act does not make a distinction between legitimate or illegitimate funds. The Assessors are of the view that funds as defined in the Act include both legitimate and illegitimate funds. Section 11 (3) state that for “*an act to constitute an offence under the Act, it shall not be necessary that the funds were actually used to commit the offence”*.

135. The terrorist financing offence under The Gambia law covers a person who, directly or indirectly, willfully and without lawful justification or excuse, provides or collects property with the intent that it be used or knowing that it will be used in whole or in part, in order to carry out the acts listed under Sections 11 (2) and 12 (1) (a) & (b) (i) (ii). Section 12 (3) provides that for an act to constitute an offence under the Act, it shall not be necessary that the property is actually used to commit the offence.

Criminalization of Ancillary Offences

136. With regards to Article 2 (4) of the SFT Convention, it is an offence under Section 66 of the Anti Terrorism Act 2002 to conspire to commit or attempt to engage in any act that constitutes an offence under the Act. The same liability is applicable to persons who aid, abet, counsel, procure, incite, encourage or urge, or is by an act or omission in any way directly or indirectly, knowingly concerned in, or party to the commission of the terrorism act. The liability for conspiracy may also be applicable to the person even though commission of the principal offence was not possible.

137. Sections 13, 14, 18, 19 & 20 cover Article 2 (5) of the SFT Convention and cover those who participate in terrorist acts, organize acts of terrorism and contribute resources to terrorist groups or individual terrorists. Under Section 13, it is an offence to (i) collect, provide or make available

directly, or indirectly property; (ii) provide or invite a person to provide or make available property or financial or other related services -

- With intention that it be used in whole or in part, for the purpose of facilitating the commission of a terrorist act or for benefiting persons who is facilitating an act of terrorism.
- Knowing that, in whole or in part, it will be used by or for the benefit of a proscribed organization

138. Section 14 provides for situations where the person uses or possesses property directly or indirectly in whole or in part with intention that it be used in whole or in part for the facilitating or carrying out an act of terrorism.

Predicate offence for money laundering

139. Terrorist financing offence would be determined to be a predicate offence of money laundering in The Gambia given the 10 years imprisonment term prescribed for the offence. This penalty is above the 2years threshold specified in the Money Laundering Act, 2003. However, it is not listed in the Schedule to the ML Act but terrorism is listed as a predicate offence.

Extraterritorial Jurisdiction for Terrorist Financing Offence

140. Section 64 (c) and (f) of ATA provides as follows:

> "64. (2) Notwithstanding anything in this Act or any other enactment, a person who, outside The Gambia, commits an act or omission that if committed in The Gambia would be an offence under this Act shall be deemed to commit that Act in The Gambia if the person who commits the act or omission – is a citizen of The Gambia, or is not a citizen of any state but ordinarily resident in The Gambia or the person who commits the act or omission is, after the commission thereof, present in The Gambia.

141. The AT Act further provides that a Court in The Gambia shall have jurisdiction to try an offence and apply the penalties specified in the Act where the act constituting the offence of terrorism or terrorist financing has been done or completed outside The Gambia. The Gambia will also exercise jurisdiction where, the victim is a citizen of The Gambia, has an effective

link with or is dealing with or on behalf of the Government of The Gambia, the alleged offender is in The Gambia and The Gambia does not extradite him or her.

The Mental Element of the FT Offence (applying R2.2)

142. The mental element of the terrorist financing offence is provided for in Sections 11(1), 13, & 14 of the AT Act. Section 11(1), 13 & 14 requires that the person accused of terrorist financing must have committed the act willfully , intentionally, and with the knowledge that the funds will be used, in full or in part to commit an offence under the AT Act.

Liability of Legal Persons (applying R.2.3)

143. Section 68 of the ATA deals with offences by corporate bodies. It provides that, where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent and connivance of, or attributed to any neglect on the part of any director, manager, secretary or other officer of the body corporate, or any other person purporting to act in such capacity; he or she, as well as the body corporate, is guilty of the offence and shall be proceeded against accordingly.

Sanctions for FT

144. Natural and legal persons are subject to a wide range of sanctions under the Act. The sanctions range from a term of imprisonment of not less than ten years and not more than twenty years, in the case of individuals and in the case of a legal person, a fine of two million Dalasis. The Court may in addition order the forfeiture of any terrorist funds together with interest accruing on the terrorist property, including any article of substance, device or material or instrument which was used in the commission of the offence. Instrumentalities may also include vehicles, aircraft or vessel used in the commission of the offence.

Statistics on FT Prosecutions and Convictions

145. There has been no conviction for terrorist financing in The Gambia.

Analysis of Effectiveness

146. The terrorist financing regime of The Gambia is broad and has incorporated the key elements required for the criminalization of terrorist financing. It is obvious that The Gambia took cognizance of the SFT Convention and FATF Special Recommendation II in drafting its terrorism legislation even though they have not ratified the SFT Convention. The Assessors were informed that the process for the ratification has commenced.

147. In terms of implementation, not much has been done to give effect to the Act. Although the ATA has been in effect since 2003, there has not been any conviction. The authorities asserted that the government strategy is to prevent the occurrence of terrorist acts and to close any gap that may lead to terrorist financing. There are no available statistics from the Police Force, he implementing agency under the Act as regards investigation and other international cooperation rendered to other countries based on the Act.

148. However, the National Intelligence Agency (NIA) indicated that investigations have been conducted by the agency regarding terrorists who were reported to be residing in The Gambia. They reported that they provided international cooperation assistance to other countries. They consider the information related to their bilateral cooperation with other countries as intelligence information and were therefore unwilling to share it with the Assessors. The Central Bank reported that it issues notices to banks in relation to the UN Sanctions list on terrorist financing. However, the Assessors were of the view that the current implementation mechanism requires improvement.

Recommendations and comments

149. The Assessors recommended that the relevant agencies involved in the implementation of the Act should be trained and provided with the required human resources and funding to undertake the challenges that terrorist financing poses to global security. This would make implementation more effective. From the discussions with the NIA, it appeared that they were more focused on gathering intelligence on terrorism for other countries and there was little evidence that they considered how to use the law to prevent the abuse of The Gambian financial system by terrorists. In effect,

the intelligence officers do not see terrorism and terrorist financing as threats to The Gambia.

150. During the meeting with the AG's office, it was obvious that the Prosecutors are not knowledgeable about the content of the ATA Act in relation to terrorist financing. There is a misconception amongst most of the stakeholders that the Act deals only with terrorism and should be left to the NIA to enforce.

151. It is recommended that the Attorney General, the CBG, the Police, the Secretary of State for Defense, the National Guard, financial institutions, and the civil society should be made aware of their responsibilities under the Act. More information should be provided in terms of ongoing investigations or future investigations to relevant agencies to enable them assist in the gathering of intelligence or in reporting suspicious acts that may result in terrorist financing. The domestic cooperation framework among the agencies should be improved and the FIU should take the responsibility of developing further guidance and a national strategy in the combat of terrorist financing offences.

Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR II	**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

2. 3 Confiscation, freezing and seizing of proceeds of crime (R.3)

Recommendation 3

Description and Analysis

Legal framework

152. The Drug Control Act, 2003 and the Money Laundering Act 2003 provide for the freezing and confiscation of laundered properties which represent proceeds of crime. Section 65 &17 of the ATA 2002 deals with seizure of terrorist funds while Section 29 of the ML Act provides for the confiscation of properties that have been laundered, proceeds or instrumentalities derived from or connected or related to the offence. Where properties or instrumentalities cannot be forfeited, a court shall order the forfeiture of any property of the person convicted for an equivalent value or the person convicted may be ordered to pay a fine of the equivalent value to the property. Chapter five of the Drug Control Act, 2003 deals with forfeitures, destruction and other disposal. Part one of chapter five deals with forfeiture of means of conveyance and other articles. Section 94 of the Drug Control Act provides as follows:

"94(1) Where a person is convicted of an offence under this Act and the court by which the person is convicted finds that the aircraft, vessel, vehicle or any other means of conveyance of whatever description was used or employed by the person in the commission or to facilitate the commission of the offence for which he or she is convicted, the aircraft, vessel, vehicle or other means of conveyance shall subject to subsection (3) be forfeited to the State.

153. Section 97 of the DCA deals with the forfeiture of proceeds acquired from drug trafficking. The section mandates the Court to determine whether the convicted person has benefited from drug trafficking and spells out the action to be taken by the Court.

Provisional measures to prevent dealing in property subject to confiscation

154. Section 28 of the MLA provides that the High Court may, on application by the competent authority, freeze the property in possession or under the control of a person wherever it may be, if the Court is satisfied that

a person has been charged or is about to be charged with a money laundering offence.

155. Section 104 of the Drug Control Act provides that where a person is charged with a drug trafficking offence, a Judge of the High Court may on application by the prosecutor, make an order (restraint order) prohibiting any person from disposing of or otherwise dealing with any realizable property, otherwise than in such manner as may be specified in the order. The order may apply to property held by the defendant or under the control of the defendant. Also, a police officer, Customs officer or any other authorized officer may for the purpose of preventing the removal of any realizable property from The Gambia, seize such property.

Ex-parte Application for Provisional Measures

156. Section 28 of the MLA and the Drug Control Act permits the initial application to the Court for an order to freeze property in the possession or under the control of a person wherever it may be. The law is silent on whether the application must be made *ex-parte* or without prior notice. Section 28 (3) suggests that the application can be with or without notice as it states that an order under Section 28 shall cease to have effect at the end of three working days following the time the order was made if the person against whom the order was made has not been charged with a money laundering offence within the specified time.

157. With regards to terrorist financing, under section 24 of the ATA, where a person is charged or about to be charged with an offence under the Act, the Inspector General of Police may apply to the Judge in Chambers for a provisional order attaching all money and property in the possession of, due, or owing, or belonging to, or held on behalf of the suspect. Section 17 of ATA permits the Inspector General of Police (IGP) to seize the funds where he has reasonable grounds to suspect that any funds-

- are intended to be used for purpose of terrorism
- belong to, or are held on trust for a proscribed organization or
- or represent property obtained through an act of terrorism.

158. This provisional power may be exercised even if no charge has been brought against the person. However, the IGP will be required to apply to a judge in chambers as soon as is reasonably practicable for a detention order. The judge may or may not grant the detention order unless he is satisfied

with the reasons given by the IGP. An order made under this provision is valid for a period of 90 days and may be renewed for a further period of 90 days until the funds are produced in the court in a proceeding against the person for an offence related to the funds. Under Section 25 of the ATA, the application to trace terrorist property may be made to the judge in chambers without any notice to the suspect.

Identification and Tracing of Property

159. The Supervisory Authority (SA) or a Law Enforcement Agency (LEA) under the ML Act has powers to enter a premises belonging to, or in possession or under the control of a financial institution or any officer or employee of the financial institution if it is satisfied that there are reasonable grounds to believe that the financial institution has failed to file reports as required under the Act or has committed an offence under the Act. Such powers extend to powers to search the premises and remove any document, material or other thing in the premises that may facilitate the investigation of the alleged offence.

160. The SA or LEA may apply also to the High Court to order a person believed to be committing or have committed an offence under the Act to deliver to the Authority or law enforcement agency any document that may help identify or trace property that belongs to or is under the control of a specified person. This order includes the identification of the location property in possession or under the control of that person. The order to produce a document can in addition, be directed to a financial institution to produce information related to a particular business transaction , or for the person with the financial institution within the period before or after the date of the court's order.

161. In the first instance, the SA or LEA can enter the premises without recourse to the court whereas in the second instance, the SA would need to apply to the court before entering the premises.

162. Under Section 25 of the ATA, the IG or any officer designated by him can enter the premises of a suspect to request for additional information or may apply to the court for an order to enter the premises depending on the exigency of each case.

Protection of Bona fide Third Parties

163. Money Laundering Act 2003 provides for the rights of bona fide third parties in Sections 28 and 30. The High Court may in making any order for freezing of the property of a suspect give directions for the disposal of such properties taking into consideration the following facts in order to protect a bona fide third party:

- Determining any dispute as to the ownership of the property or any part of it;
- Its proper administration during the period of freezing;
- The payment of debts due to creditors prior to the order'
- The payment of moneys to that person for the reasonable subsistence of that person and his family.

164. In applying the sanctions related to the confiscation of proceeds of crime, the court is also required to ensure that proper notices are given to all those who have legitimate legal interest in any property, proceeds, or instrumentalities.

Power to Void Actions

165. Section 30 (4) of the MLA permits the voiding of an earlier order given by the competent authorities or by the court where the claimant can show that he acted in good faith. Also section 29 of the MLA provides that when a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instrumentalities derived from, or connected to the offence should be forfeited and disposed of in a manner determined by the Secretary of State. Where forfeiture is not possible, a fine of the equivalent value of the property may be imposed. Section 24(7) of the ATA also provides that any payment, transfer, pledge or other disposition of property made in contravention of an order for attachment of the properties of a suspect is void.

Additional elements

166. It is not possible to forfeit properties until final determination of the proceedings in the court and upon conviction of the accused persons. However, the court is permitted to apply the standard of proof in civil proceedings in determining whether or not a property is derived or connected to a money laundering offence.

Statistics on Forfeited Assets

167. There has been only one money laundering case which led to forfeiture of assets of the accused person since the enactment of the MLA and ATA. The Drugs Enforcement Agency informed the Assessors that the assets of persons convicted for drug trafficking have been confiscated and forfeited to the Government of The Gambia. The Assessors were not provided with statistics on the number of convictions obtained by the DEA and the value of assets confiscated.

Recommendations and Comments

168. The Gambia has covered a significant component of Recommendation 3 in terms of the existing legal frame work. With regard to effective implementation, it would seem that the Drug Enforcement Agency do use the power to freeze and confiscate assets broadly. With regards to the application of freezing and confiscation measures to money laundering and terrorist financing cases, it may well be that the investigation and prosecution agencies have not presented the courts with the opportunity to apply the existing measures in the laws. From discussions with the prosecution office and the DEA, it seems however, that having regard to the confiscation of assets derived from drug trafficking, that the application of the international obligations in relation freezing and confiscation measures under the money laundering and terrorist financing Conventions will not present a problem in The Gambia

169. The Assessors recommended that the implementation of the requirements of R. 3 will be more effective if the following measures are taken into consideration:

- Adequate measures should be put in place for the efficient tracing and identification of illicit funds and terrorist funds and assist law enforcement agencies to trace assets;
- The FIU should be strengthened to enable it receive and analyze STRs;
- The authorities are requested to provide training to the police, the prosecutors and the officials of the FIU and the Central Bank to enable them develop implement the existing measures for freezing and confiscation.

	RATING	SUMMARY OF FACTORS UNDERLYING RATING
R.3	**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.

2. 4. Freezing of funds used for terrorist financing (SR.III)

Special Recommendation III

Description and Analysis

170. The measures for freezing and confiscation of terrorist assets are provided under Sections 17 & 65 of AT Act 2002. The mechanism in place for freezing and confiscation of terrorist funds are twofold. In the first scenario, under Section 17, the Inspector General of Police may seize any fund which he has reasonable grounds to suspect are terrorist funds before seeking an order of the court to detain the funds for 90 days with possible extension of another 90 days pending the final investigation on the source of the funds. The order will give him time to determine, based on the facts before him whether the suspect should be charged to court and the funds confiscated. In the second scenario, under Section 65, when any person commits any of the offence under the Act and is eventually convicted, the court may in addition to any other penalty, order the forfeiture of the terrorist funds with any interest accruing on the property, including any article, substance, device or means by which the offence was committed and any vehicle or vessel used in the commission of the offence.

171. Once a decision is made by the Court to detain such funds and assets, the court may appoint an official receiver or any other person to manage the assets during the period of detention and the IGP shall publish the order in

the official Gazette and in two newspapers and give notice of the order to banks and other financial institutions or any other person who may hold properties belonging to the suspect. The order made by the Court will remain in force until the determination of any charge or intended charge and in the event of a conviction, until the Court makes an order for forfeiture, or the proceedings related to the forfeiture is concluded.

172. Additionally, the Central Bank of The Gambia (CBG) has the mandate under CBG Act, and the Financial Institutions Act, 2003 to issue requests for information regarding designated entities to financial institutions. Since 2006, the CBG has been appointed as the FIU and as such has the mandate under the Financial Institutions Act to request information from financial institutions and to provide further guidance to financial institutions, non-financial institutions and other reporting entities on how to identify and freeze terrorist funds.

Freezing Assets under UN/SC/Res.1267

173. Section 17 of the ATA provides for seizure and detention of terrorist funds without delay by the Inspector General of Police on reasonable suspicion that funds are intended to be used for the purpose of a terrorist act, or that it belongs to, or are held on trust for a proscribed organization among others. In the context of The Gambia, the foreign affairs office has submitted reports to the UN Counter Terrorism Committee regarding individuals and groups with links to Al-Qaida in 2003. These individuals were subsequently handed over to the Central Intelligence Agency in the United States after investigation established that they had knowledge about Al-Qaida.

Freezing Assets under UNSC Resolution 1373

176. Within the existing legal mechanisms, The Gambian authorities through the National Intelligence Agency, the Police, and the Central Bank can take prompt action to prevent the movement of terrorist funds in the country by seeking to identify individuals or persons who may be involved in terrorist activities, or who may be funding and support groups involved in terrorist activities. The authorities have issued lists of designated persons and entities to relevant agencies to determine if such persons are resident in The Gambia.

177. The authorities are working closely with the UN Counter-Terrorism Committee and other UN Member States, and ECOWAS in the implementation of their obligations under UNSC/Res 1373. While no assets of any group or individuals have been frozen as at the time of the onsite, The Gambian authorities have submitted a report to the UN 1373 Committee regarding individuals and organizations that are under the watch list of The Gambia security agents. In 2003, the security agents intercepted some individuals who came to The Gambia to perform religious errand but on investigation, it was revealed that they were traveling to Senegal through Banjul (capital of The Gambia) to meet members of an organization that was already proscribed. They were immediately deported.

178. The CBG constantly dispatches list of designated persons from other countries to the banks and has also requested the banks to check their data base for the list of entities and individual terrorists who may be using the financial system in the country. In addition, the CBG circulates the US OFAC list from time to time. However, the circulation is only restricted to banks.

Freezing Actions Taken by Other Countries

179. Part VI, Section 38 of the Anti-Terrorism Act provides for mutual assistance in criminal matters between The Gambia and any foreign State but subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or class of cases generally. As such, in Section 39, an order for an attachment, freezing or forfeiture may be made by a Judge in Chambers on application by the Inspector General pursuant to a request by a foreign State for assistance in the investigation or prosecution of an offence related to terrorism.

180. The authorities within the context of their bilateral and multilateral cooperation mechanisms have given effect to requests from the US, UK, and Germany. Other countries where bilateral arrangements exist on criminal matters are Algeria, Mauritania, Senegal, Morocco, France, and Nigeria. They are also obliged to give effect to requests from ECOWAS and Commonwealth Member States.

Extension of SR III.I – III.3 to funds or assets controlled by designated persons

181. The mechanism for seizing and freezing assets of terrorists and the power of the court to detain such assets for a longer period under Section 17 and 65 is applicable under Section 16 (2) (a) of the ATA to any property which wholly or partly and directly or indirectly represents the proceeds of a terrorist act, including payments or other rewards in connection with the commission of the terrorist act. It is also applicable to the resources of a proscribed organization. The Court can detain money or other property which is applied, or made available, or which is intended to be applied, or made available for use by the organization. The IGP is also permitted to seize the funds even if he reasonably suspects that only part of the funds is terrorist funds

182. The ATA prohibits any person in The Gambia or citizen of The Gambia outside The Gambia from knowingly assisting anything that causes, assists, promotes or is intended to cause, assist or promote any act or thing prohibited by the Act under the following circumstances:

(i) Provision or collection of funds directly or indirectly to persons who may reasonably be suspected to be involved in the facilitation or commission of terrorists acts;
(ii) Deal directly or indirectly in any property that is owned or controlled by or on behalf of any terrorist or any entity owned or controlled by any terrorist, including any funds generated from property owned or controlled directly or indirectly by any terrorist or any entity owned or controlled by an terrorist;
(iii) Make available any funds or other financial assets or economic resources for the benefit of "prohibited" persons (prohibited person means terrorists, entity owned, or controlled by terrorists, or any person, or any entity acting on behalf of, or at the direction of any terrorist, or terrorist entity)

Communication to the Financial Sector

183. This criteria is provided for under section 24(4) (b) of the ATA. This section enjoins the Inspector General to give notice of the order for the

attachment of property to banks and financial institutions and cash dealers among others.

Guidance and Communication to Financial Institutions

184. The Central Bank of The Gambia is responsible for sending the list of designated persons and entities to the financial institutions. The lists are issued periodically when they are received from the diplomatic missions in The Gambia, or from The Gambian Permanent Representative at the United Nations.

185. The Anti-Terrorism Act permits the Inspector General to take an action to publish any order of the court related to assets or money of a suspect who is charged or about to be charged and whose assets has been detained by an order of the court in the official Gazette and two newspapers. Notice of the publication shall also be given to banks, financial institutions, and cash dealers or any other person who may hold or be vested with property belonging to the suspect or held on behalf of the suspect.

186. With the exception of the above notification by the IGP, the Central Bank and the FIU have not issued any guidance notes to the financial institutions regarding the procedure for communication of information concerning frozen funds or assets to competent authorities. At the moment, the CBG systematically issues the list of designated persons to the banks without requiring any timely feedback. No training has been provided to the banks or any other financial institution or private sector bodies in The Gambia on how to process and trace the names of designated persons in their data-base or other publicly available data-base.

De-listing Requests and Unfreezing Funds of De-listed Persons or Entities

187. There is a mechanism for unfreezing the funds of listed persons under the Anti-Terrorism Act under Section 17 (8). Although there is no clear procedure regarding the delisting of persons either designated under UNSC/Res. 1267 and 1373, Section 26 of the Act which may be applicable only to the 1373 defreezing procedure, provides that the Attorney General may, deregister a charity or refuse to register a charity based on criminal intelligence report that such an organization provided or collected funds from a terrorist or proscribed. The certificate of deregistration can be set aside based on another decision of the Council and on the application of the

registered charity to the effect that there has been a material change in circumstances of the registered charity since the Council's first decision.

188. The Council may consider the application for review based on the submission of the organization or based on any intelligence report made available to them. The Council may within 90 days of the application for review determine if there has been any change in the status of the registered charity and determine whether to lift the previous decision or to cancel the certificate. If no decision is made within ninety days of the receipt of the application, the certificate is deemed cancelled on the expiration of that period and the AG shall notify the registered charity and then publish the final decision in the official Gazette. It should be pointed out here that this procedure is only applicable to persons on the list related to UN/SC Res 1373 since only the UN Security Council has the power to unfreeze the funds or delist persons named in the 1267 list.

Unfreezing Procedures of Funds of Persons Affected by Freezing Mechanism

189. Under Section 17 (8) of ATA, the detained funds with interests accruing on it may be released to the person or organization concerned by an order of a judge in chambers under the following circumstances:

(i) If the person or organization satisfies the court that the conditions for which the money or assets were detained in the instance do not apply
(ii) No proceedings were brought by the IGP in connection with the detained funds within one hundred and eighty days of the first order of the judge.

190. Additionally, once an order made by the court under this section ceases to have effect, the IGP shall cause notice of the cessation to be published in the official Gazette and two official newspapers.

Access to frozen funds for expenses and other purposes

191. The Court may order the manner in which any money or assets of a person who is charged or about to be charged under this act may be accessed. An order by a judge may provide for granting of authority to make money or other property available to such persons and on such conditions as may be specified in the earlier order given by the same court for the freezing

of the property. The Judge may also appoint an official Receiver or any other suitable person to manage the assets of the suspect during the period.

Review of Freezing Decision

192. The Court has the power to review orders related to freezing measures and unfreeze detained funds where the IGP is not able to bring a charge against the person whose funds are detained within one hundred and eighty days. With regards to registered charity, the National Security Council reviews the cancellation of certificates if there has been material change in the situation which led to the cancellation of the certificate or the non-issuance of certificate in the first instance.

Freezing, seizing and confiscation in other circumstances

193. The Gambia has the mechanism to freeze, seize and confiscate assets under other circumstances related to money laundering, and drug trafficking as permitted by national laws and international Conventions which they have ratified.

Protection of third party rights

194. The Anti-Terrorism Act empowers the judicial authority to review the freezing action taken by the IGP and to determine if there is need to provide for the granting of authority to make money or other property available to such persons and on such conditions as may be specified in the order. The judge may also include any such conditions as may be necessary in the management of the detained funds.

Monitoring compliance with obligations

195. There is no mechanism in place in The Gambia for the monitoring of compliance with SR III.

Recommendations and Comments

196. Within the existing legal framework, particularly with regards to the Anti-Terrorism Act, 2002, The Gambia legal system has provided comprehensive measures for the freezing and confiscation of the assets, properties, and resources of terrorists, terrorist organizations, those who

collect or provide assets and funds to terrorists and those who support them in any form. The Police are the competent authority for the freezing of funds under the terrorism legislation. Unfortunately, no training has been provided to the Police officials on how to implement their mandate under the Act as required by SR III. There is no coordinated process or mechanism in the country for the implementation of SR III. Overall, the implementation has not been effective despite the legal framework that has been put in place in the last 6 years.

197. In order to be fully compliant with the FATF Special Recommendations, the Assessors recommended that the authorities take the following steps that will improve the implementation mechanisms in place in the country:

- There is need for a fully functional FIU which will lead to an effective implementation of SR III;
- The FIU should provide additional guidance to the FIs for the effective implementation of the Act;
- Furthermore the distribution of the lists of designated persons and entities should be forwarded to other reporting entities and not only to banks.
- The CBG should set up a coordinating committee with the police and the security agencies with regards to the freezing and confiscation of terrorists' assets;
- The Police and the officials of the FIU should be trained to be able to provide guidance to financial institutions regarding the implementation of their obligation under SR III;
- The CBG, through the FIU should develop a monitoring mechanism in place to ensure compliance with the freezing measures in the country.

Compliance with Special Recommendation III

RECOMMENDATION	RATING	SUMMARYOF FACTORS UNDERLYING RATING
SR III	**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 related to unfreezing of funds and delisting of persons under UNSC Resolution 1267. • 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.

Authorities

2. 5 Financial Intelligence Units and Powers (R.26, 30 & 32)

2.5.1 *Description and Analysis*

Recommendation 26

198. Section 10 of the Money Laundering Act (2003) provides the legal framework for the appointment of a Supervisory Authority (SA) to implement the ML Act and to supervise and monitor the compliance of Financial Institutions (FIs) with the Act. The law requires the Secretary of State for Finance and Economic Affairs (SOS/DFEA) to appoint the SA. The powers of the Supervisory Authority are elaborated under Section 11 to include the receipt of the reports issued by the financial institution under Section 4 (2) of the MLA. Section 4 of the Act obliges FIs to prepare and submit reports to the SA in relation to transactions which they reasonably suspect could constitute money laundering.

199. In 2006, the SOS/DFEA by a letter addressed to the Central Bank of The Gambia (CBG) directed the CBG to act as the SA and to set up the Financial Intelligence Unit (FIU) for The Gambia under the Financial Supervision Department (FSD). Following this directive, the FSD was mandated to act as the FIU and to commence the development of the structures, training of staff, drafting and issuance of guidance notes to the FIs.

Functions of the FIU

200. As provided in Section 11 of the Act, the functions of the FIU are:

- Receive the reports issued by the FIs in pursuant to Section 4(2);
- Send reports received to the law enforcement agency (LEA) after considering the report and has reasonable grounds to believe that a money laundering is being, has been or is about to be committed;
- By itself or a person authorized by it for such purpose enter into any premises of any financial institution during normal working hours to inspect any business transaction record kept by FIs pursuant to Section 8(1) (a) to ask questions relevant to the record and make notes or take copies of the whole or part of the record;

- Send to the law enforcement agency any information derived from an inspection carried out during the inspection if it has reasonable grounds to believe that a money laundering is being, has been or is about to be committed;
- Destroy any note or copy collected during inspection mentioned in paragraph (c) within 3years except where the note has been sent to the LEA;
- Instruct a financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the SA following a report or investigation;
- Compile statistics and records and disseminate the information within or outside The Gambia, make recommendations based on information received;
- Issue guidelines and advise the SOS and the AG with regard to any matter relating to money laundering; and
- Determine training requirements and provide training for any financial institution in respect of its reporting and business transaction record-keeping obligations required under Sections 4 (2) and 12 (a) respectively.

201. From the powers of the FIU enumerated above, it is appropriate to state that the FIU has the core functions required by Recommendation 26 (1) which is that the FIU should be a national center for the receiving, requesting, analyzing, and dissemination of disclosures of STRs and other relevant information concerning money laundering and terrorist financing.

202. The FIU is domiciled within the CBG and is to be managed by the same persons who are responsible for the Financial Supervision Department. The dual roles of the FSD officials may create problems in terms of the differences in the functions of the staff of the FSD and the role of the FIU. This may also affect their ability to perform their tasks as FIU officials efficiently and in an independent manner.

Issuance of guidance to FIs and DNFBPs

203. The FIU has recently developed reporting formats for financial institutions. The guidance were sent out just before the onsite visit and a one day training program was organized for banks, insurance sector, bureaux de

change and other reporting entities with the exception of DNFBPs in order to sensitize them about the onsite visit and their obligations under the MLA.

204. Although the FIU has commenced the implementation of its mandate under the Act, it is obvious, that the process of developing guidance notes and training for FIs on how to apply the guidance notes are still at the early stage and that the FIU has more work to do in order to ensure the effective compliance with the AML/CFT regime by the FIs and NFIs.

Reporting procedure

205. The FIU has provided information on reporting procedures to the FIs and NFIs. The current procedure is manually driven as the FIU has not established an electronic reporting system. At the moment, reports are sent in by mail to the FIU.

Access to information from other agencies

206. The FIU has the mandate under the existing law to access information directly or indirectly on a timely basis from FIs and LEAs. The FIU is operationally required to work closely with the LEAs, the Attorney-General's chamber, and other government and private sector agencies. As at the time of the onsite, the cooperation framework with these agencies had not been put in place. The agencies, however, indicated their willingness to support the work of the FIU.

Access to additional information

207. Section 11 (c) and (f) of the Money Laundering Act empowers the supervisory authority to obtain additional information from reporting entities in the discharge of its function.

STRs analysis and dissemination

208. Section 11 (b) (d), & (g) of the MLA authorizes the FIU to consider the report received from the FIs, and make recommendations to the LEA if it has reasonable ground to believe that a money laundering offence is being, has being, or is about to be committed. The Assessors were of the opinion that the powers indicated in these paragraphs include the power to analyze the reports received from the FIs.

209. Once the FIU comes to a decision that the report should be forwarded to the LEA, it is also empowered to disseminate such analyzed reports to the LEA for further investigation. The power to disseminate includes dissemination within or outside The Gambia.

Terrorism and terrorist-financing related STRs

210. Under Section 3 (5) of the ML Act, the FIs are required to collect information on any transaction that it suspects are related to the laundering of drugs money or other proceeds of crime without reference to the threshold. The FIU has indicated that it relies on the Financial Institutions Act and the CBG Acts which are part of its operational tool to request for information in relation to terrorist financing STRs from the FIs. It has been circulating lists of designated persons under the UN/SC/RES 1373 and 1267 to FIs.

Operational independence

211. FIU is established under the Central Bank with the Director of Financial Supervision Department of the Central Bank acting as the Head of the FIU. The officers of the FSD double as the officers of the FIU. The Assessors considered this as a potential impediment to the independence and autonomy of the FIU. With the current legal framework, which permits the CBG to have a day-to-day supervisory oversight over the Director of the FSD and the FIU, it was difficult to determine the level of independence that the FIU has. At the time of onsite, no separate fund has been allocated to the FIU for the procurement of computers, hiring of personnel, and training of personnel. The FIU is still dependent on the budget of the FSD. The two-room office allocated to the FIU were still under renovation as at the time of the onsite.

Protection of information

212. There is no mechanism in place to ensure the security of financial information held by the FIU. The FIU is located within the CBG premises is not secured to restrict the staff of the CBG from having access to the information in the office. The staff of the FSD who are working for the FIU have not been screened.

Public reports

213. The FIU has not published any report as at the time of the onsite,

Egmont Group membership

214. The FIU is still at the early stages of establishment and would need to adhere to the Egmont Group Statement of Purpose and Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases and the best practices related to the implementation of the roles and functions of the FIU before it can apply for membership of the Egmont.

215. The Assessors were of the opinion that Section 32 (6) of the MLA, that requires mutual legal assistance and exchange of financial intelligence to be provided only (i) to countries with which The Gambia has entered into mutual legal assistance treaties; (ii) on a bilateral basis; and (iii) on multilateral basis; will inhibit the FIU's ability to share intelligence with other FIUs when it becomes fully operational. However, given that the FIU is located within the CBG, it may be able to rely on the CBG Act that empowers the CBG to sign confidential exchange of information agreements with other supervisory bodies in other countries.

Statistics

216. As at the time of the onsite no STRs have been received. However, the FIU has since the onsite reported that it has received 10 STRs and after consideration, forwarded 3 of the STRs to the police for further investigation.

FIU structure, resources, integrity standards, and training

217. The FIU lacks adequate human and material resources to effectively implement its core functions. No budget has been made available to the CBG for the establishment of the FIU since 2006 when the SOS for Finance directed the CBG to set up the FIU. No specialized training has been provided to the staff of the FSD who are expected to double as the staff of the FIU. At the time of the onsite, the FSD has only fourteen staff members including the Director. As such, it is almost impossible for the same staff to

effectively discharge their prudential task as bank examiners and at the same time function as FIU staff.

218. The FIU has not been provided with any computers and software necessary for the receipt, storage and analysis of STRs. There is currently no trained analyst or law enforcement officer from any other agency working with the FIU either on secondment or on a permanent position. There is no policy in place for screening of new staff to ensure that they are persons of high integrity.

2.5.2 Recommendations and Comments

219. The legal mechanism in place in The Gambia for the setting up the FIU would appear to be the power conferred on the Secretary of State for Finance under the Money Laundering Act to appoint a Supervisory Authority for the implementation of the MLA.

220. Within the context of this mandate, the SOS appointed the CBG as the supervisory authority and directed that they establish the FIU. The FIU was subsequently established under the Financial Supervision Department. The FSD has since then made some effort to take up the challenge of implementing its prudential mandates as well as function as the FIU.

221. The Assessors, after reviewing the process for setting up the FIU, and the extent to which the FIU has met the Egmont principles related to the functions and roles of FIU, were of the opinion that The Gambian FIU as established lacks a strong legal framework and, thus may potentially not be able to perform its primary functions. The FIU, it would seem lacks sufficient operational autonomy to perform its role as its budget and personnel are not guaranteed. The Assessors recommended that the CBG should take further steps within its mandate as the Supervisory Authority of the ML Act to request for financial and operational autonomy for the FIU:

- The ML Act should be revised to clearly provide for the operational independence of the FIU;
- The reporting of STRs to the FIU as the national center for the receipt of such reports should be clearly provided in the ML Act. At the moment, the Act provides that the LEA or any other competent authority can receive reports from the FIs;

- Adequate funding should be provided to the FIU to enable it hire competent staff and equip its offices;
- The personnel of the FIU should be hired and screened independent of the FSD;
- The new staff of the FIU should be trained to undertake their primary role of receiving, analyzing and disseminating STRs, including the development of guidance and policy recommendations on how to improve the AML/CFT measures in the country
- The FIU should provide detailed guidance to FIs, NFIs, and DNFBPs regarding their obligations under the Act and should develop and provide training programs to reporting entities to improve the reporting of STRs;
- The ML Act should be reviewed to empower the FIU to share information spontaneously with other FIU counterparts; The FIU should be made functional as soon as possible to enable it join the Egmont Group of FIUs;
- The FIU should establish a coordination committee comprising of the relevant government agencies such as the NIA. DEA, Police, Customs, Immigration, AG's Chambers, the Company Registrar, Department of State for Foreign Affairs, Finance, Tourism and Interior to exchange intelligence and information on issues patterning to money laundering and terrorist financing.
- The FIU should publish annual reports and send feedback to the FIs and DNFBPs

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	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 the skilled personnel to analyze STRs • 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;

2.6 Law enforcement, prosecution and other competent authorities – framework for the investigation and prosecution of offences, confiscation and freezing (R.27, 28, 30&32)

2.6.1 *Description and Analysis*

Recommendation 27

222. There are different Law Enforcement Agencies (LEAs) in The Gambia charged with the responsibilities of investigating money laundering and terrorist financing offences. The Gambia Police Force is the primary investigating agency for money laundering and terrorist financing but the National Intelligence Agency (NIA), the Drug Enforcement Agency (DEA), the National Guard (NG) and the Customs Service has investigation mandates under the Money Laundering Act 2003; the Anti-Terrorism Act, 2002; the National Intelligence Agency Decree, 1995; the Economic Crimes, Decree 1994; and the Drugs Control Act, 2003 as amended in 2005.

223. The measures put in place under the law permits law enforcement authorities to waive and postpone the arrest of suspected persons in order to enable the Police to track and identify properties, which are proceeds of crime or instrumentalities used in the commission of the crime. This can be done through undercover operations. The purpose for the use of undercover operations as provided under the Drug Control Act is to provide the person who may have committed, or is committing, or is about to commit an offence, the opportunity to manifest evidence of the offence.

Additional Elements:

224. The Gambian Police have a special fraud unit while the DEA also maintains a special investigation unit. The Police make use of forensic investigation equipment in the identification and retention of finger prints and other data.

225. During the onsite, Officers from different LEAs confirmed that they apply different investigation techniques in the conduct of investigation. Part IV of the Drug Control Act permits the DEA to use scientific analysis in the conduct of investigation. The DEA has powers under Sections 44,66,67,70

and 75 to investigate drug related offences which is a predicate offence of money laundering. The NIA is mandated to investigate and obtain information relating to serious and economic crimes under Section (3) (e).

226. The LEAs are permitted to use special techniques during investigation and to cooperate with other countries in the conduct of special investigations. The money laundering and terrorist financing investigation methods have not been reviewed by competent authorities.

Recommendation 28

227. The law enforcement agencies have broad powers to search persons or premises, compel production of any document, and seize and obtain transaction records, identification data, account files and business correspondences from financial institutions.

Money laundering investigations

228. Section 11 (d) of the Money Laundering Act (2003) empowers the Supervisory Authority to "send to the law enforcement agency any information for the purpose of investigating and prosecuting money laundering offences".

229. The interpretation section of the ML Act refers to The Gambia Police Force or any other body charged with the responsibility of performing the duties of the law enforcement agency as the law enforcement agency referred to under Section 11 (d) under the Act.

230. Under the ML Act, the Police have powers to enter the premises belonging to, or in the possession, or under the control of a financial institution, if he/she is satisfied that there are reasonable grounds for believing that the FI has failed to submit STRs, keep records of transactions as required under the Act, or that an officer of the FI has committed or is about to commit an offence under the Act. The Officer may search the premises and remove any document or material.

231. The Officer may also apply to the High Court for an order to identify, locate or quantify any property belonging to, or in the possession of, or under the control of that person or the FI. Where the FI fails to produce all, or part of the requested document, the Police may request for an injunction

and the Court may grant a mandatory injunction against any or all of the officers of the FI on such terms, as the Court may deem fit to enforce compliance with the obligation under the law.

Seizure, freezing and confiscation powers

232. The Police and other competent authorities also have powers under Sections 28, 29 and 31 of the ML Act to apply for an order through an exparte application for the freezing of any property in the possession of, or under the control of a person, wherever it may be located. The Court will grant the order pending the determination of the ownership of the funds, or revoke the order if there is no charge brought against the person within 3days after the order was granted.

Investigation of terrorist financing

233. The measures for freezing and confiscation of terrorist assets are provided under Sections 17 & 65 of ATA 2002. There are mechanisms in place for the investigation, freezing and confiscation of terrorist funds. Under Section 17, the Inspector General of Police may seize any fund which he has reasonable grounds to suspect are terrorist funds before seeking an order of the court to detain the funds for 90 days with possible extension of another 90 days pending the final investigation on the source of the funds.
The order will give Inspector General enough time to conduct further investigation and waive arrest in order to determine if the facts before him is sufficient to charge the suspect to court and to request for confiscation of the fund.

Structure, resources, integrity standards and training for law enforcement and prosecution agencies (Applying R.30)

The Gambian Police:

234. Section 178 of the Constitution and the Police Act, CAP (18:3) established The Gambia Police and created the office of the Inspector General of Police (IGP) as the head of The Gambia Police Force. The Gambian Police consists of roughly over 2000 officers. The Police powers include the mandate to investigate and prosecute money laundering and terrorist financing offences. The Police can only prosecute when directed to do so by the AG, particularly in less complex cases. The Police are

responsible for the enforcement of the provisions of the Criminal Code, the ML Act, and the Anti-Terrorism Act.

235. The Police Force consists of 4 major departments. They are: Operations, Administration, Finance, and Crime Management. They also have specialized units working within the departments. The units are the prosecution unit, criminal intelligence unit, fraud squad unit, scientific support unit, child welfare unit, statistics, and the Human Rights Bureau.

236. The IGP is supported by the Deputy Inspector General of Police (DIG) and heads of formations, who are referred to as Commissioners of Police. They are 10 Commissioners in the Police and they are spread across the country to cover the capital, Banjul, and the regional offices.

237. Only 3 Police Officers have been trained in programs organized by international organizations on the application of the AML/CFT regime. The Police do not currently have any working relationship with the FIU. However, it has in the past investigated financial crimes cases which led to a request to a bank to freeze the account of a suspect. They collaborate closely with other law enforcement agencies. They also have working relationships with their counterparts in the region, and the US, Turkey, and Egypt. The Police are hosting the INTERPOL representative in The Gambia.

Drug Enforcement Agency (DEA):

238. The Drug Control Act (2003), sections 4 and 5 established the DEA while sections 63 to 73 mandated the Agency to investigate, search, arrest and prosecute suspected drug dealers. The DEA has 153 officers, most of who have been trained on the investigation of drug related cases. The Agency has 4 departments and a special unit. The departments are administration, operations, prosecution, and scientific and special investigation unit.

239. The DEA has powers of search without warrant and also legal powers to use various investigation techniques in the investigation of drug cases and seizure of proceeds from drug trafficking. DEA officers have a special remuneration benefit of 1000 Gambian Dalasi on top of their monthly pay as incentive towards strengthening their integrity. The DEA has not established

any relationship with the FIU. The officers of the Agency have not been trained on AML/CFT matters.

240. For the purposes of prosecution, the DEA sends its files to the Attorney-General for legal advice and recommendation of charges to be preferred. The Attorney-General takes over in the event of an appeal. A special magistrate court deals with drug cases.

Attorney General and Minister for Justice

241. The power of the Attorney-General is derived from Section 72 (2) of the Constitution of the Republic of The Gambia, 1992. The Attorney-General is the principal legal advisor to the Government of the Republic of The Gambia and has the right of audience in all courts in The Gambia.

242. The office receives and processes requests for legal advice from other government agencies. This is normally preceded by investigation conducted by the requesting authority. The Attorney-General recommends or ratifies charges and advises whether the AG Chambers will prosecute a matter or allow the requesting authority to prosecute.

243. Article 84 of the Constitution provides for the appointment of a Director of Public Prosecution whose office shall be in the public service. Article 85 of the Constitution provides that the Director of Public Prosecutions shall have power subject to the approval of the Attorney-General, to initiate and undertake criminal proceedings against any person in any court for an offence against any law of The Gambia. The DPP is also empowered to take over and continue or discontinue any criminal proceedings instituted by the DPP, any other person or authority. The DPP may delegate the power conferred by the Constitution. Key officers of the

Department consist of:

- Attorney-General;
- Solicitor-General;
- Deputy Solicitor-General;
- Director for Public Prosecutions;
- Deputy Director for Public Prosecutions;
- Director, Civil and International Law Division;
- Registrar of Companies;

- Registrar of Intestate Estate;
- Registrar of Deeds;
- Parliamentary Counsel

The staff strength of the Department are as follows:

- Criminal Division – 10
- Civil Division- 4
- Legislative Drafting Division -2
- Registrar-General's Office- 1

244. Staff of the Department are not trained on the prosecution of AML/CFT matters but a few of them have participated in workshops organized by international organizations.

Prosecution and Legal Services:

245. The Attorney General's Chambers provide prosecution or legal advisory services to all the LEAs. In the case of terrorism prosecution, the AG will be the authority to prosecute as provided under Section 85 of the Constitution of The Gambia.

National Intelligence Agency (NIA):

246. Section 191 of The Gambia Constitution and Decree no. 45 of 1995 established the NIA. The NIA undertakes investigations related to terrorism with the Police Force as part of its core mandate of protecting the security of the State of The Gambia from threats of espionage, terrorist acts, and economic crime. They have powers of seizure and arrest, including the power to enter and search premises with or without warrant.

247. The NIA can apply controlled delivery to waive arrest pending the final investigation or to gather more evidence on a suspect. They cooperate at the international level with the UK-SOCA, and US –CIA. At the regional level, they cooperate with ECOWAS Member States. They have signed MOUs with Mauritania to deal with religious fundamentalism. They cooperate informally at Presidential and Ministerial level on security matters with other countries. They work with INTERPOL to conduct intelligence surveillance. The NIA participates in the West African Internal Security Conference (WAISEC).

248. The officers of the NIA have been trained on counter-terrorism investigation and there is a special anti-terrorism unit established for the purpose of conducting undercover operations to gather intelligence about terrorist cells and those who fund them. They also monitor religious bodies and NGOs in the country to make sure that fund for terrorism are not passed through their accounts.

The Gambia Customs:

249. The Gambia Customs is established by CAP 86 (1). The Customs has powers to make arrests but it lacks prosecution powers. The Customs is viewed as more of a revenue generating agency in The Gambia rather than a law enforcement agency. The Customs is responsible for the enforcement of disclosures of foreign exchange at the port of entry and departure either by land, sea or air. The Customs is supposed to implement the ML Act provisions in Sections 16 and 19 with regards to the transportation of currency and other negotiable instruments across the border. However, they are unaware of their role in this regard and have not received any training on AML/CFT matters. They have not issued any forms for declaration or disclosure of foreign currency, or monetary instruments in excess of the threshold set by the law.

Professionalism, Confidentiality and Integrity of Staff of Competent Authorities

250. There are provisions in different laws establishing the various authorities requiring them to maintain confidentiality of information received in the course of their work or during investigation or prosecution of cases. The staff of the agencies responsible for money laundering and terrorist financing has not been trained and is not skilled in the implementation of the ML Act and terrorist financing legislation. The officials appear to have high integrity and apply themselves professionally to their work.

Training on ML/FT

251. Only a handful of officers have been trained on the implementation of the AML/CFT measures. There is no training strategy in place for the various institutions that are involved in the implementation of AML/CFT measures.

Additional Elements

252. 5 Gambian Judges, drawn from the High Court and Court of Appeal were trained in March, 2008 at a West African Judges Seminar on Economic and Financial Crime organized by GIABA. The program covered all aspects of FATF 40+9 Recommendations on money laundering and terrorist financing.

Recommendation 32

Review of effectiveness of systems for the combat of money laundering and terrorist financing

253. The Gambia authorities have not reviewed their systems and institutions with regards to their ability to implement AML/CFT measures in the country. The implementation of the ML Act and the AT Act is not effective across the agencies assessed.

Statistics

254. The 2007 statistics received from the DEA indicated the magnitude and trends of trafficking in The Gambia. Offences range from possession to trafficking in drug and narcotic substances such as cannabis, cocaine, and hashish. In total, about 1,270mgs of drugs were seized in 2007. 54 cases were reported. 16 cases led to convictions; 3 persons were acquitted and discharged; 20 cases are pending in the court while 35 cases were concluded based on plea bargaining. In total, 74 cases were dealt by the DEA in 2007. Nationalities of persons arrested include, Gambians, Senegalese, Nigerians, Guinean, Dutch, British, American, French, and German citizens.

255. Other than the statistics provided by the DEA, the authorities did not provide any other information on either the investigation of predicate offences or money laundering and financing of terrorism. There has not been any effective STR reporting to the FIU. The FIU is yet to develop a system for receiving and maintaining data on STRs.

256. The Department of Justice did not provide prosecution data and only mentioned two money laundering cases. No cases were provided regarding prosecution of money laundering offences under the Drug Control Act.

Statistics on extradition, mutual legal assistance, assets frozen, confiscated and forfeited were not made available to the assessors despite promises to that effect.

257. The CBG could only mention two instances where it has sanctioned financial institutions, even though it has a broad range of powers under the FIA, and ML Act to sanction FIs, and NFIs.

258. The Assessors were of the view that the LEAs and the financial sector supervisory authorities do not have effective record keeping systems. Additionally, information on money laundering and terrorist financing is not centralized and there is no coordinating mechanism between the various agencies that are responsible for the implementation of AML/CFT measures.

Additional elements

259. Competent authorities do not maintain adequate records on STRs, investigations and prosecutions of money laundering and terrorist financing cases.

2.6.2 Recommendations and Comments

Recommendations 27 & 28

260. The Police, DEA, NIA, and the Customs are the LEAs that have mandates to investigate money laundering and terrorist financing cases. They also have powers to apply undercover measures in order to waive or postpone arrests.

261. The laws have provided competent authorities with the powers to enter and search premises or persons, and to seize and confiscate proceeds of crime. These powers apply during investigation, prosecution, and after conviction.

262. However, they have not applied effective measures to the investigation of money laundering and terrorist financing despite the fact that the ML Act came into effect since 2003. The Act has not been effectively implemented across all the agencies. The DEA provided one report of a company owned by German nationals but registered in The Gambia. The German nationals were arrested and prosecuted in Germany for

drug trafficking and money laundering in Germany in 2005. All properties belonging to the German nationals were eventually forfeited to The Gambia. The Assessors formed the view that the LEAs lacked the requisite skills, experience, and capacity to deal with money laundering threats in particular and terrorist financing.

263. The LEAs would need to reassess their mandate and review their capacities in order to be able to address the threats that are likely to face their financial systems from money laundering, terrorism, and terrorist financing.

Recommendation 30

264. More competent staff are needed to provide guidance to those who are involved in the day to day investigation. Human resources and funding should be devoted to the development and implementation of AML/CFT strategy in the country. There is need to train more staff of the different agencies to enable them commence proactive implementation of the ML Act and the AT Act. The coordination framework for LEAs should be established to enhance exchange of information and intelligence. The FIU should take up the challenge of coordinating efforts related to the development of guidance, training programs, and policy for the relevant agencies.

Recommendation 32

265. The lack of cooperation framework and lack of strategy in the implementation of the AML/CFT regime has made it impossible for the LEAs to maintain statistics on these cases. While funding may be a challenge, the development of a basic recording system does not require much resource. It is essential that all the competent authorities responsible for prosecution, investigation, and supervision of money laundering and terrorist financing enhance their cooperation in this regard.

266. The FIU should work with the LEAs to develop a central data base for information on investigation and prosecution of all money laundering and terrorist financing cases, including the predicate offences. Data base should also include information on extradition and mutual legal assistance. Assets frozen, forfeited and confiscated should also be included in the data base.

Each agency should appoint a desk officer who shall be responsible for data collection and dissemination, where necessary.

2.6.3 Compliance with Recommendations 27 and 28.

	Rating	Summary of factors underlying rating
R.27	**C**	
R.28	**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.

*Ratings for R.30 & 32 are discussed under section 7.

2. 7 Cross Border Declaration or Disclosure (SR.IX)

Special Recommendation IX

2.7.1 *Description and Analysis*

267. Paragraph 16 of the Money Laundering Act 2003 states:

> *"A person leaving The Gambia with more than three hundred thousand Dalasis or its equivalent in cash or negotiable bearer instruments, without first reporting the fact to the Supervisory Authority, commits an offence and is liable on conviction to a fine of not less than ten thousand Dalasis."*

268. This section does not apply to similar movements of cash or negotiable instruments into The Gambia, but Section 19 of the ML Act further describes the legal framework on SR IX.

" A person who transports or attempts to transport a monetary instrument of funds from one place to the other in The Gambia to or through a place outside The Gambia, or to a place in The Gambia from, or through a place outside The Gambia with intent to (i) promote the carrying out of specified unlawful activity; (ii) where the funds or instrument represent the proceeds of crime; and the transportation is designed in whole or in part to – conceal

or disguise the nature, source, location, ownership, control, of the proceeds, or avoid a lawful transaction under the law of The Gambia"

269. There are no procedures or mechanisms in place to make the required report under Section 16 and 19 directly to The Central Bank/FIU, who are the appointed Supervisory Authority under the Money Laundering Act 2003. The responsibility has been passed to The Gambia Customs department for the implementation of measures to control the movement of such cash or instruments across the border.

270. As at the time of the onsite, the Customs department have not issued specific rules and guidelines, or provided specialized training to its officers, regarding cross border cash movements. They are aware of the threshold for declaration of D300, 000 (three hundred thousand Dalasis). However, they maintained that it only applies to cash or negotiable instruments being transported out of The Gambia.

271. Their policies and procedures regarding their functions at The Gambian border points however, have not been altered to meet the requirements of the Money Laundering Act 2003 or the FATF Special Recommendation IX. They continue to act under The Customs Act 1986, which they informed the Assessors is being reviewed, but no time frame for the completion of the review or copy of the amended legislation was provided to the Assessors.

272. The capacity and infrastructure for cross border control is very limited with little computerized assistance. There are no statistical records being maintained or attempts to collect data for intelligence or analysis of the scale of movement of cash and instruments across The Gambia borders.

273. The legal framework in respect of cross border declaration is the Customs Act of 1986. The Customs and Excise department have rules and guidelines on cross border cash movement, people and goods. The threshold for declaration is D300, 000 (three hundred thousand dalasi). The guidelines were in place well before the MLA 2003 and thus have not been reviewed to meet the requirement under the Act and under the Special Recommendations. The capacity and infrastructure for cross border control is very limited and the process is currently manually driven.

Disclosure /Declaration system

274. The Gambian Customs department stated they operate a limited declaration system at disembarkation at Banjul airport only. They stated that they provide declaration forms that passengers bearing cash or negotiable instruments are required to complete when the amount carried exceeds D300, 000 in value. The forms presented to the Assessors did not provide for the collection of the details of the individual/s. However in reality, no attempts are made to make passenger aware of this requirement or to ensure compliance. The forms are not presented for passengers to complete as was witnessed by the Assessors on arrival at the Banjul Airport.

275. A declaration system is stated to be applied at all other points of border control in the Republic of The Gambia, but no records or statistics are maintained which could substantiate this claim.

Stop and seizure powers

276. The Customs department has general powers to stop and search people and goods across border points in The Gambia. A limited number of scanners for metallic objects have been deployed at some points of entry, but there is no equipment to help detect cash. The Department informed the Assessors that if any cash, traveler cheques, bank drafts and any other negotiable instruments are found during a physical search, the amount is checked to ensure that it does not exceed the prescribed threshold of D300, 000.

277. If it is found to exceed the threshold, it is at the discretion of the Customs officials to determine whether to detain the items. If detection and arrest action is instigated, the Customs department officials stated that they would then be required to immediately report the matter to the Central Bank. The investigation of the case would then pass over to the CBG. When separately questioned, the Central Bank stated this was not correct and that they would not expect to have any involvement in such a direct law enforcement action. No formal statistical evidence is maintained on any aspect of these procedures by the Customs department, so the implementation of such procedures could not be substantiated.

278. The Customs officials stated they are empowered to freeze detected cash or negotiable instruments if they suspect that they are derived or used for the purpose of money laundering or the financing of terrorism. The

general provision to use Customs' powers on any import or export which is subject to legal prohibition or regulation is contained in the Customs Act 1986. This Act is said to be currently under review to incorporate the requirements created under the Money Laundering Act 2003. The powers to detain cash were stated to have only been used once by Customs, where the money was later released to the owner after investigation. At the moment, the powers are inadequately and ineffectively used - if they are meaningfully used at all.

Domestic and international cooperation

279. The Customs department is not familiar with the requirement related to filing of declarations to the FIU. There is an MOU with Senegal but no cooperation activity has been recorded.

Sanctions

280. According to the ML legislation, where there is discovery of false declaration or failure to declare, the person involved can be detained for questioning. If the Customs officer is not satisfied with the responses given, then the disputed items may be seized and the person concerned arrested. The Customs department stated that investigation of the case would then pass to the Central Bank with prosecution and confiscation action being possible. This statement was contradicted by the Central Bank officials who stated that such a matter would not be their responsibility but that of the law enforcement agencies.

281. Under Section 19, the penalty for committing the offence of knowing or ought to have known that the funds and instruments represent the proceeds of unlawful activity is a fine one million Dalasis or twice the value of the monetary instrument or fund, whichever is higher or imprisonment for a term of five years or to both the fine and imprisonment.

282. There has only been one case of a prosecution for failing to report currency when leaving The Gambia under Section 19 of the Money Laundering Act 2003. The individual concerned was fined D10, 000 and sentenced to one year's imprisonment. The case was handled by the Banjul Police. Where there is discovery of false declaration or failure to declare, the person involved can be detained for questioning and if the investigation

officer is not satisfied with the responses given, the case file maybe forwarded to the police for possible prosecution.

Statistics (applying R.32)

283. The Customs departments do not maintain records of their seizures and sanctions applied. They have not attempted to quantify or carry out a risk analysis of the movement of cash or similar instruments across Gambia's borders. There has only been one detention of cash by Customs under these powers, which took place at Banjul airport. The money was later released. No statistics have been compiled and no attempts have been made to collect data on any aspect of the declaration/disclosure of cash or negotiable instruments at the borders.

Additional Elements

284. The Gambia has not implemented the Best Practices Paper for SR IX. Documents are manually managed and there is no data base for analysis of declarations. The Customs do not have any information or intelligence on AML/CFT matters.

Professional Integrity and competence (applying R. 30)

285. The Customs department requires training on how to combat money laundering and terrorist financing at all levels. They have shown no evidence of competency in the exercise of the legal requirements regarding these matters. Nor have they compiled any records or statistics which give any evidence or trends of the volume of flow of cash or negotiable instruments across the borders of the Republic of The Gambia. The Gambia procedures in this area are ineffective. The "discretion" given to the Customs officials at the border points as to what action to take if a person is arrested for breaching the ML Act leaves the process of investigation and control system open to abuse.

2.7.2 Recommendations and comments

286. The current regime under the Customs Act 1986 and the Money Laundering Act 2003 do not provide effective mechanisms to combat suspicious cross border currency transportation. The Authorities should consider implementing the following measures which will strengthen the institutions and systems required for the effective implementation of SR IX:

- Require inbound and outbound travelers to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying.
- Give explicit power to the Customs department to request further information as to the origin and intended use of transported funds and negotiable instruments.
- Give explicit power to the Customs department to stop or restrain transported funds and negotiable instruments in order to ascertain whether evidence of money laundering or terrorist financing exists
- Ensure that the Customs department transmits copies of positive declarations on a monthly basis or sooner and exigent matters immediately to the FIU and set a proper coordination framework between the two organizations.
- Give explicit instructions to the Customs department to begin collating statistical data on all its relevant actions regarding its law enforcement activities.
- Give explicit power to an Authority to investigate and prosecute where necessary once notified by the Customs department.
- Train the Customs department on how to combat money laundering and terrorist financing, particularly at the middle and low level, because they are the ones who deal with interception of cash and negotiable instruments at the airports, borders and sea.

2.7.3 Compliance with Recommendations IX

	Rating	**Summary of factors underlying rating**
SR.IX	**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. • 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.

3. PREVENTION MEASURES – FINANCIAL INSTITUTIONS

Overview of legal and regulatory framework

287. The legal frameworks for the prevention of money laundering and terrorist financing in the financial system in The Gambia are: The Money Laundering Act, 2003, the Anti-Terrorism Act, 2002, the Drug Control, Act 2003, the Insurance Act, 2005, the Central Bank Act, 2005, and the Financial Institutions Act, 2003. With regards to specific CDD measures, this is described in the "Guidelines on Customer Due Diligence (GCDD) for Financial Institutions in The Gambia"

288. The Financial Institutions (FIs) and Non-Financial Institutions (FIs) in The Gambia are regulated largely by the Central Bank of The Gambia (CBG) through the implementation of the Financial Institutions Act and the Insurance Act. In the implementation of the FI Act, the CBG has developed prudential regulations and guidelines for the banks, insurance companies, money value transfer service providers, the bureau d' change operators and the micro-finance sectors.

289. With the enactment of the ML Act, in 2003, the CBG assessed and reviewed its mandates in order to improve and accommodate the new responsibilities under the Act. In 2006, the CBG was appointed the Supervisory Authority for the implementation of the ML Act and for the establishment of structures, mechanisms and systems required for the effective implementation of the ML Act in accordance with best practices and international standards.

290. In line with these mandates, the Financial Supervision Department (FSD) of the CBG was tasked with the responsibility of setting up the FIU. The FSD was also mandated to develop guidelines and regulations that will enhance the effectiveness of FIs in the implementation of the ML Act and the combating of terrorist financing measures in the country.

291. So far, the FSD has drafted the KYC or Customer Due Diligence Guidelines for FIs in August, 2007. The CDD is aimed at improving the effective supervision of the FIs in line with the 25 Core Principles, and the Financial Action Task Force Recommendations (FATF). The CDD principles are targeted not just to banking institutions but also to all entities expected to file reports to the FIU under the ML Act and for the purpose of

filing of Suspicious Transactions Reports (STRs). The CDD provides a uniform set of criteria that will guide the operations of financial institutions in the implementation of the ML Act and other relevant laws in the country. It is divided into four parts: definition of STRs and how to identify it; (ii) identification procedures for corporate and quasi corporate customers; (iii) identification of individuals; and (iv) documentary evidence required for CDD measures.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering and terrorist financing

292. The CDD Guidelines reinforces the provisions of the ML Act with regards to the steps that FIs and NFIs must take in terms of the implementation of "Risk Based Approach" The CDD states that it shall be the responsibility of the Risk Control and Compliance Department of each bank to evaluate the risk management and internal controls, towards compliance with KYC principles. It requires a continuous review of policies and procedures on account opening. As a general rule, it requires banks to confirm the true identity of a customer before establishing any business relationship. It does not permit any exemption, except with regard to FIs registered in The Gambia and one-off transaction customer.

293. The GCDD recognizes that there are risks inherent in dealing with some customers and some products, services, and countries that do not apply the FATF standards. With regard to trustees, agents, and third parties, FIs are required to obtain information about their customers and those they represent. The same procedure is applicable to corporate entities and trustee accounts.

294. The fundamental principle in applying the CDD measures is to establish beyond reasonable doubt the true identity of a customer (individual, corporate or quasi-corporate) before entering into any business relationship. It recognizes that some customers may require enhanced due diligence such as in the case of non-face to face customers, internet banking relationships, correspondent banking relationships, shell banks, charities, religious organizations, corporate gate keepers or professionals such as lawyers, accountants, real estate agents, Notaries, Politically Exposed Persons (PEPs), and Agents.

295. The CDD measures provide for risk based approach to be applied in all cases despite the classification as low or high risk customers. Details of customers must be collected in all cases as if there is suspicion of potential wrong doing by the customer. In addition to the need for face to face contact with all customers, the banks must have at least one passport photograph of the customer in their accounts' files. Risk based approach must also be applied in the determination of documentation for the identification of customers and the level of verification required in each case. At a minimum, the prescribed ID cards as approved by the authorities, the names, addresses, dates of birth and expected source of funds must be provided.

Supervision by CBG of Compliance with AML/CFT measures by FIs

296. The CDD measures were issued in August 2007. As at the time of the onsite, the CBG had not incorporated the risk based approach and the supervision of AML/CFT measures in the onsite examination manual.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Anonymous accounts and fictitious names – numbered accounts

297. The FATF Recommendations require that CDD measures should be either in law or regulation. With regard to The Gambia, some CDD measures have been provided in the ML Act and some in the GCDD. The GCDD is considered as "other enforceable means (OEM)" and was issued by the CBG based on the power conferred on it by the FI Act, 2003. It provides further guidelines on issues elaborated in the MLA. The ML Act requires each financial institution to take reasonable steps to satisfy itself as to the true identity of an applicant who intends to open an account. No account can be opened anonymously without proper identification of the person or corporate entity.

When CDD is required

298. The GCDD document requires collection of all relevant information prior to the establishment of any business relationship. Section 3 (1) of the ML Act provides that financial institutions should establish the true identity of an applicant who wants to (i) enter into a business relationship with it; or (ii) carry out a transaction or series of transactions with it by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant.

Circumstances when CDD is required under the ML Act include

299. Section 3(a) (b) (5) (6) (7) (8) provides for the circumstances where CDD measures must be applied during the beginning of a business relationship. A casual customer shall be identified as described below:

- When any transaction involving a sum greater than two hundred thousand Dalasis or its equivalent;
- The transaction is carried out in one or more transactions that seem to be connected and the amount is unknown at the start of the transaction, as soon as the amount is known or is greater than two hundred thousand Dalasis;
- The financial institution suspects that the amount involved in a transaction relates to the laundering of drug money or other proceeds of crime; it shall require identification of a customer, notwithstanding that the amount involved in the transaction is less than two hundred thousand Dalasis or its equivalent;
- An applicant requests a financial institution to enter into a transaction, the institution shall take reasonable measures to establish whether the person is acting on behalf of another person; and
- Where it appears to a financial institution that an applicant requesting it to enter into a transaction is acting on behalf of another person, the institution shall take reasonable measures to establish the true identity of the person on whose behalf or for whose ultimate benefit the applicant my be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise;

300. In determining what constitutes reasonable measures, regard shall be given to all the circumstances of the case, and in particular, to – (i) whether the applicant is a person based or incorporated in a country in which there are in force, provisions to prevent the use of the financial system for the

purpose of money laundering, and (ii) the Customs and practice as may, from time to time, be current in the relevant field of business.

301. Section 3 (9) permits exemption where the production of any evidence of identity will not be required if – (i) the applicant is itself a financial institution; or (ii) there is a transaction or a series of transactions taking place, in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

Required CDD Measures

302. Section 3 (2) (a) (b) & (3) of the ML Act and the CDD guidelines provides that documentation of individual customer identity includes use of National ID cards, passports, alien ID cards for refugees, and birth certificates. The CBG informed the Assessors that the use of a new "Tax Identification Number" (TIN) which is unique to each individual and corporate body is encouraged and would gradually replace other forms of identities.The Government intends to make this work like a social security number. The FI is to require the applicant to produce an official record reasonably capable of establishing the true identity of the applicant as follows:

Individuals

1. where the applicant is an individual, the applicant is required to provide proof of identity by presenting to the financial institution –
   i) a valid original copy of an official document bearing the applicant's name and photograph;

   ii) the originals of receipts issued within the previous three months by public utilities, as proof of the applicant's address; and

   iii) identification by an existing customer of the financial institution.

Legal persons

303. Where the customer is a corporate body, it shall be required to provide proof of its identity by presenting – (i) its certificate of incorporation, and (ii) any other valid official document dating from less than three months

before the date of the transaction and attesting the existence of the body corporate:

2. The manager, employee or assignee delegated by a body corporate to open or operate an account shall be required to – (i) produce the documents specified for individuals and (ii) proof of the power of attorney granted to him or her covering the transaction.

304. Identification requests shall also be extended to persons seeking for account opening and those they represent, e.g. trustees. The CDD document (3.1) provides guidance on "specific information that may be collected on corporation which shall be based primarily on original documents as follows:

- Certificate of incorporation (must be notarized where the corporate body is incorporated outside The Gambia)
- Mailing address of business head office
- Name address and date of birth of persons behind the business including directors and their residences
- Particulars of business to be conducted.
- Most recent annual return of the corporate body filed at the Registrar General's office (must be notarized where the corporate body is incorporated outside The Gambia)

305. The GCDD takes in to account the need to collect information from all customers in order to establish their true identities irrespective of the risk profile of the account being opened. It does not make distinction between low and high risk accounts. Banks are required to recognize the potential for suspicion in all transaction and to deal with each as may be appropriate.

306. The GCDD also requires the Banks to take cognizance of the risks associated with foundations, charities, and PEPs, including professionals who act as corporate gate keeps or as agents to those who wish to launder their money. The FIs must satisfy themselves about the businesses and source of income of corporate gate keepers and should report suspicious transactions that emerge from them.

Beneficial Ownership

307. The ML Act's interpretative note states that identification record will include any other sufficient documentary evidence to prove to the satisfaction of the FI that the person is who he/she claims to be and for the purpose of this paragraph "person" shall include persons who are nominees, agents, beneficiaries or principal in relation to a business transaction. Beneficial Ownership is reflected in paragraph (b) under the definition of "identification records" in the interpretation section of the MLA.

308. Additionally, section 3(6) & (7) of the MLA requires FIs to take reasonable measures to establish the identity of the person and on whose behalf or for whose ultimate benefit the applicant may be acting in a proposed transaction. The beneficial owner must be a natural person. The verification should include determining if the person opening the account is a trustee, nominee, agent or otherwise.

309. The CDD document (3.2) provides that the names and addresses of the principal beneficial owners/controllers should be provided as well. In each case, the GCDD provides the types of identity that should be requested from beneficial owners who is acting as agent, trustee, or as professional gate keeper. In determining what is "reasonable measures" for the purpose of the ML Act, Section 3 (8), the FI shall consider (i) whether the applicant is a person based or incorporated in a country in which there are in force, provisions to prevent the use of the financial system for the purpose of money laundering, and (ii) the Customs and practice as may, from time to time, be current in the relevant field of business. This requirement puts the responsibility of verifying the track records of the country where the transaction is origination from on the FIs to enable them determine if the country is implementing AML/CFT measures. Secondly, it requires the FIs to take further steps to verify their data base and that of other companies that provide such services for any information that may trigger red flags concerning a customer.

310. In order to determine ownership and structure, the GCDD (5.5) requires that verification of documents in the case of corporate bodies and partnerships or sole proprietorships referred to as quasi-corporate entities must be based on original documents of incorporation or business registration. The names, addresses, dates of birth of beneficial owners must be established and documented.

Purpose and intended nature of business relationship

311. The ML Act, Section 4 states that FIs shall obtain information on the purpose and intended nature of business relationship whether or not it relates to laundering or drug money if it involves (i) an amount greater than 500.000 Dalasis for individual and 2.000.000 million Dalasis for Corporate bodies; (ii) if it is surrounded by conditions of unusual or unjustified complexity; (iii) if it appears to have no economic justification or lawful objective. The interpretative section of the ML Act also defines "business transaction records which must be kept by the FIs as part of their obligation under the Act to include, (i) a description of that transactions sufficient to identify its purpose and the methods of operation (ii) identification of all parties involved in the transaction (iii) the details of any account used for that transaction, including the bank, branch, and sorting code, and (iv) total value of transactions.

312. Additionally, the CDD document (3.1), & (5.1) requires FIs to obtain information on the particulars of business to be conducted and expected source of income by applying a risk based approach in its verification of the information it receives from various categories of customers.

Ongoing due diligence measures

313. Ongoing due diligence will apply in the circumstances described in the paragraph above as well as when the FI has formed a reasonable suspicion regarding a particular transaction even if the person is an old customer. The CDD document (2.2) requires FIs to collect sufficient information at the commencement of a business relationship as well as update their records continuously to capture transformations that customers may encounter such as an expansion in business.

314. The ML Act applies to circumstances where the FI would be required to scrutinize the transactions undertaken throughout the course of a relationship to ensure that the transactions being conducted are consistent with the FI's knowledge of the customers, their business and risk profile and where necessary the source of the funds. The CDD document (2.2) provides that FIs should ensure that they are satisfied with the source of funds and legitimacy of business. *The onus of proof is on the customers who shall beyond reasonable doubt provide evidence that the source of the income or business is genuine*. Additionally, (CDD 4.3) provides that when a new

account is be opened by an existing customers, request for details must be obtained irrespective of the length of the relationship with the FI. The same detailed verification and confirmation of identity is required by customers introduced by long-time customers of the FI. The CDD document (2.2) requires FIs to ensure that documents, data or information collected under the CDD documents are kept up to date for continuous reviewing.

Risks

Enhanced due diligence

315. The Gambia ML Act and the GCDD document do not make a distinction between low and high risk accounts or customers (CDD part 4). FIs are expected to recognize the potential for suspicion in all transactions and to deal with each appropriately by applying a risk based approach. Banks must apply the "reasonable standard" in order to be objective in its assessment of risks. So while the general rule is that there is no low or high risk profiling of customers, there is a measure of flexibility given to FIs to determine when to raise the risk profile for enhanced due diligence purposes.

316. The CDD document recognizes that certain class of Customers – natural or legal – will pose high risk and therefore may require the application of a higher level of due diligence. Examples of persons and entities that may require enhanced due diligence are listed in the CDD to include, politically exposed persons (PEPs),one-off transaction Customers, real estate agents, property developers, and motor vehicle dealers.

317. For Corporate bodies, enhanced due diligence should be applied to correspondent banking relationships, clubs, charities, and foundations, foreign consulate accounts, agents, nominees, and professional gate keepers like accountants, lawyers, notaries and those who inadvertently use their profession to facilitate money laundering.

Reduced due diligence

318. The AML regime in The Gambia does not make a distinction between high and low risk Customers. The CDD document specifically requires FIs to establish the true identity of a Customer, including the beneficial owners, irrespective of the risk profile of the account holder. To that extent therefore,

Recommendations 5.9 to 5.12 are not applicable to the situation in The Gambia. For the purpose of monitoring, however, FIs are allowed the discretion to adopt a risk based approach (CDD part 4). This requires them to determine the types of products, services and persons or countries who may be most vulnerable to corruption.

Timing of Verification

319. The ML Act and the GCDD document require verification for Customers and beneficial owners during the account opening and before the establishment of relationship with the Customer.Section 3 (1) (a) and (b) of the MLA require an FI to satisfy itself as to the true identity of an applicant before seeking to enter into a business relationship with it. This identification process must take place before they carry out a transaction or series of transactions with the Customer. FIs are expected to request the applicant to produce identification documents and information related to the transaction records referred to earlier in Recommendation 5.3. and the CDD document (parts 3 and 4).

320. Recommendation 5.14 do not apply in The Gambia because Section 3 (1), (6) and (7) of the MLA and the CDD document do not permit FIs to enter into a business relationship without first identifying and verifying the applicant who intends to do business with them.

Failure to Complete CDD

321. The CDD document (5.2) requires that persons who fail to provide satisfactory evidence of proof of identity and address, other than those exempted, must be excluded from transactions with the FI.

322. The GCDD reiterates that exemptions are limited to FIs licensed to conduct business in The Gambia and that only persons conducting one-off transactions such as receipt of funds through money transfer schemes "may be" exempted from the full CDD disclosure measures. Section 3(4) (a) and (b) of the MLA require that casual or occasional Customers be identified and their background verified just like any other Customer for any transaction involving a sum greater than two hundred thousand Dalasis, or its equivalent whether in a single transaction or a series of transactions that is linked.

323. Furthermore, Sections 4 (2) (a) (b) and 7 (1) (a), (b) and (c) of the MLA provide that FIs should report any suspicion they have formed on information they have on any transaction. In the case of Section 4, it will be submitted immediately. Under Section 7, the report must be submitted within three days to the Supervisory Authority or law enforcement agency in writing or in such other form as the Secretary of State may from time to time approve.

324. The CDD document (2.4) states that the FIs should consider filing STR where a Customer's refusal to cooperate with enquiries regarding source of funds, which due to no apparent reason raises reasonable suspicion. Although the Customer's refusal to cooperate is not tantamount to proof of guilt, the application of a risk based approach would trigger the FIs suspicion.

Existing Customers

325. Recommendation 5.17 is covered under Sections 4 (1) and 5(1) of the ML Act and the CDD document (2.2). The provisions note that transactions which are so large and therefore abnormal for the type of business of the Customer should attract attention and should lead to the conduct of enhanced CDD measures on existing Customers. FIs are further required to ascertain the source of funds and legality or otherwise of the business. The onus of proof in this instance is on the Customer who shall beyond reasonable doubt provide evidence that the source of funds is genuine and not from drug trafficking, money laundering or other financial crimes. FIs are required to update their records continuously to capture transformations that Customers may encounter such as expansion in an existing business. In applying a risk management approach, the expansion in the business of the Customer will facilitate the upgrading of Customers to a higher level of transaction volume to avoid unnecessary suspicion.

326. Recommendation 5.18 is not applicable in The Gambia in the absence of numbered or anonymous accounts. Section 36 of the MLA expressly overrides any obligation as to secrecy or other restriction on the disclosure of financial information imposed by any law or otherwise.

Recommendation 6

327. The ML Act 2003 and CDD documents issued in 2007 are the main guiding principles. Financial institutions have been specifically directed to apply risk based approach in addressing the issue of PEPs under the CDD measures.

328. The ML Act do not define PEPs but requires the FIs to apply of CDD measures on the basis of materiality and risk and the conduct of due diligence on every Customer by taking reasonable measures to satisfy itself about the "true identity" of persons seeking to enter into business transactions, including beneficial owners such as trustee, agents and nominees. The Act provides information on what may trigger suspicion and how to identify persons who seeks to launder their money through the financial system under Sections 3 &4.

329. The CDD document (4.1) highlights the risks involved in dealing with Politically Exposed Persons (PEPs). PEPs are defined under the CDD document as "Persons appointed as senior government officials or to ministerial positions, including senior political figures and their immediate families and close associates and influential persons in the society"

330. The Gambia has made a remarkable legislative progress in this regard particularly in the region by recognizing domestic and international PEPs as potential risks to the global, and indeed The Gambia financial system. The GCDD provides that the FIs should minimize their exposure to PEPs and to avoid the reputational risks relating to the handling of illicit funds by strict application of the KYC principles.

331. FIs are required to show a high degree of awareness of the existence of PEPs and to adopt the risk based approach as part of the monitoring process. This approach would require them to take extra steps to develop knowledge of persons or countries most vulnerable to corruption. They are also expected to have regard to industries that are vulnerable to corruption such as the oil and arms business. Some of the FIs, particularly the subsidiaries of banks with strong AML/CFT group policies informed the Assessors during the onsite that they are applying risk based approach based on group policies and their internal control policies. This is because the GCDD implementation in The Gambia is still evolving.

<u>Senior Management Approval</u>

332. GCDD document (3.3) requires FIs to obtain management approval and if necessary, that of the Board of Directors before establishing a business relationship with a Correspondent banker. However, this was not expressly stated in the ML Act or in the GCDD with regard to PEPs. As discussed above, the FIs are required to conduct ongoing and enhanced due diligence and to apply their reasonable judgment in determining when to review the status of an already existing Customer. It is expected that the internal control policies of FIs in The Gambia would require the approval of senior management even though it is not expressly stated in the GCDD

Source of Wealth of PEPs

333. The MLA and GCDD require FIs to identify the source of wealth of Customers, including beneficial owners at the time of opening the account and during business transactions. The movement of large amount of money and the complexity of transactions related to PEPs, or any other Customer can trigger further verification and enhanced due diligence. The CDD measures do not make distinction as to the nature of Customers when risk based approach are to be applied under the ML Act. As such, the same mechanism based on materiality and risk will apply to all Customers.

334. As discussed earlier, the conduct of enhanced ongoing monitoring on relationships with Customers are not restricted to any particular type of persons or corporate entity. The CDD document requires a risk based approach to be implemented as part of the monitoring process in the assessment of risk profiles of Customers.

Additional elements:

335. The requirement of Recommendation 6 applies to PEPs who hold prominent public functions domestically. The Gambia has neither ratified nor implemented the UN Convention against Corruption. There is no national strategy for the combat of corruption in the public and private sectors.

Recommendation 7

336. The ML Act 2003 and the GCDD measures have standardised the practice in relation to correspondent banking in The Gambia. The Central

Bank of The Gambia (CBG) monitors the use of correspondent banking and provides guidance to financial institutions from time to time.

337. The CDD document (3.3) requires FIs to exercise extra due diligence in establishing a correspondent banking relationship. It requires them to have adequate knowledge of the correspondent bankers. FIs should pay special attention to the type of business correspondent bankers engage in and the level of internal control measures are in place against ML/TF. Key verifications that must be conducted include whether or not the correspondent bank has KYC principles and abides by them and whether it has a secretive or open culture regarding information sharing. The verification should also be extended to the country where the correspondent bank is located to ensure that the laws of that country do not permit the use of shell banks. The CDD document requires FIs to obtain the approval of Management and if necessary that of the Board of Directors before establishing new correspondent relationships.

338. Although the CDD document is silent on the obligation of FIs to document the respective AML/CFT responsibilities of each institution, it is part of their general obligation under the ML Act to maintain records of business transaction for a minimum of 6 years. As such, the Assessors were of the view that the general obligation under the ML Act extends to the provision under R.7.4.

339. The MLA and CDD documents do not provide for mechanisms for dealing with “payable-through account”. However, as part of the enhanced risk based verification for Correspondent banking relationships provided under the GCDD, it is expected that the FIs as a matter of its risk based internal control policy will apply R. 5 CDD measures to all its Customers that maintain “payable-through account”.

Recommendation 8

340. With regards to the implementation of the measures under R.8, GCDD is the only policy guidance available to financial institutions in The Gambia at the moment.

341. The GCDD measures (2.5) on internet banking recognizes that internet or e-banking virtually eliminates the face to face contact between banks and Customers resulting in increased difficulty in Customer

identification. In view of this, it outlines what FIs should put in place to prevent the misuse of technological developments in ML and TF schemes. They include,

(i) a detailed Customer identification procedure;
(ii) confirmation of identity should be based on the provision of original documents;
(iii) adequate controls must be built in firewalls and routers as electronic access controls remain crucial to internet banking;
(iv) apply KYC policies of the FIs in obtaining initial information about the Customer, their needs, the source of funds and likely client and transaction profile.
(v) the FI should also set up an alert system to flag suspicious transactions;
(vi) ensure that e-money institutions are well regulated to deny ML facilities; and
(vii) ensure proper documentation of electronic transactions for future audit trail.

342. The CDD measures (2.5 (i)-(v)) as described above has spelt out internal control policies to be put in place by FIs to address any specific risk associated with non-face to face business relationships or transactions. The Assessors were informed that the three major telecommunication companies in the country, including the government owned Gamtel are required to assist the banks in the implementation of these measures. Internet Service providers are expected to keep records of the following documents- (i) registers of subscribers; (ii) internet protocol numbers per subscriber should be retained at least for one year and should be provided to investigators when requested.

3.2.2 Recommendations and Comments

343. The Gambia AML legislation has implemented the requirements under Recommendation 5 in a very broad manner. The ML Act is reinforced by the Guidelines on CDD which was issued in 2007. The two documents complement each other adequately with regards to the FATF standards under R. 5-8. Unfortunately effective implementation of the ML Act and the GCDD has not commenced and this has impacted on the overall efficiency of the various institutions and systems in place for the combat of ML/TF in The Gambia.

344. The Gambia authorities, particularly the CBG and the FIU would need to progress to the next step by requiring the FIs to effectively implement the ML Act and the GCDD. The authorities should ensure that onsite examinations include AML/CFT measures. There should be a system in place to determine the level of compliance of the measures by FIs. The Assessors recommended that the authorities should consider the following measures that will enhance the implementation mechanisms:

Recommendation 5:

- The CBG should commence full implementation of the ML Act and the GCDD through the process of proactive monitoring of compliance of the AML/CFT measures by FIs.
- The GCDD should be adopted as a regulation by the National Assembly in order to create a direct obligation for the FIs to ensure a comprehensive implementation of the R. 5 requirements.
- FIs should be trained on how to apply the risk-based approach in order to increase the level of implementation of the ML Act and the GCDD by FIs.
- The authorities should consider developing further guidance notes and typologies on the various CDD measures in order to provide feed back and best practices on the implementation of R. 5 to the FIs.

Recommendation 6:

- The authorities should require that the FIs put in place appropriate risk management systems to be able to assess on the basis of materiality and risk whether a potential Customer, an existing Customer or beneficial owner is a PEP.
- There should be a direct obligation to obtain senior management approval to continue the business relationship entered into with a PEP before the person became a PEP.
- Additionally, there should be a direct obligation either in the MLA or the GCDD document for the FIs to establish the source of wealth/funds of PEP Customers.
- There should be an effective risk management system in place to check the risk profiles of PEPs or those associated with them.

Recommendation 7

- The ML Act or the GCDD should create a direct obligation for the documentation of the respective AML/CFT responsibilities of each institution.
- The issue of "payable -through accounts should be clearly addressed in the GCDD and the ML Act.
- There is no efficient mechanism in place for the monitoring of the implementation of R. 7 by FIs

Recommendation 8:

The authorities should commence the full implementation of this Recommendation by requiring FIs to effectively develop their internal systems in collaboration with the telecommunication companies to eliminate risks associated with internet banking.

3.2.3 Compliance with Recommendation 5 to 8

Rec.	Rating	Summary of Factors Underlying Rating
R.5	**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 • The implementation of the GCDD is ineffective • The measures in the GCDD do not cover terrorist financing directly.
R.6	**PC**	• Neither the MLA nor the CDD document requires 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 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
R.7	**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.
R.8	**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

3.3 Third Parties and Introduced Business (R. 9)

3.3.1 Description and Analysis

Recommendation 9

345. The laws and the regulatory documents neither permit nor prohibit FIs to rely on intermediaries or third parties for CDD. The CDD document simply states that it is the ultimate responsibility of an FI to carry out CDD satisfactorily. The MLA requires the FIs to identify and verify all applicants before establishing business relationships with them. As such, it is implicit in the law that third party and intermediaries cannot be relied upon in the conduct of CDD measures by the banks.

3.3.2 Recommendations and Comments

3.3.3 Compliance with Recommendation 9

Rec.	Rating	Summary of Factors Underlying Rating
R. 9	**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 Ml Act.

3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

Legal Framework:

346. The legal framework is found in CBG Act 2005, Sections 27 and 35, FI Act 2003 Section 60, Insurance Act 2003 Section 70, and ML Act Section 36.

347. The Gambian authorities have not done a detailed review of secrecy laws in the country to determine whether they might inhibit the implementation of AML/CFT measures in the country. The assessors reviewed the secrecy laws in the other legislation in the country and discovered that there are prohibitions to giving information in the CBG Act, Insurance Act, the Income & Sales Act and FI Act.

348. However, Section 36 of the ML Act 2003 states that "the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any law or otherwise" It is the view of the Assessors that this provision would override any other secrecy law in relation to sharing of financial records. However, Assessors expressed concerns regarding the fact that a new law with secrecy prohibition may override the provisions of Section 36 of the MLA in view of the fact that under the common law, the latter law always takes precedence.

<u>Ability of competent authorities to access information</u>

349. The Assessors were of the view that competent authorities can access information. The MLA provides that any person who obstructs the Supervisory Authority, the LEAs or any other person authorized to exercise the powers conferred in them by this Act commits an offence and is liable on

conviction to a term of not less than five years, or more than ten years in the case of individual, and in the case of a financial institution or body corporate, to a fine of one million Dalasis.

Sharing of information with other competent authorities internationally and domestically

350. The MLA provides for international cooperation with other competent authorities in the adjudication, investigation and prosecution of money laundering and terrorist finance case. However, Section 32 (6) limits the sharing of information internationally to countries with which The Gambia has entered into mutual assistance treaties on a bilateral or multilateral basis.

351. The restriction under Section 32 (6) may prevent the sharing of information between competent authorities in The Gambia and those from other countries including the exchange of financial intelligence in a prompt manner. The Assessors expressed reservations about this clause but the authorities advised that the process of entering bilateral agreement is easy and therefore can be completed within a short period of time to enable sharing of information without delay.

352. The Assessors were of the opinion that this clause may inhibit the FIU's ability to share intelligence with other FIUs when it becomes fully operational. There is nothing in The Gambia financial or corporate laws that prohibit the sharing of information amongst financial institutions domestically

3.4.2 Recommendations and Comments

353. The Assessors recommended that the authorities should review of all their laws to ensure that none of the existing or new laws will inhibit the implementation of AML/CFT measures in the country. Additionally, Section 32(6) of the MLA should be reviewed to ensure that it does not inhibit sharing of financial information amongst competent authorities and financial institutions domestically and internationally.

3.4.3 Compliance with Recommendation 4

Rec.	Rating	Summary of Factors Underlying Rating
R.4	**LC**	• International exchange of financial information

		is restricted to countries which has signed bilateral and multilateral treaties with The Gambia. • Secrecy provision clauses in other laws and potentially new laws may inhibit access to financial information or intelligence.

3.5 Recording keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

354. The legal framework is found in Sections 8, and 12 of the ML Act 2003. The GCDD document was published as a guideline in 2007 and all banks are subject to record keeping requirements.

Record keeping and Reconstruction of Transaction Records

355. The MLA, Section 8 (1) (a) requires FIs to keep records of all transactions exceeding two hundred thousand Dalasis for a period of 6years. The records must include the following information:

a) the names, addresses, and occupations or the businesses or principal activities of each person conducting the transaction, or on whose behalf the transaction is being conducted including the beneficial owner;
b) the method used by the financial institution to verify the identity of each person;
c) the nature and date of the transaction;
d) the type and amount of currency involved;
e) the type and identifying number of any account with the financial institution involved in the transaction;
f) If the transaction involves a negotiable instrument, other than currency, the details will include the name of the drawer of the instrument and of the institution on which it was drawn, the name of the payee (if any), the amount and dates of the instrument, the number (if any) of the instrument, and details of any endorsements appearing on the instrument.

356. Furthermore, Section 3 of the ML Act requires FIs to collect and keep Customer identification information during the commencement of a business transaction or when it is required to carry out a business transaction or series of transactions. For an individual, information to be collected shall include, valid original copy of an official document bearing the person's names and photograph, and original of receipts issued within previous three months by public utilities as proof of address, or identification by an existing Customer of the financial institution. For body corporate, such information include, certificate of incorporation and any other valid official document issued less than three months of the date of transaction.

357. Section 8 (3) of the ML Act requires the records mentioned under this section to be kept for at least six years from the date of the completion of the business or transaction while Section 12 of the MLA requires the FIs to keep a business transaction record of "any business transaction" for a period of at least six years after the termination of the business transaction so recorded. In this case, it would include both ongoing and completed transaction. Any record of any business transaction is interpreted by the FIs to include account files and business correspondences.

Availability of Records for Competent Authorities

358. Sections 11 (c) and 12 (c) of the MLA gives the Supervisory Authority, or a person authorized by it, power to inspect a business record held by FIs and ask any questions relevant to the record, make any notes or take copies of the whole or part of the record. In addition, Sections 14 & 15 of the MLA empowers the SA/FIU or law enforcement agency to obtain transaction records upon court order if the reporting entity fails to comply with the initial directives under Section 11 & 12.

Special Recommendation VII

Originator Information for Wire Transfer and Threshold

359. SRVII applies to both cross-border and domestic transfers of funds, in any currency, which are sent or received by a payment service provider. However, the following types of payments are exempted:

- Any transaction carried out using a credit or debit card provided the card number accompanies the transaction. This exemption does not apply when a credit or debit card are used as a payment system to effect a money transfer.
- Any transfers of funds where both the payer and the payee are payment service providers acting on their own behalf.

360. For all wire transfers of 1,000 EUR/USD or more, ordering financial institutions are required to obtain and maintain the following information relating to the originator of the wire transfer:

- The name of the originator.
- The originator's account number (or a unique reference number if no account number exists).
- The originator's address (this may be substituted with a national identity number, Customer identification number, or date and place of birth).

361. The Gambia authorities have issued no legislation or guidance to financial institutions regarding the implementation of SR.VII. The representatives of the Central Bank stated that the matter had been covered in a one week training prior to the evaluation visit with the banking sector. The training session lasted two hours. The representatives from the banking sector all confirmed that the practice in the industry is to send full required originator details with all cross border wire transfers, regardless of threshold level. A Central Bank representative stated this was achieved through "moral persuasion".

362. The reality is that the compliance by the payment service providers is brought about by their own banking group policy and/or fear of likely exclusion from the international wire transfer systems operationally due to non-compliance. Also the reality that the transfers themselves would be rejected by the international systems used to transfer the payments if the required details were not accompanying the transfer when it left The Gambia may explain the implementation of such measures based on moral persuasion. The Gambia Authorities have neither taken any measures to ensure that the payment service providers have complied with the requirements of Special Recommendation VII nor have they made any

provision for the supervision and monitoring of the compliance of FIs with the FATF measures.

Verifying originator information

363. As The Gambia Authorities have not enacted any legislation and the Central Bank have not issued any guidance to the banking sector regarding SRVII, there is no requirement for the originator details to be verified other than by the application of the bank's internal control policies.

Maintaining originator information

364. The FATF Recommendations require that the originator details which accompany the wire transfer should be maintained for five years. Section 12 (a) of the MLA provides that a financial institution shall "keep a business transaction record of any transaction for a period of at least six years after the termination of the business transaction so recorded". The evidence from the banking sector is that this requirement is being adhered to. There was however, no evidence from the Central Bank to indicate any meaningful attempt to ensure compliance.

Cross-border wire transfer

365. SRVII requires that for cross-border wire transfers of EUR/USD 1,000 or more, the ordering financial institution should be required to include full originator information in the message or payment form accompanying the wire transfer. It is left to each country to decide if cross-border or domestic wire transfers below 1,000 EUR/USD are required to contain full and accurate originator information. All the evidence presented by the financial sector indicated that the payment service providers were fully complying with the requirement to supply originator details with all cross border wire transfers. This includes transfers of less than EUR/USD 1,000.

366. SRVII also requires receiving FIs and NFIs to adopt effective risk-based procedures for the handling and identification of received wire transfers that are not accompanied by the required originator information.

The lack of complete originator details may also be considered as a factor in assessing whether an STR/SAR should be made to the relevant authorities.

367. Despite the lack of relevant legislation or guidance, the FIs stated that any transfers received without the requisite information were acted upon and payment returned if the details were not forthcoming. However, there was no evidence to support this due to the lack of regulatory control. As at the time of the onsite, no STR/SARs had been submitted to the FIU.

Monitoring of information and sanctions

368. The Gambian Authorities have not taken any steps to develop legislation, a supervisory regime, sanctions, regulatory guidance or policies in this area regarding the requirements of SRVII. There was no evidence of any planned measures to correct this position

3.5.2 Recommendations and Comments

Recommendation 10:

369. The Central Bank of The Gambia's Examination Procedures Manual does not include examination of whether banks should retain Customer ID records, although the CBG bank examiners stated that they check for compliance with account opening formalities, including the retention of Customer ID records during on-site examination of banks. Banks and other financial institutions interviewed also stated that they comply with the account opening formalities including photographing and the retention of ID records. The bureaux de change confirmed that they request for IDs before transacting business with Customers but this cannot be confirmed in all instances.

370. With regards to the insurance industry, the assessors were not provided with the manual of examination to check whether insurance companies comply with record keeping and retention requirements. The Microfinance Institutions (MFI) Supervision Unit showed limited knowledge of the MLA requirements. Consequently there is no effective implementation of record keeping requirements under the ML Act.

371. The Supervisory Authority should ensure that it covers all rules relating to record keeping in its supervision and examination program.

Recommendation VII:

372. The FIU has not issued legislation or guidance regarding the implementation of SR.VII to the financial sector.

373. The authorities are advised to:

- Issue explicit guidance notes to the financial sector regarding SR.VII. The obligations related to SR VII may be included in the ML Act or in the GCDD.
- Sanctions and penalties should be provided for non-compliance with SR.VII.
- The implementation of the record keeping requirements should cover all reporting entities.
- R. 5 and other CDD measures should apply to one off transactions relating to wire transfers.

- The Central Bank should verify that the requirements of SR.VII are being adhered to, when appropriate, as part of its on-site inspection programme.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

Rec.	Rating	Summary of Factors Underlying Rating
R.10	**PC**	• The Assessors were not able to review examination manual for insurance industry to ascertain whether the coverage include record keeping; • 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.
SR VII	**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

Unusual, Suspicious and other Transactions

3.6 Monitoring of transaction and relationships (R11 and 21)

3.6.1 *Description and Analysis*

Recommendation 11

Complex, Unusual Large Transactions

374. Section 4 (1) of the MLA requires that when a transaction is surrounded by conditions of unusual or unjustified complexity and appear to have no economic justification or lawful object, FIs are to seek information on the origin and destination of funds, the aim of the transaction and identity of beneficiary. This section complies only with essential criteria 11.1.

375. Paragraph 2.2 of CDD Guidelines issued to FIs requires them to pay attention to large volume transactions. The volume of transactions may vary relative to the size of the business or capacity of the person behind the business. . However, there is no requirement to maintain records of unusual transactions reported under Section 4 (1) for a specified period although the CDD Guidelines require FIs to scrutinize large volume transactions.

Recommendation 21

Special attention to countries that do not apply FATF Recommendations

378. Section 3(7), (8) (a) (b) provides that FIs should take reasonable measures to check the background of any potential Customer and to determine whether the person is acting on his behalf, or for other beneficiaries and should consider whether the applicant or persons are incorporated in, or based in another country where there are AML/CFT

measures in force. However, there are no procedures in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. The FIs are responsible for developing internal measures to determine the level of risk profile of a country when a transaction is taking place.

Scrutiny of transactions with no apparent economic or visible lawful purpose

Section 4(1) (c) of the ML Act requires that when FIs detect a business transaction that has no apparent economic justification or lawful object, they should submit a report containing all the relevant information on the matter. Under the GCDD, there is also a requirement that once a suspicion is formed by the FI about a particular transaction from a specific country or sources that triggers red flags, the FI is required to submit a report to the FIU. Currently, The Gambia does not have a mechanism to apply counter measures to countries that do not apply the FATF Recommendations sufficiently.

3.6.2 Recommendations and comments

379. The MLA includes the requirement for the banks to examine reports of unusual transaction but there is no corresponding requirement to keep the reports of the findings

380. However, discussions with both the FIs and an accounting body, revealed that FIs are particularly careful about monitoring business accounts largely because of concerns over possible fraud, or to meet correspondent banks and global group policies for those that are subsidiaries of a larger company domiciled elsewhere. In addition, the risk based approach of the GCDD requires that FIs take extra steps to establish beyond reasonable doubt that a particular transaction is not from illicit source. Nevertheless reporting of identified unusual transactions to the supervisory authorities has not started.

381. Furthermore, there are no measures in place to advise FIs of concerns about weaknesses in the AML/CFT systems of other countries nor appropriate counter-measures for countries who do not apply or insufficiently apply the FAFT Recommendations.

382. The CBG should ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries and that counter-

measures are put in place when dealing with countries that do not apply or insufficiently apply the FAFT Recommendations. The CBG should include in their examination procedures manual examination of FIs' compliance with FATF Recommendations.

3.5.3 Compliance with Recommendation 11 and 21

Rec.	Rating	Summary of Factors Underlying Rating
R.11	**LC**	• Examination procedures manual do not include examination of FIs' compliance with FATF requirements. • 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. • There is no requirement to maintain records of unusual large transactions for a specified period. • There is no effective implementation of the requirements of the MLA provisions for monitoring of complex and unusual transactions
R.21	**PC**	• There is no provision to apply appropriate counter-measures where a country continues not to apply the FAFT 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

3.7 Suspicious Transaction Reports (STRs) and other reporting (R13-14, 19, 25 and SR IV)

3.7.1 *Description and analysis*

Recommendation 13 & Special Recommendation IV

383. Recommendation 13 makes it mandatory under the law for financial institutions to report STRs to the FIU on money laundering and terrorist financing. STRs should include attempted transactions, regardless of the amount.

384. The Money Laundering Act 2003, Section 4(1) (b) (2)(a) and (b) and Section 7(1) (a)(b) require financial institutions to report all STRs to the supervisory authority responsible for the implementation and enforcement of the Act, which presently is the FIU located at the Central Bank of The Gambia (CBG). In addition, Section 5 of the Act provides that mandatory disclosures by FIs should be sent to the LEAs. Section 4 provides three different scenarios which will trigger the filing of report in relation to a suspicious transaction.

385. Section 4 (1) states that: "When a transaction, whether or not it relates to the laundering of drug money- (i) involves a sum greater than five hundred thousand Dalasis or its equivalent in the case of individual or two million Dalasis or its equivalent in the case of a corporate body; (ii) is surrounded by conditions of unusual or unjustified complexity; (iii) appears to have no economic justification or lawful object, the financial institution shall seek information from the Customer as to the origin and destination of the funds, the aim of the transactions and the identity of the beneficial owner.

386. The FI shall take the next step based on a "reasonable suspicion" that the transactions described in subsection (1) could constitute or be related to money laundering. The question whether a reasonable suspicion has been formed shall be determined objectively having regard to all the facts and surrounding circumstances of the case.

387. Once the opinion of reasonable suspicion is formed, the financial institution shall, (i) prepare a written report containing all relevant information on the matter mentioned in paragraphs (a), (b) and (c) of

subsection (1), together with the identity of the principal and, where applicable, of the beneficiary or beneficiaries; and (b) Send a copy of the report to the supervisory authority/FIU.

388. Section 7 of the Act reinforces Section 4 requirements as detailed above. It requires financial institutions to submit STRs to support the investigation or prosecution of any persons for an offence under the Act.

389. Section 7 (i) provides that "whenever a financial institution is a party to a transaction and has reasonable grounds to suspect that the information it has concerning the transaction may be relevant to the investigation or prosecution of a person for an offence under this act, it shall as soon as possible within three working days, after forming the suspicion, take reasonable steps to ascertain the purpose of the transaction, origin and ultimate destination of the funds involved and the identity and address of any ultimate beneficiary.

390. The FI shall prepare a report of the transaction and submit same to the law enforcement agency or in such other form as the Secretary of State may from time to time determine. The problem with Section 7 reporting is that it refers to the LEA instead of the Supervisory Authority or the FIU. The same is also the case with mandatory reporting of currency transaction reports under Section 5. The Assessors expressed concern about the multiple authorities which are mandated under the law to receive STRs. In essence, it defeats the purpose of establishing the FIU.

391. As at the time of the onsite, the FIU had not received any STR. While the CBG attributed the non-filing of STRs to the fact that the FIU was still not fully functional, discussions with FIs and NFIs suggested that most of the institutions have not been provided guidance on how to detect and file STRs.

392. The Money Laundering Act 2003 is also deficient because it criminalizes only 12 predicate offences under the Schedule to the Act. The prescribed offences include (1) Blackmail; (2) Counterfeiting; (3) Drug Trafficking and related offences; (4) Extortion; (5) False Accounting; (6) Forgery; (7) Fraud; (8) Illegal Deposit Taking; (9) Robbery; (10) Terrorism; (11) Theft; (12) Insider Trading. In addition to the prescribed offences, predicate offences may also include offences that fall within the imprisonment term of two years and above. Not all predicate offences

required under FATF Recommendation 1 are covered but the offence of terrorist financing under SR II and SR IV while not listed as a prescribed offence will fall within the two years imprisonment term threshold since the penalty for terrorist financing offence is a minimum of 10 years imprisonment term.

393. The FIs and NFIs are not effectively reporting STRs currently because the FIU is still at the early stages of establishment. In addition, other reporting entities and the DNFBPs have not received guidance and training on how to file STRs.

STR related to terrorist financing

394. Neither the Money Laundering Act (2003) nor the Anti Terrorism Act (2002) mandate FIs and DNFBPs to report STRs related to terrorist financing. However, the CBG has forwarded lists of designated persons under 1267 and 1373 UN Security Council Resolutions to the banks only and has included the reporting of TF in a recently released guidance note.

Reporting Threshold

395. STRs linked to money laundering can be reported regardless of the amount of money involved.

Reporting of Tax Matters

396. Requests for cooperation may be refused on the ground that tax matters are involved because tax offence is not a predicate offence under the ML Act and the punishment for filing misleading tax returns or tax fraud is one year which is below the two years penalty threshold required under the ML Act. **Additional Element**

397. FIs are required to report once a reasonable suspicion is formed about the funds or transactions of a Customer which may relate to any of the offences under the ML Act.

Recommendation 14

398. Recommendation 14 requires that financial institution and their directors, officers and employees (permanent and temporary) should be

protected by law from both criminal and civil liability for breach of restrictions on disclosure of information and be prohibited by law from tipping off on matters related to reports submitted to the FIU.

399. Section 4 (4) of the Money Laundering Act provides protective powers to reporting officers from criminal and civil liability for breach of any restriction on disclosure provided the report was made in good faith. The Act provides that "When the report referred to under the Act is made in good faith, the financial institution and its employees, directors, owners, or other representative as authorized by law shall be exempted from criminal, civil, or administrative liability as the case may be, for complying with this section or for breach of any restriction on disclosure or information imposed by contract or by any legislative, regulatory, or administrative provision regardless of the result of the information".

400. Section 20 of the ML Act provides for criminal liability against any person who tips off anybody or divulges any information that may prejudice the investigation and prosecution of an offence under the Act. The penalty for tipping off is a fine of one hundred Dalasis on conviction and imprisonment term of not less than five years of more than fifteen years or to both the fine and imprisonment

Additional Elements

401. Under the same act, section 4(3) bars any person, including officers and employees of reporting entities from tipping off or disclosing any information on STRs sent to the supervisory authority (CBG) for what ever reason that is likely to prejudice investigation. The section says: "A financial institution shall not notify any person, other than a court, a law enforcement agency or any other person authorized by law, that information has been requested by or furnished to a court or the Supervisory Authority.

Recommendation 19 - Large currency transaction reporting (CTRs)

402. The Gambia has considered the feasibility of implementing a system of large currency reporting as required by Recommendation 19. Section 5 of the MLA requires financial institutions to disclose in writing to law

enforcement agencies within 7 days any simple transaction, lodgement, and transfers in excess of D1,000,000 (one million dalasi) for individuals and D2,000,000 (two million dalasi) for corporate bodies. The report is to be made to the law enforcement agencies for investigation. However, in the absence of any guidance note to the financial institution to also report to the FIU large currency transactions, there is no system or centralized agency responsible for the establishment of a data base to collate the reports submitted by the FIs.

Additional Elements

403. There is no data base for the collection of CTRs and the information is only available to the law enforcement who is obliged to investigate and determine if the funds are being laundered. The LEA may issue a stop notice to the FI to block and defer the transaction for three days. The first three days may be extended by another three days and thereafter by a court order. If no stop notice is issued to the FI, it may proceed with the transaction.

Recommendation 32 ***(maintaining comprehensive statistics)***

404. There are no statistics on CTRs or STRs at the time of onsite visit. However, the FIU has recently reported the receipt of 10 STRs which were analyzed and from which 3 were sent to the police for further investigation.

3.7.2 Recommendations and Comments

405. The scope of the legal framework for the reporting of STRs is broad, however, the weaknesses mentioned under R.I of the ML Act with regards to the list of designated categories of predicate offences in the FATF glossary impacts negatively on R.13. The terrorist financing offence while not provided in the prescribed list meets the description of a predicate offence under the Act because it is above the two years imprisonment term threshold but there is need for the law or a regulation to specify a direct obligation for FIs to report terrorist financing STRs to the FIU.

Recommendation 13 and Special Recommendation IV:

406. The challenge before the authorities and the FIU is to commence the development of detailed guidance notes for all reporting entities including training on how to file the STRs. In addition, the Assessors would recommend further that,

- The Money Laundering Act should be revised to provide for the minimum designated predicate offence or adopt a broader approach which is to include all crimes within the minimum term of 6months imprisonment as a predicate offence.
- Terrorist financing should be clearly included as a predicate of money laundering.
- Reporting entities should be directed to submit STRs related to financing of terrorism to the FIU.
- Tax matters should be included in the reporting of STRs.

Recommendation 19:

- The ML Act should be reviewed to authorize the FIU to receive CTRs and to establish a data base for the storage of the CTRs and the STRs.
- The ML Act should guarantee the security of electronic data related to STRs and CTRs which must be made available to investigation authorities.
- The FIU needs to set up a secured, well staffed and well equipped ICT department for the purpose of receipt and analysis of STRs and if permitted CTRs.

3.7.3 Compliance with Recommendation 13,14,19,25 (criteria 25.2) and Special Recommendation IV)

Rec.	Rating	Summary of Factors Underlying Rating
R.13	**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 • The reporting of STRs is ineffective due to lack of supervision of the process by the FIU.
R.14	**C**	
R.19	**LC**	• There is no data base for the storage of the CTRs. • The ML Act does not guarantee the security of electronic data related to CTRs which must be made available to investigation authorities when required.
R.25	**NC**	• • MFIs and insurance sectors have not received guidelines as regards the submission of STRs on money laundering and terrorist financing. • The departments of the CBG responsible for MFIs and the insurance industry are not aware of the STR guidelines issued by the FIU. • The FIU has not undertaken any typologies or risk assessments as at the time of the on-site visit. • There is no feedback mechanism in place between the CGB/FIU and the FIs. • The guidelines have not been effectively implemented across the FIs.
IV	**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.

Internal controls and other measures

3.8 Internal Controls, Compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and Analysis

Recommendation 15

407. The legal framework for internal control measures and compliance is found in MLA Section 9.

Internal AML/CFT controls

408. Section 9 (a) and (d) require that FIs should develop and maintain internal reporting procedures to identify persons to whom an employee is to report any information that may give rise to suspicions of money laundering, take appropriate measures to make employees aware of domestic laws relating to money laundering, including the internal procedures and related policies established and maintained by the FIs in relation to the Money Laundering Act.

409. Paragraph 1 of the CBG's Corporate Governance Guidelines (CGG) further provides that it shall be the responsibility of the FI's management to ensure that a comprehensive risk management process which identifies, monitors and controls different types of risks is in place. The boards of directors of the FIs are required to carefully review the adequacy of risk management policies, systems and procedures proposed by management and approve same in line with the over all internal control policies.

410. Section 9 of the MLA 2003, provides for the establishment of policies, measures and internal controls for the prevention of money laundering, including the preparations and retentions of reports required under Sections 4 and 5 of the ML Act.

Compliance management arrangement

411. There is no provision in the MLA for the appointment of compliance officers. However Section 9 (b) provides for the identification of a person or

persons to whom an employee may report any suspicious activity related to money laundering. The employee should also be permitted access to information by authorised staff of the institution. Section 9 (c) requires the authorised staff to report the matter to the FIU and the Law Enforcement Agency.

412. Additionally, paragraph 2.5.6 the Corporate Governance Guidelines requires boards of FIs to set up an independent compliance function and approve the compliance policy. It is the view of the Assessors that the authorized person indicated in Section 9 (a) is the representative of senior management who is expected to serve as the Compliance Officer.

Audit function

413. The MLA has no specific provision for FIs to develop internal audit arrangements, including audit procedures to ensure compliance with the ML Act. However Section 31 (3) of the FIA empowers the Supervisory Authority to set up and enforce standards for the corporate governance of FIs, including a management structure with clear accountability and independent board of directors that will be able to provide a check on management, monitor the implementation of independent audit and compliance functions.

414. The Introductory statement to the CDD Guidelines puts direct responsibility on the Risk Control and Compliance Department of FIs to evaluate risk management and internal controls towards compliance with KYC principles. Section 25 (3) of the FIA requires FIs to annually appoint an auditor to report on the balance sheet and accounts of the institution. The paragraph 2.12.1.1 of the CGG requires FIs to establish an Audit Committee to review the financial condition of the banking institution, its internal controls, performance and findings of the internal auditors, and to recommend appropriate remedial action regularly. Paragraph 2.12.1.2(f) of the CGG requires that the external and internal auditors should have free access to the Audit Committee and be allowed to attend and be heard at any meeting of the Audit Committee while paragraph 2.5.5 requires FIs to set up internal audit department that is staffed with qualified personnel to perform internal audit functions.

Ongoing Employee training AML/CFT

415. Section 9 (c) of MLA 2003 requires the provision of appropriate training to employees of FIs in the handling of money laundering issues. In addition, Section 12 (d) specifically requires FIs to comply with training requirements as determined by the Authority.

Screening procedures

416. The MLA has no specific provision for screening employees. However the FIA Section 30 (1) requires that no person shall be appointed as officer or director if the person is declared bankrupt, has been convicted of a felony or an offence involving dishonesty. In Paragraph 2.11 of the CGG, issued to FIs, there are criteria for disqualifying directors or senior managers, implying that the persons who fall below the established criteria would not be employed. Paragraph 2.7.1.1 of the CGG also requires FIs to conduct rigorous vetting to ensure that directors and senior management officers appointed are "fit and proper" persons and that they have the prior approval of the CBG before the appointment is confirmed.

417. There are no requirements for FIs to put in place screening procedures to ensure high standards and integrity when hiring all categories of employees although discussions with them revealed that they have in place procedures for hiring staff including request for police clearance and references.

Additional Elements

418. The Corporate Governance Guidelines requires boards of FIs to set up an independent compliance function and to notify the CBG if a head of compliance leaves that position and the reasons for leaving.

Recommendation 22

419. There is no provision in the FI Act that prevents The Gambian FIs from having foreign branches or subsidiaries. Also there are no provisions for the application of AML/CFT measures on branches and subsidiaries which do not or insufficiently apply the FATF Recommendations; or where minimum requirements differ with host country to require branches and

subsidiaries to apply the higher standard to the extent that the host country laws will permit. At present, there are no foreign branches or subsidiaries of The Gambia FIs.

420. There is no specific rule requiring FIs to communicate with their supervisor when a foreign branch or subsidiary is unable to observe AML/CFT measures because this is prohibited by host country laws and other measures.

Additional Elements

421. There is no requirement that FIs subject to the Basel Core Principles apply consistent CDD measures at the group level taking into account the activity of the Customer with the various branches and majority owned subsidiaries worldwide.

3.8.2 Recommendations and Comments

422. With regards to the provisions of the MLA in terms of compliance with Recommendations 15, there are no requirements for the conduct of audit function to test compliance. There is also no requirement for the screening of employees. However, the Corporate Governance Guidelines covers in a more detailed manner issues related to the role of the board of directors in the supervision of internal control and compliance structure put in place by management. The CGG and the FI Act provide for an independent audit function, compliance function, and screening of directors and senior management officer. In addition, the Examination Procedural Manual provides for examination of the extent to which FIs have complied with internal control, and audit function requirements in the law and the CGG. During the meetings with the CBG, and the FIs, it was reported that the implementation of the internal control and compliance function is effective. However, the Assessors were of the opinion that there was no effective implementation of the requirements of the ML Act relating to the appointment of compliance officers.

Recommendation 22:

423. There were no foreign branches or subsidiaries of The Gambian FIs based in other countries as at the time of the onsite. However, some of the

branches of the banks with their group offices in other countries are based in The Gambia.

424. Since the establishment of foreign branches is not prohibited by the law, it is important to include a requirement in law or regulation or in the guidelines to FIs regarding the monitoring of foreign branches and subsidiaries with regards to their AML/CFT obligations to ensure that it is consistent with home country requirements. FIs should also be required to communicate to the CBG about their inability to perform their AML/CFT obligations in a host country. As such the Assessors recommended as follows:

- With regards to Recommendation 15, the CBG should ensure that the Examination manual covers all measures relating to internal control, compliance function, screening procedures, employee training, and the independent audit function.
- There should be a direct obligation in the Act for the appointment of Compliance Officers at the Senior Management level.
- Training on AML/CFT should be provided to all management and junior staff responsible for AML/CFT implementation in the FIs.
- Access to information on records of transactions should be accessible to compliance officers and selected staff members of the FIs.
- In order to effectively implement Recommendation 22, the MLA should be reviewed to ensure that the FIs can apply AML/CFT measures in foreign branches and subsidiaries when they are established. This requirement can also be included in the guidelines to FIs as well as in it's the examination manual.
- FIs should also be required to communicate to the CBG about their inability to perform their AML/CFT obligations in a host country.

3.8.3 Compliance with Recommendations 15 & 22

Rec.	Rating	Summary of Factors Underlying Rating
R.15	**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.
R.22	**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.

3.9 Shell Banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

425. There are no provisions in the laws preventing the operation of or dealing with shell banks.

426. Although there are no rules regarding shell banks, the CBG explained that shell banks are not permitted. Additionally, there are no specific rules against banking or establishing correspondent relationship with shell banks.

427. There are no specific rules requiring FIs to satisfy themselves that correspondent institutions in foreign countries do not permit their accounts to be used by shell banks. There is no provision in the law permitting the licensing of shell banks. In practice, shell banks are not permitted to establish by the CBG. However, the non prohibition of shell banking and non-availability of any guidance to the FIs in this regard presents a potential threat to the financial system since it is possible for shell banks to exist without the knowledge of the CBG. Such shell banks may be deemed to be operating legally since they are not excluded by law or regulation.

3.9.2 Recommendations and Comments

428. The MLA should be revised to include provisions consistent with FATF Recommendation 18. The CBG should ensure that the examination manual includes the surveillance of institutions who may be transacting with shell banks in other jurisdictions or have plans of setting up shell banks in The Gambia.

3.9.3 Compliance with Recommendation 18

Rec.	Rating	Summary of Factors Underlying Rating
R.18	**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.

3.10. The supervisory and oversight system – competent authorities and SROs; roles functions, duties, powers (including sanctions) (R23, 29, 17 & 25).

3.10.1 Description and Analysis

Recommendation 23 (including Recommendation 30– structure and resources of the supervisory resources)

Legal Framework:

429. The legal framework is found in the FIA, 2003, Section 11 of the MLA, Section 63 CBG Act, and Section 4 of the Insurance Act.

Regulation and Supervision of FIs:

430. The ML Act empowers the Central Bank as the Supervisory Authority to supervise all FIs and NFIs and to ensure that they comply with all financial sector regulations and the AML/CFT measures that have been put in place in the country.

The Central Bank of The Gambia:

431. Since 1997, the Central Bank has been the sole regulator of all financial institutions in the country, including insurance companies, bureaux de change and micro finance institutions. The functions of the CBG as enumerated in Section 6 (1) include,

a) Formulate and implement monetary policies aimed at achieving the objects of the Bank;
b) Promote by monetary measures the stabilization of the value of the currency within and outside The Gambia;
c) Institute measures which are likely to have a favourable effect on the balance of payments, the state of public finances and the general development of the national economy;
d) License, regulate supervise and direct the financial system to ensure the smooth operation of the system;
e) Promote, regulate, and supervise payment and settlement system;
f) Issue and redeem the currency notes and coins of The Gambia;
g) Ensure effective maintenance and management of The Gambia's external reserves;

h) License, regulate and supervise non-banking financial institutions;
i) Promote and maintain relations with international banking and financial institutions and subject to the Constitution or other relevant, enactment, implement international monetary agreement to which The Gambia is a party;
j) Act as a banker and financial adviser to the government of The Gambia and guarantee government's loans;
k) Own, hold, and manage its official international reserves;
l) Promote the safe and sound development of the financial system including safe guarding the interest of depositors;
m) Collect, analyze and publish statistical data; and
n) Do all other things that are incidental and conducive to the efficient performance of its functions under the Act.

432. In addition to the functions listed above, the CBG shall direct and regulate the financial, insurance, and banking systems in the interest of the economic development of The Gambia. They shall encourage, and promote sustainable economic development and the efficient utilization of the resources of The Gambia through effective and efficient operation of the financial system. The Act states that the CBG shall perform its functions, subject to the direction of the Secretary of State for finance.

433. To improve CBG's corporate governance and independence, a new Central Bank Act became effective in January 2006. The new Act contains provisions that are aimed at strengthening the operational independence of the Bank. The new CBG Act conforms to international best practices that require the CBG to implement monetary policies more effectively if they are to be shielded from political interference.

434. A memorandum of understanding to improve policy co-ordination between the Central Bank and Department of State for Finance and Economic Affairs (DOSFEA) in the area of debt management and monetary operations was recently signed by both parties. In addition, the supervisory powers of the Financial Supervision Department were strengthened to ensure a safe and sound banking system. The most important element of the reform measures was the drafting of the Prompt and Corrective Action (PCA) – a framework to identify and address anomalies in banks' performance at an early stage, particularly in key areas such as profitability, liquidity and capital adequacy. The Central Bank has issued several guidelines with respect to prudential examination.

Structure and Resources

435. The Supervisory Authority for financial institutions and non-financial institutions is the Central Bank of The Gambia. The CBG has 6 departments, namely, the Financial Supervision Department, the Micro Finance Department, the Insurance Commissioner, the Credit Reference Bureau, the Foreign Exchange Department and the Research and Personnel Department.

436. Within the CBG, the Financial Supervision Department (FSD) is mandated to set up the FIU and undertake the task and responsibilities of implementing the Money Laundering Act across all reporting entities.

437. The FSD, under the CBG is responsible for the supervision and monitoring of financial institutions' compliance with prudential regulations and Core Principles. However, the ability of the FSD to undertake its primary responsibility and at the same time act as FIU is limited. The FSD is currently made of fourteen staff, including the Director, who is also the current head of the FIU. No separate budget and no personnel have been provided to the CBG for the purpose of undertaking the additional responsibilities of monitoring and supervising FIs and NFIs for AML/CFT compliance.

Licensing procedures for financial institutions

438. A fundamental requirement of the licensing process is the submission of a feasibility study report on the proposed activities of the new institution. There are stringent requirements regarding the contents of such feasibility. Among them are accurate financial projections of proposed activities over a five year period, proposed capital, which must meet the minimum requirements. Upon fulfilling these requirements, the application moves to the next stage, namely confirmation of sources of funds, determination of the true identity of the applicants and establishing if they are "fit and proper persons". The process is quite detailed and can last more than six months.

Powers to sanction

439. The Central Bank employs different forms of sanctions drawn from the Financial Institutions Act (FIA) 2003, the CBG Act, 2006 and the ML Act, 2003. These include monetary fines for non-submission of statutory

reports or erroneous returns, as well as non-compliance with regulatory requirements. A person who carries on banking business in The Gambia without a licence issued by the CBG commits an offence and is liable on conviction to a fine not exceeding 500.000 Dalasis or imprisonment term of not more than ten years or on both such fine and imprisonment.

440. The CBG can also revoke or cancel the licences of any financial institution that engages in a business other than its registered objectives. The mandate to cancel or revoke a licence includes situations where the business of the financial institution is being conducted in an imprudent manner; the FI is found to be unsound; or where the continuation of the activities of the FIs is detrimental to the interests of its depositors. In 2002, the CBG revoked the licence of a commercial bank because it conducted its operations in an imprudent manner. In 2006, the CBG appointed an advisor to manage a bank that was found to be imprudent in its operations. The situation improved after six months and the advisor was withdrawn.

Competent Authority for the Implementation of AML/CFT Measures

441. Section 10 of the ML Act empowers the Secretary of State to appoint a supervisory authority to supervise FIs regarding the implementation of AML/CFT measures. The CBG has been appointed as the Authority for ensuring compliance with AML/CFT measures in the country. Additionally, the CBG has now taken steps to establish the FIU in the Financial Supervision Department.

Market Entry - Prevention of Criminals from Controlling Institutions (R.23.3-23.7)

442. Section 4 (3) of the FIA and the guidelines for the licensing of FIs require the CBG, when considering application to commence banking business, to take into account the character and fitness of directors and officers of FIs, and NFIs. The Corporate Governance Guidelines requires FIs to ensure that directors and senior management officers employed by the institutions are “fit and proper” persons and are approved by CBG before their appointments are confirmed. Section 30 (2) of the FIA provides for the disqualification of any director, or officer who is convicted of a felony or an offence involving dishonesty but there is no such related disqualification provision for beneficial owners. However, FIA Section 8 (2) requires the

approval of the CBG before a person acquires directly or indirectly more than 10% of the total shares of a financial institution.

443. Under Section 9 of the FIA, Where the CBG has reason to believe that a person is carrying on banking business without a valid license; it shall seize the books and records relating to the business. Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding 100.000 thousand Dalasis or imprisonment for a term not exceeding five years. The person shall also be subject to criminal proceedings. In 2007, a bank was put under prescription for six months and a manger from CBG was appointed to manage the bank. `

Islamic Financial Institutions (IFI)

444. Section 12 of the FIA, 2003 provides that no local financial institution shall carry on Islamic banking business in or outside The Gambia and no foreign institution shall carry on Islamic banking business without a license issued by the CBG. Such a business will only be approved by the CBG if it meets the conditions under Sharia. Where the IFI fails to operate within the provisions in the Act, it shall be liable on conviction to a fine of not less than 100.000 thousand Dalasis.

The Insurance Sector

445. An Insurance (Amendment) Act, 2006 was enacted to regulate the operation of Islamic insurance (Takaful) in The Gambia and was assented to by the President of the Republic of The Gambia on August 31, 2006. Under the new FIA, 2003, the Central Bank is now requiring board members and other senior executives of all insurance institutions to undergo a 'fit and proper' test. Consequently, all financial and non-financial institutions must ensure that all their directors and senior officers complete and forward to the Bank a standard questionnaire together with their curriculum vitae (CVs) for vetting. In February, 2008, the Central Bank issued the first license under that law to an Islamic insurer, Takaful Gambia Limited. With the advent of this new company the number of registered insurance companies in The Gambia now stand at ten (10).

The Micro-Finance Sector

446. The staff of the CBG -Micro Finance Department conducts onsite visit to the NFIs on a quarterly basis. Non-Bank Financial Institutions (NBFIs) are required to submit statutory returns on their operations. There are guidelines on the licensing and operation of Micro Finance Institutions. Recently, the Central Bank took steps to draft a legislation that will regulate all forms of MFIs, which culminated in a Bill that is currently before the National Assembly for consideration. When it becomes law, the new piece of legislation will strengthen the CBG's position regarding the oversight responsibility on MFIs.

Foreign exchange bureaux

447. The Foreign Exchange Department is responsible for the monitoring and supervision of BDCs. There are guidelines regarding their licensing and operations. All foreign exchange bureaux are required to keep track of transactions with their Customers. The supervision processes for BDCs are similar to the supervision of other financial institutions.

448. Staff of the FED visit BDCs who are registered with the CBG as part of its supervisory mandate to conduct onsite examination of their books. FED has the mandate to impose sanctions or monetary fines for non-compliance as provided in the relevant guidelines. As part of its regulatory functions, the Central Bank has also approved a market code of conduct for the foreign currency administration. However, there still exist some money changers who are not licensed and thus remain outside the supervisory framework. These money changers are operating in the suburbs and border villages where they are less likely to be tracked down by supervisory authorities.

Application of Prudential Regulations to AML/CFT:

449. All financial and non financial institutions are subject to the Basel Core Principles and issues related to licensing, structure, risk management processes (in some FIs), and ongoing supervision, are part of the prudential measures. However, the prudential regulations do not cover the AML/CFT measures. The examination procedure manual would need to be revised to ensure that the prudential measures include the application of AML/CFT measures as well. At the moment, compliance with AML/CFT measures has not commenced and would require a functional FIU to be able to take off effectively.

Licensing or Registration and Monitoring of Value Transfer Service

450. The FIA requires CBG to license and supervise value transfer services and foreign exchange dealers. The Assessors were of the view that many of the value transfer service providers and bureaux de change are unregulated despite the provisions in the laws. The ML Act covers value transfer services for the purpose of ensuring that they are in compliance with AML/CFT measures but the implementation of the requirements of the MLA in this regard had not commenced as at the time of the onsite visit.

Licensing and Regulation of other FIs

451. The CBG has not conducted a risk assessment in the informal sector or the other financial sector that is currently unregulated to determine the level of AML/CFT risks and threats that these sector or those that do not apply the Core Principles pose to The Gambian financial system. The FIA requires that all FIs and NFIs must be licensed, registered, regulated and supervised. However there is no effective mechanism in place to monitor the implementation of the Act regarding the other financial institutions, the informal and unregulated sector.

Ongoing Supervision and Monitoring - Recommendation 23 (23.4-23.7)

452. The CBG is responsible for ensuring that all Directors, majority shareholders and senior management of financial and non financial institutions undergo "fit and proper" test before employment. Institutions that engage in money transfer services are issued licence which is renewable on a yearly basis.

Insurance Business:

453. Financial institutions such as insurance companies and micro finance companies are subjected to supervision after registration or licensing process. The Supervisory process for all financial institutions and non-financial institutions are guided by the Basel Core principles. Thus the licensing and on-going supervision are observed.

454. There is presently no effective system for monitoring and ensuring compliance with requirements to combat money laundering and terrorist financing. No effective oversight has commenced with regards to other institutions such as insurance companies, finance and investment companies and bureaux de change.

Overall supervision

455. The current regulatory and supervisory framework requires FIs to observe and implement AML/CFT measures but the supervision has not been effective.

Ongoing supervision and monitoring framework

456. Under Section 19 of the ML Act 2003, the Supervisory Authority is expected to supervise FIs for compliance with AML/CFT measures. However, effective implementation of these powers has not commenced as the CBG/FIU, the key Supervisory authority still lack the capacity to do so.

Training of Supervisory Staff

457. There is an ongoing effort to train staff of the Supervisory Authority but there is need for further training. There is some level of independence in the prudential supervisory process. However, there is need for additional resources including personnel, and more specialized training on the implementation of AML/CFT measures.

Authorities, powers and sanctions - Recommendation 29 & 17

458. Supervisors have adequate powers under the FIA 2003, the MLA 2003 as well as the Guideline One and the Prompt Corrective Action. Sections 26 & 27 of the FIA, and the MLA 2003 empower the CBG and the FIU to conduct inspections of FIS and NFIs. Section 24 of the FIA and section 11 (f) of the MLA empower the supervisor to ask for records of the FIs or conduct onsite examination of the FI whenever it deems it necessary and expedient in order to determine whether or not the institution is sound or

to ensure that the requirements of the FIA have been complied with in the conduct of its business. The examination may extend to any of the FIs associates or affiliates located in The Gambia.

459. The FIU or the CBG may have access to all books, minutes, internal, operation manuals, accounts, cash, securities, document vouchers and other documents relating to business in The Gambia. Access is not predicated upon court order. Failure to produce the document will lead to conviction and fine not exceeding 1,000 Dalasis for every day the default occurs. Production of false document is an offence and the offender will be liable to a fine of not less than 20,000 Dalasis on conviction and or imprisonment term of five years.

Monitoring of AML/CFT by Supervisors

460. The MLA and FIA empower the CBG and the FIU to monitor compliance of FIs with AML/CFT measures in the country and to ensure that the measures that FIs have put in place are consistent with the FATF Recommendations.

AML/CFT Inspections by Supervisors

461. Section 11 of the MLA and Section 26 of the FIA, the CBG has the authority to inspect FIs to ensure that they are in compliance with their obligations under the ML Act. The inspection visit includes the inspection of books, review of policies, procedures, and transaction records.

Power to Compel Record by Supervisors

462. Under Section 13 of the MLA, Section 44 of the Insurance Act (IA), and Section 27 of the FIA, the CBG has the authority to compel FIs to produce all documents relevant to monitoring compliance. The documents to be produced may include accounts or other business relationships, transaction records, and reports related to STRs.

Power of Enforcement and Sanction by Supervisor

463. The power to sanction financial institutions and non-financial institutions resides with the CBG. These powers are derived from the FIA

and the CBG Act. The FIA Sections 9(1), 11, 20(4-7), 25(6), 28, 31(2), 34, 41, and 42 provide sanctions for various violations. The sanctions range from suspension, seizure, revocation and cancellation of operating licenses to taking possession of an institution.

464. A cursory examination of two banks reports showed that the supervisory authority is taking steps to enforce the powers provided in the FIA and CBG Acts. At one instance a bank was put under prescription and an adviser sent from the CBG to the bank. Banks are pulled up for poor performance and issues such as poor loan management and insider dealing.

465. The supervisory authority also issued a prompt corrective action against some banks in August 2007. The Insurance Act (IA) Sections 10(1), 12(4), 25(1), 34, 36, 48, 51, 65 and 66 provide powers of enforcement and sanctions but the assessors could not confirm the application or the effectiveness of the sanctions against the insurance sector.

Recommendation 17

466. Power of enforcement and sanctions of the supervisors are provided in the MLA, FIA, IA and CBG Act. There are criminal, civil and administrative sanctions available to the authorities with regard to the enforcement of AMLCFT obligations of the FIs. Sections 15 (2), 16, 17 (2), 18 (2), 19 (2), 20 (2), 21 (2), 22 (1), 23 (2), 24, 25, and 28 of the ML Act provide for sanctions related to criminal and civil penalties for both individuals and corporate bodies for various violations. Fines range from 10,000 Dalasis to 1,000,000 Dalasis. Imprisonment terms range from 5 to 15 years.

<u>List of available sanctions:</u>

- When a financial institution or any of its employees, director, owner or other authorized person willfully fails to file STRs or files a false report, the financial institution or any other person shall be liable on conviction to a fine of 50,000 Dalasis and in addition, the license to operate may be suspended or revoked by the CBG in accordance with the FI Act; and Section 4 (6) ML Act
- For money laundering offences, the penalty for an individual is a fine of not less than 100,000 Dalasis or imprisonment of not less than five years or more than fifteen years and for body corporate, a fine of not less than 500,000 Dalasis (Section 17 (2) MLA);

- For laundering of funds obtained through specified unlawful activities, the fine for financial institution or body corporate is 1,000,000 Dalasis and for directors or officers of the corporate body or other person, the penalty is five years imprisonment with no option of a fine (Section 18 (2);

Other Types of Sanctions

- Tipping off by chief executives or employees of a financial institution;
- Making or accepting cash payment above the limit authorized under the Act;
- Refraining from making the report required under the Act;
- Destroying or removing a register or record required to be kept under this Act;
- Failure to report an international transfer of funds or securities required to be reported under the Act;
- For transporting money in or through The Gambia with the purpose of carrying out unlawful activity;
- Giving advance information prejudicial to investigation, falsification and concealment of document, and conversion of property.

467. Any person who commits any of the offences listed above – (i) in case of an individual, shall be liable to a fine of not less than 100,000 Dalasis or imprisonment term of not less than five years or not more than fifteen years or to both the fine and imprisonment. (ii) In the case of a corporate body, to a fine of not less than one million Dalasis. A person who commits any of the offences listed above may in addition to the penalty be banned permanently or for a period of five years from practicing the profession which provided the opportunity for the offence to be committed.

468. There are also provisions for freezing and confiscation of assets of persons and entities convicted of committing any of the offences under the Act. The FIA Sections 9(1), 11, 20(4-7), 25(6), 28, 31(2), 34, 41, and 42 also provide sanctions for various violations. The sanctions include fines, suspensions, revocation, and taking possession of an institution. In addition, CBG Act Section 63(6) also permits the supervisor to sanction FIs for failure to maintain required reserves.

469. The Insurance Act (IA) Sections 10(1), 12(4), 25(1), 34, 36, 48, 51, 65 and 66 provide powers of enforcement and sanctions but the assessors cannot confirm effectiveness.

Adequacy of powers, including on-site inspection and access to information

470. The power to apply sanctions is broad, proportionate and includes dissuasive and deterrent actions but they have not been effectively utilized by the Authorities. The CBG is the designated body empowered to apply the sanctions. The ML Act does not cover the full extent of businesses or professions that are required to be by the FATF Recommendations.

471. The powers to access information are adequate; however onsite inspections are not regular and AML/CFT measures compliance inspection has not commenced.

Statistics on Sanctions

472. The CBG reported that banks have been sanctioned in the past for failure to comply with prudential guidelines. In one case, a bank was put under prescription and an adviser sent from the CBG to the bank. Banks are pulled up for poor performance and on issues such as loan management and insider dealing. The supervisory authority also issued a prompt corrective action against a bank in August 2007.

Guidelines

Recommendation 25 – (guidelines for financial institutions other than on STRs)

473. For prudential purposes, the CBG has been active in issuing guidelines. Several guidelines have been issued on the basis of the FIA, including the KYC/CDD document. However, with respect to the implementation of the ML Act, the FIU is at the early stages of drafting and developing guidelines and a lot of work still remains to be done in order to ensure the effective provision of guidance notes to FIs & NFIs regarding the AML/CFT measures in the country.

474. During the onsite visit, the Assessors were informed that the CBG has only recently issued one guidance note to assist financial institutions in

understanding their obligations under the AML/CFT regime but the guidance was not well drafted, not widely circulated and no training has been provided to ensure effective implementation. The FIs informed the Assessor that the guidance was issued a week before the onsite visit in a one day training session conducted by the CBG for the first time since the enactment of the ML Act in 2003 and since the establishment of the FIU in 2006. The DNFBPs that are covered under the Act have not been provided with any guidance regarding their obligations under the AML/CFT laws.

Provision of feedback

475. No feedback has been provided to the FIs, NFIs and DNFBPs. There is no mechanism in place for acknowledging receipt of STRs, and no feedback mechanism has been developed.

3.10.2 Recommendations and Comments 17, 29, 23, and 25

Recommendation 23:

476. In terms of prudential examination, reporting and remedial actions, and CBG's supervision has been broadly adequate. The CBG has adequate supervisory and enforcement powers under the law to ensure that FIs comply with the money laundering and counter financing of terrorism legislation. The CBG have been conducting the fit and proper test on applicants and senior employees to ensure criminals do not own or control FIs. However there has not been any supervision of the implementation of ML requirements beyond the basic account opening formalities.

477. Although the MLA mandates the FIU to monitor and ensure FIs' compliance with FATF Recommendations, lack of effective implementation of the MLA has impeded the overall effectiveness of the AML/CFT measures.

478. While the CBG has sanctioned a few FIs, there is no record to show that insurance companies, MFIs and MVTs have been sanctioned. In addition many foreign exchange operators and MVTs are operating without proper regulation in The Gambia. The CBG have been unable to apply the available sanctions in the law adequately on FIs and NFIs that do not comply with prudential guidelines. Therefore due to non-implementation of AML/CFT supervisory measures as provided under the ML Act and the

GCDD principles, the Assessors are of the opinion that the sanctions have not been tested.

479. The CBG has not conducted risk assessment in the financial sector or in the informal sector and therefore is not able to determine the sectors that are vulnerable to money laundering and terrorist financing and whether there is need to regulate and license other FIs that are not subject to the Core Principles. The Assessors were of the opinion that if the recommendations below are implemented, the supervisory and enforcement powers would become effective:

Recommendations 23 and 29:

- The CBG should formally cover all the AML/CFT measures in its supervision and onsite examination.
- The ML Act should be reviewed to cover the FATF Recommendations comprehensively with regards to DNFBPs, and other unlicensed and unregulated sector.
- Onsite examinations should be extended to the DNFBPs included in the Act.
- The FIU should monitor and ensure compliance by FIs, and NFIs with requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations.

Recommendation 25:

- The FIU should develop appropriate regulations and guidance notes including typologies, and ML/FT trends for the FIs
- The FIU should conduct risk assessments to determine the vulnerable sectors for the purpose of developing further regulations and applying its limited resources in high risk sectors.
- The CBG should take steps to implement the sanctions contained in the FIA and MLA 2003.
- Provide guidance notes and train financial institutions and DNFBPs on how to implement the guidance notes
- Develop a feedback mechanism based on the FATF Best Practices Guidelines on Providing Feedback to FIs and Other Persons.

Recommendation 17:

- The powers to apply sanctions should be diligently utilized if and when necessary;

- Sanctions should apply to all FIs, NFIs, and DNFBPs

Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of Factors Underlying Rating
23	**NC**	• there has not been an effective implementation omoney 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 • Resources available to supervision authorities are limited
29	**NC**	• There has been no effective implementation of supervisory powers under the ML Act. • Supervision of FIs, NFIs and DNFBPs for AML/CFT compliance has not commenced • There is no measure in place for ongoing supervision and monitoring of AML/CFT compliance by FIs
R.17	**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
R.25	**NC**	• The Authorities have not issued any guidelines to assist DNFBPs to comply with the AML/CFT measures in the country • No typologies or risk assessments have been undertaken. • There is no feedback mechanism in place between the CBG/FIU and the FIs

3.11 Money Value Transfer Services (SR VI)

2.7.1 Description and Analysis

Special Recommendation VI

Legal Framework:

480. Money Value Transfer Services (MVTs) are covered in the ML Act, 2003 and the FI Act as a financial institution.

Designation of Licensing Authority:

481. MVT services fall under the categories of financial activities in the FI Act to be licensed by the CBG.

Application of Recommendations:

482. MVT services are financial activities so that all AML/CFT measures that apply to FIs apply to them.

Monitoring of MVT Service Operators:

483. Although MVT services are covered under the ML Act, MVT services operating in the country, operate through banks licensed under the FI Act. Therefore they are monitored during on-site examinations.

List of Agents of MVT Service Operators:

484. MVT Services fall under the Act and money transmission is done through banks. This implies that all agents are recorded.

Sanctions:

485. MVT Services fall under the Act so that all sanctions for non-compliance with MLA that apply to FIs apply to them.

Additional Elements:

486. Money or value transfer services providers are licensed by the Central Bank and are subject to all the supervisory measures to which FIs are subject to.

2.7.2 Recommendations and Comments

487. 507. The CBG is licensing and conducting prudential examinations on registered MVTs consistent with those measures applicable to FIs and NFIs. A list of MVTs that are registered with the CBG is available.

488. Examination Procedural Manual does not have any aspect of MVT service operators, meaning that examination of MVTs are done on an adhoc basis. There has been no effective implementation of the AML/CFT measures in this sector. Nonetheless MVT services operating in the country, such as Western Union, are agents of well known global networks of formal MVT operators. Discussions with the operators suggest that they comply with their group –operating policies and standards on AML/CFT and therefore are subject to their group policies when dealing with Customers.

489. While the MVTs are subject under the law to AML/CFT measures; they have not been issued any guidance regarding their obligation under the ML Act. No AML/CFT examination or inspections have been conducted and risk assessment has not been conducted for this sector. No MVT have been sanctioned either for non-compliance with their obligation under the FI Act or the ML Act.

490. The Assessors recommended that the CBG/FIU should undertake a risk assessment of this sector in order to determine its vulnerability. Further steps should be taken to develop appropriate AML/CFT guidance for this sector. Monitoring for AML/CFT compliance should commence without further delay.

2.7.3 Compliance with Special Recommendation VI

Rec.	**Rating**	Summary of Factors Underlying Rating
SR.VI	**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 non-compliance with the ML Act. • There is no effective implementation of the SR VI obligations by the SA/FIU.

4. PREVENTIVE MEASURES – DESIGNATED NO-FINANCIAL BUSINESSES AND PROFESSIONS (DNFPBS)

Basic legal obligations

491. Not all the categories of DNFPBs as defined by the FATF Methodology are found in The Gambia. Of the ones that are, not all of them are covered by the Money Laundering Act 2003. The DNFPBs that do fall within the ambit of the Money Laundering Act 2003 however, are not being supervised for compliance with AML/CFT measures.

Casinos

492. The Money Laundering Act 2003 applies to casinos by virtue of their inclusion in paragraph 19 of the Schedule to the ML Act. The Ministry of Tourism is responsible for the regulation of Casinos in designated tourist areas. The Gambia Revenue Authority regulates the casinos in all other areas. There was no evidence of internet gambling business operated out of Gambia. The casinos are currently subject to the regulatory requirements for health and safety issues; alcohol licensing; fire and the correct operation of the games and equipment used in that business.

493. There is no KYC or AML/CFT supervision of any kind carried out on the Customers using the facilities. There is no requirement for the Casinos to apply the threshold when they deal in financial transactions equal to, or above$3.000 US Dollars. Nor are there any immediate plans to put casinos under any compliance supervision for AML/CFT purposes. The FIU sent out the form for reporting STRs to all casinos just before the onsite visit.

Real Estate Agents

494. The Money Laundering Act, 2003 applies to real estate agents by virtue of their inclusion in paragraph 15 of the Schedule to the ML Act. At the moment, they are totally unregulated and the Authorities have not undertaken any supervision visit to this sector with regards to their AML/CFT obligation.

Dealers in Precious Metals & Stones

495. The Money Laundering Act 2003 applies to Bullion Dealing by virtue of their inclusion in paragraph 5 in the Schedule to the ML Act. However the authorities stated that there are very few dealers in precious metals and stones operating in The Gambia, since there is not much precious metal and stone in the country. No AML/CFT supervision has been conducted for this sector and no threat or risk assessment has been conducted.

Trust Company & Service Providers (TCSPs)

496. The Money Laundering Act 2003 applies to Trust Service Providers by virtue of their inclusion in paragraph 20 in Schedule to the ML Act. The Authorities noted that there are no businesses in Gambia operating a Corporate or Trust Service Provider role. The creation of Trusts in The Gambia is extremely minimal even though this is permitted under their laws. The lawyers reported, however, that they undertake trust business but do not necessarily have to register it with the Registrar General's office. There has not been a threat or risk assessment of any of the DNFBPs to determine the ML/FT trends and their operational mechanisms. There has been no supervision of this sector for AML/CFT compliance.

Lawyers, Notaries, Other Independent Legal Professions & Accountants

497. There is no AML/CFT regime for accountants, lawyers or notaries, nor are there any regulatory controls of them for AML/CFT purposes undertaken by any self regulating organization or association.

498. All Legal Practitioners have to be members of The Gambia Bar Association. The authorities have not consulted with the Legal Practitioners on any aspect of AML/CFT matters nor issued them with any guidance. The same applies to Notaries.

499. All qualified accountants working in The Gambia have to be members of The Gambia Association of Accountants. The members of the Association are trying to set up an Institute of Accountants. Even though the Money Laundering Act 2003 does not apply to their profession, the Association organized a training seminar on money laundering prevention for their members in August 2004. They also hired a legal consultant to draft some guidance for circulation to their membership along with a copy of the ML

Act. The Association has also sent one member to attend a money laundering course in London and another to a forensic accounting course held in South Africa. They plan to organize further seminars on anti-money laundering for their members in due course.

4.1 Customer due diligence and recording keeping (R.12)

Recommendation 12, applying R. 5, 6, 8 - 11,

Description and Analysis

500. The Customer due diligence, record keeping, and suspicious transaction reporting requirements aspect of the Money Laundering Act, 2003 apply in full to bullion dealers, casinos, real estate agents and trust businesses. The Central Bank has sent copies of its Suspicious or Unusual Transaction Report form to the casinos, along with copies of training slides used at a two hour seminar they organized a week before the onsite visit.

501. The Customer due diligence, record keeping and suspicious transaction reporting requirements do not apply to accountants, corporate service providers, dealers in precious stones, lawyers or notaries. The Authorities have provided no training or guidance to these sectors regarding the reporting of STRs.

4.1.2 Recommendations and comments

502. The Assessors recommended that the authorities should consider implementing the following measures in order to ensure full compliance with AML/CFT measures by the DNFBPs:

- Amend Schedule 1 of the Money Laundering Act 2003 to make the required relevant provisions apply to all DNFBPs as provided in the FATF glossary.
- Bring all DNFBPs under regulatory and supervision measures for AML/CFT purposes either under a governmental department or a relevant SRO.
- Provide, or direct relevant SROs to provide, appropriate AML/CFT guidance to all DNFBPs.

- Include an exemption for STR obligations for legal professionals when the matter in question is subject to legal privileges.
- Develop a cooperation and coordination mechanism between the FIU and DNFBPs for effective reporting and monitoring.

4.1.3 Compliance with Recommendations 12

	Rating	Summary of factors underlying rating
R.12	**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 • 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. Applying R.6. • 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.

		<u>Applying R. 11.</u> • 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. <u>Recommendation 12</u> • 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.

4.2 Suspicious transaction reporting, R. 16 (Applying R13 – 15 & 21)

Description and Analysis

Recommendation 16

Reporting to FIU

503. The Money Laundering Act 2003 only applies in full to bullion dealers, casinos, real estate agents and trust businesses. The statutory provision regarding the making of STRs therefore applies to those businesses and professions only.

504. The FIU has not established any coordination mechanism with the DNFPBs that are covered under the Act. No guidance notes have been developed for STRs submission to the FIU by the DNFBPs. There is no obligation to report STRs when the Casino is dealing in a financial transaction that exceeds the $3,000 USD threshold as provided by FATF. The casinos were only given a copy of the proposed STR form and copies of the presentation from a two hour training course held by the Central Bank in April 2008.

505. There are no statutory or regulatory provisions which apply R. 13.1 – 13.4 to accountants, corporate service providers, dealers in precious stones, lawyers or notaries. Therefore they are under no legal requirement to submit STRs to the FIU.

Protection for reporting suspicious transaction and protection of tipping off

506. As bullion dealers, casinos, real estate agents and trust businesses are covered by the Money Laundering Act 2003, Section 4(4) that gives protection from criminal, civil or administrative liability to reporting entities applies them too. The Act states;

"*When the report…is made in good faith, the financial institution and its employees, directors, owner, or other representative as authorized by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative,*

regulatory or administrative provision, regardless of the result of the information."

507. Likewise, Section 20 of the Money Laundering Act 2003 prohibits them from "tipping off." The paragraph states:

"*(1) A person who, knowingly or suspecting that an investigation into money laundering has been, is being or is about to be made, divulges to another person a fact or other information that is likely to prejudice the investigation commits an offence.*

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of one hundred thousand Dalasis or imprisonment for a term of not less than five years or more than fifteen rears or to both the fine and imprisonment."

508. Those DNFBPs not included in Schedule 1 of the Money Laundering Act 2003 are not under regulatory or statutory control for AML/CFT purposes. The provisions in Sections 4 & 20 described above do not extend to them and therefore they are not protected from both criminal and civil liability if they were to make a STR. There are also no prohibitions which apply to those DNFBPs not covered regarding disclosing the fact that STR or related information is being reported or provided to the FIU.

Internal controls, compliance and audit

509. There is no mechanism in place to apply R. 15.1 – 15.4 to DNFBPs. The covered DNFBPs are not required to appoint compliance officers, train their officers on AML/CFT measures or develop internal control structures, policies and procedure which must be subject to internal and external audit.

Special attention to relationship involving countries that inadequately applying AML/CFT measures and counter- measures

510. There have been no provisions made by The Gambia Authorities to apply R. 21.1 – 21.3 to DNFBPs

Recommendations and Comments

511. The Authorities should consider taking additional steps to bring all the DNFBPs in compliance with AML/CFT measures as recommended below:

- Amend the Money Laundering Act 2003 to make the required relevant provisions apply to all DNFBPs
- Bring DNFBPs under regulatory control for AML/CFT purposes either under a government department or a relevant SRO
- Require a relevant SRO to provide, appropriate AML/CFT guidance to DNFBPs
- Include an exemption for STR obligations for legal professionals when the matter relates to, or is subject to legal privileges.

Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	**NC**	There has been no action to implement the provisions of Recommendation 16 by The Gambian Authorities. 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. 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. Applying R.21. DNFPBS are not obliged to give special attention to businesses located in countries that do not sufficiently apply the FATF Recommendations

4.3 Regulation and Supervision of DNFBPs

4.3.1 Description and Analysis

Recommendation 24

Overview of DNFBP supervisors

512. Casinos in designated tourist areas are licensed by the Department of State for Tourism. Casinos in other areas are licensed by The Gambian Revenue Authority. The regulatory regime is currently only for operative and health and safety measures. There is no regulatory oversight for AML/CFT issues. The same applies for other DNFBPs.

Recommendation 25 – *(Guidance for DNFBP other than guidance on STRs)*

513. No effective AML/CFT guidance has been issued to DNFBPs by either the authorities or any relevant SROs. As the FIU has not been functional, there has been no STR procedures established for this sector. As a result of this, DNFBPs have not been provided with feedback.

Recommendations and Comments R.24 & R.25:

514. The Authorities should consider:

- Amending the Money Laundering Act 2003 to make the required relevant provisions apply to DNFBPs.
- Bring DNFBPs under regulatory control for AML/CFT purposes either under a government department or a relevant SRO.
- Require a relevant SRO to provide, appropriate AML/CFT guidance to DNFBPs.

Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors underlying rating
R.24	**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 Recommendations 24 by The Gambian authorities.
R. 25	**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 Recommendations 25 by The Gambian authorities

4.4 Other non- financial businesses and professions (R.20)

4.4.1 Description and Analysis

Recommendation 20

515. The Money Laundering Act 2003 does not currently apply to all non – financial businesses and professions (other than DNFBPs) that are at risk of being used for money laundering or terrorist financing. The Authorities have considered and included only pawnshops and gambling businesses under Schedule 1 of the Money Laundering Act 2003. However, there is no process for implementing or monitoring the pawn shops and the gambling business for AML/CFT compliance.

516. The Authorities have not given effect to existing measures to limit the use of cash in the economy. Given the circumstances, the reduction on the reliance of cash in the economy is likely to be a long-term project. The Authorities, however, do not issue large denomination bank notes. The highest denomination is 100 Dalasis.

4.4.2 Recommendations and Comments

517. The Authorities should consider and implement the following additional measures:

- Conducting an assessment of the level of ML & TF risk posed by non financial businesses and professions (other than DNFBPs).
- Ensure that there are effective monitoring and supervision of these businesses when they are covered under the ML Act.
- Adopt appropriate measures to reduce the circulation and use of cash in commercial transactions
- Encourage the use of non-cash means of payment that facilitate the identification of the participants concerned.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors relevant to underlying overall rating
R20	**NC**	• There has been no assessment of the level of ML and TF risk posed by other DNFBPs.

		• No requirement for the covered DNFBPs to report to the FIU • No mechanism in place to monitor the pawn shops and the gambling business for AML/CFT matters. • There is no mechanism in place to implement the use of modern techniques to manage payment systems in the country.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

518. The 1955 Companies Code is the legal framework for the registration of legal persons including trust companies, foundations, charities and NGOs. The Registrar-General (RG) is responsible for the implementation of the Companies Code. The RG is located at the Department of State for Justice and is supervised by the Attorney-General and Secretary of State for Justice through the Solicitor-General.

519. The Registrar Generals Office is the competent authority to register all legal persons and arrangements. There is a requirement for full disclosure during registration.

Types of companies that can be registered

- Private limited liability companies;
- Unlimited Companies;
- Company Limited by Guarantee (LTD/GTE);
- Business Names (covers "partnership" registration);
- Incorporated Trustees; and
- Foundations.

Mandate of the Registrar include

520. The mandate of the Registrar-General includes:
- Registration of companies, business names, non-profit organizations and Trustees;
- Issuance of certificates to commence business;
- Conduct of search for interested persons;
- Issuance of certified true copies of extracts of filed documents;
- Registration of increase in share capital, mortgages, debentures and charges;

- Processing the statutory filings of –annual returns, alteration of memorandum and articles of association and addresses;
- Maintenance of register of shareholders and change of shareholders;
- Change of names of directors;
- Registration of change of name;
- Change of particulars of allotment;
- Change of registered office address;
- Registration of receivership;
- Registration of appointed liquidators;
- Statement of affairs;
- Conduct of investigation into the affairs of any company, business names or incorporated Trustees;
- Supervision of the management and winding up of companies; and
- Enforcement of compliance with the provisions of Companies Code by corporate bodies;

Registration Process

521. The Registrar-General's Office is the central office for the registration of legal persons. Documentation is not only done at the Registrar's office. Some legal persons register through The Gambia Investment Free Zone. This is based on satisfaction of certain requirements. These requirements include the possession of documents necessary for the registration of the legal persons. Full disclosures regarding the purpose of business, shareholders, location, registered office address, names and addresses of directors are required at the registration stage.

522. Legal persons or arrangement are established upon registration of the Articles of association and Memorandum by the Registrar. The Registrar also retains a copy. Once such a legal arrangement is registered, they can own property such as land, and other assets. They are issued with a certificate of incorporation upon completion of the registration process. Legal persons registered in The Gambia must have a registered office to which all communications and notices may be addressed.

523. The Memorandum contains the number of members with which the company proposes to be registered. Where the company has a share capital, the amount of share capital with which the arrangement proposes to be

registered. Where the memorandum of the company is limited by shares or guarantee, it must also be stated in the memorandum that the liability of its members is limited. If limited by guarantee, it must state that each member undertakes to contribute to the assets of the arrangement in the event of its being wound up.

Registration of business names:

524. The Gambia has in 2005 passed a new legislation for the purpose of registration of Business Names. The new legislation is titled "Business Name Registration Act" The Registrar General (RG) is responsible for the management, application and enforcement of the Act. A person carrying on a business in The Gambia which is not exempted without a certificate granted by the Registrar commits an offence. All business names, except those exempted from time to time by the Secretary of State, are to be registered with the RG.

Incorporation of Financial Institutions

525. The Registrar incorporates financial institutions that purport to operate as banks or provide services that include banking on the approval of the articles of the memorandum and articles of association by the Central Bank.

526. Financial institutions in The Gambia register through the Central Bank. Section 4 of the Financial Institutions Act, 2003 provides that the Bank may permit an applicant to incorporate a bank and on incorporation issue a license to carry on the business of banking. The section requires that an application for a license is to be in writing and include,

(a) the proposed memorandum and articles of association of the financial institution;
(b) the address of the proposed head office of the financial institution, the names and permanent addresses of the persons who will be its directors;
(c) the name and address of the person who will be the chief executive of the financial institution;
(d) the name and permanent residential address of every subscriber of the class or series of shares to be issued by the financial institution in a number not exceeding ten percent of all the shares of that class or series whether the shares carry the right to vote in all circumstances or not;

(e) the addresses of the places of business where it proposes to locate and in the case of a mobile office, the area proposed to be served;
(f) full particulars of business it proposes to carry on;
(g) the amount of its proposed capital; and
(h) such other evidence of the foregoing and additional information as the Bank may prescribe.

Transparency mechanism

527. The mechanism used in the registration and verification of legal persons is transparent. The Company Code requires an applicant to disclose whether the applicant acts in a personal capacity or acts on behalf another person. Non-disclosure of this information attracts a penalty. Members of the corporate entity have access to the information contained in the memorandum and articles of association and this information must be retained in the country where the arrangement is established or registered. The Business Registration Act requires renewal of business name and the filing of annual returns every year. This will enable the RG to determine the number of companies and foundations that are still in business or functional. Failure to renew may lead to cancellation or revocation of business names.

Access to Information

528. The information available from the Registrar General (RG) on legal persons is accessible on payment of a fee. However, it may not be available on a timely basis as the office is still manually driven. Information on registered bodies may take longer time to access. They are also subject to alteration or destruction in the absence of a secured storage system.

529. There are other ways of accessing information related to a corporate body. For instance, if the Registrar General wants to conduct investigation on the affairs of a company based on application of members, the RG would appoint an inspector where such an application is supported by evidence of a good reason for requiring the investigation.

530. The RG may appoint an inspector on other grounds such as: (i) based on a company's special resolution or (ii) by the order of a court. (iii) where the RG based on his/her assessment feels that there are circumstances suggesting that the business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for fraudulent or

unlawful purpose or in a manner oppressive to its members or that it was formed for a fraudulent or unlawful purpose; (iv) RG may also commence investigations where the persons concerned with the formation or management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or (v) that its members have not been given all information with respect to its affairs which they may reasonably expect.

531. Where the matter under inspection shows that the persons involved have committed a criminal offence, the RG will refer the matter to the AG for prosecution.

Bearer Shares

532. This is not applicable in The Gambia.

Reliance on investigative powers

533. The AG can compel information required for prosecution from any officer of a registered company. The ML Act and FI Act permit law enforcement agencies to enter the premises of any financial institution to inspect all documents and records of transactions. They can also compel the company to submit information to them. Where the corporate body fails to produce requested information on the request of the investigation or prosecution authorities, an application will be filed in the court for an order compelling the corporate body to produce the document.

Additional Elements

534. The FIs can access information on beneficial ownership for the purpose of verification of Customers under the CDD requirements.

5.1.2 Recommendations and comments

535. The corporate and other registration of business laws in The Gambia permits for upfront disclosure of the owners and the control structure of corporate bodies and registered entities. By submitting a memorandum and articles of association, the person applying to be registered is required to include names of all those who has interest or control of the majority shares in the body. The FIA Act requires all those on the board of financial

institutions to disclose their beneficial ownership status in cases where somebody is acting on behalf of another person. Beneficial ownership is defined under Section 3 (7) of the ML Act to mean trustee, nominee, agents, or otherwise. However, there is no requirement for verification of this information once they are filed in the registrar.

536. The information is available in the registry on payment of fees. However, the Assessors observed that the process of searching for information is manually driven. There has not been any effort to create an electronic database or a secured buck-up system for the registry. In addition with only three staff, it is practically impossible for information required by public to be available when requested. It was reported that on the average, about 1,000 companies are registered annually, including business names and NPOs. In order to be able to track information registered in the previous 5 to 10 years; more personnel would be required to make the registry efficient. The RG reported that in 2007, 339 associations were registered while 270 companies were registered.

537. The Assessors recommended that the office of the RG should be provided with enough personnel and budget to undertake its tasks under the company code. Additionally, the RG should establish a database for all types of companies, business names, and NPOs so as to facilitate the request for information in a timely manner. The RG should commence the verification of information provided in the registration forms in order to ensure that they are valid.

5.1.3 Compliance with Recommendation 33

Rec.	Rating	Summary of Factors Underlying Rating
R.33	**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. • 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 lost in the process of moving around paper documents.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Process for registration and identification of owners of LTD /GTE Company or Organization.

538. The process of registration and identification of owners of companies limited by shares or guarantee or organizations are as provided by the Companies Code. It provides that the proposed objects of the company are to be delivered to the Registrar for registration of the company. The Registrar must be satisfied that the proposed objects of the company comply with the Companies Code. The memorandum and articles must state

(a) The name of the company, with "Limited" as the last word in the case of a company limited by shares;
(b) The nature of the business or businesses which the company is authorized to carry on, or if the company is not formed for the purpose of carrying on a business, the nature of the object or objects for which it is established;
(c) That the company has, subject to its authorized businesses or objects, all the powers of a natural person of full capacity except in so far as such powers are expressly excluded by the Companies code;
(d) The names of the first directors of the company;
(e) That the powers of the directors are limited in accordance with the Code.
(f) The memorandum of a company limited by shares or guarantee should also state that the liability of its members is limited.

Process for registration of Incorporated Trustees and identification of beneficial owners

539. The process for the registration of Incorporated Trustees is provided for by the Companies Code. This is managed by the Registrar-General. The instruments of trusts are usually prepared by lawyers engaged by the intended trustees. The trust deeds are supposed to be deposited with the registrar after registration by the lawyers.

Transparency Mechanism

540. As in the case of the members and directors of corporate bodies and other legal entities, information on beneficial owners and trustees must be provided at the time of the registration. Non-provision of such information is an offence. The FIA, MLA, and the Business Name Registration Acts provides for the disclosure of identities and those behind a business at the opening of account, and during the establishment of the business name. This information is available at the registry.

Access to Information on Beneficial Owners of Legal Arrangements

541. Members of the public are able to access information on beneficial ownership at the registry on payment of a fee. Information may not be available on a timely and accurate manner due to the fact that The Gambian registry is manually driven, and the data is not available for prompt response to those requesting for information.

Reliance on investigative powers

542. The same powers of the police, AG, and the FIU as described under R.33 are available for the investigation of beneficial ownership and control structures of companies and other legal entities.

Additional Element:

543. The FIs can access information on beneficial ownership for the purpose of verification of Customers under the CDD requirements.

5.2.2 Recommendations and Comments

- The Assessors recommended that the office of the RG should be provided with enough personnel and budget to undertake its tasks under the company code and other laws in this regard.
- Additionally, the RG should establish a database for all types of companies, business names, and NPOs and the beneficial owners registered in all cases.
- The information should be electronically driven so as to facilitate the request for information in a timely manner.

- The RG should commence the verification of information provided in the registration forms in order to ensure that they are valid.

5.2.3 Compliance with Recommendation 34

Rec.	Rating	Summary of Factors Underlying Rating
R.34	**PC**	• Information on beneficial owners are not available on a timely and accurate manner • The RG's office is under-staffed and lacks 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

5.3 Non Profit Organisations (SR VIII)

5.3.1 Description and Analysis

Overview of the sector

544. The Non-Governmental Affairs Agency was established by the Non-Governmental Organizations Decree 1996 (Decree No.81). Ad hoc measures were used previously to manage the activities of NGOs.

545. In 1994, the status of NGOs in The Gambia was reviewed and in 1996 the Decree was enacted to govern the affairs of NGOs. The Agency serves as an administrative link between the NGOs and the Government and its activities are managed by a Board. The Agency ensures that NGOs meet the necessary conditions for registration which is done at the Department of State for Justice. The Agency compiles the list of NGOs in the country and is responsible for monitoring, risk assessment, accountability and integrity. There are currently one hundred and twenty NGOs out of which thirty nine are subsidiaries of international-based NGOs.

546. There is an umbrella organization of NGOs called the Association of NGOs (TANGO). The consortium was established in 1983 and includes national and international NGOs. It has seventy four members of which ten are international. Membership comprises of NGOs concerned with advocacy, human rights and health amongst others. Funding for TANGO is through international agencies and internal fund raising. The consortium acknowledged that they lack the capacity to implement self policing measures on their members.

Registration requirements

547. NGOs are required to apply to the Agency for a clearance certificate before they are registered as a charitable organization under the Companies Code, 1955. The rules of procedure for NGOs are provided in the Protocol of Accord in the First Schedule to the Decree. Amongst other things, they are required to provide their constitution and annual work plan to the NGO Agency annually. They must operate in a transparent and accountable manner. The Code of Conduct for NGOs is to be found in the Second Schedule to the Decree. Registration fees are payable to the Government and the fees are higher for international NGOs.

Outreach to the sector

548. The Agency reported that it verifies the beneficial ownership of NGOs by relying on the information provided in the Constitution of the NGO's Board of trustee and directors. Members are required to supply their addresses. International organizations are required to provide their charity certificates to enable the Agency to verify the genuineness of their objectives. Verification is done by the Agency based on information from individuals within the organization. They also visit embassies in the case of international organizations to verify the registration of international NGOs in their home countries. The NGOs are required to keep their records for at least five years. However, no outreach related to terrorist financing and money laundering has been conducted for the sector by the FIU.

Information on objectives ownership, and control and administration

549. The Central Bank's Guidelines on Customer Due Diligence extends to charities and religious organizations. Charities, NGOs and religious organizations are expected to provide information which includes details of their leadership, aims and objectives, sources of funds and types of projects they plan to execute. Banks are required to obtain details of signatories to the accounts of NPOs and the signatories are accountable for adverse developments regarding the NGOs. Three signatories are required for each account and banks are expected to apply KYC rules to the NGOs.

550. NGOs are expected to submit annual reports, work plans, budget and audited accounts under Article 13 of the First Schedule of the Decree. The Agency would then verify the work plans of NGOs to see how they applied the funds they received. The Agency also undertakes onsite visits to the NGOs project sites to ensure that the resources were prudently applied and that the beneficiaries can attest to this fact. The verification report will form the basis for renewal of the NGO's certificate which is issued provisionally for one year and then for another two years.

Transaction and accounting records

551. Charities, NGOs and religious organizations are expected to provide information which includes details of control, ownership structure, aims and objectives, sources of funds and types of projects they are involved in.

Banks are required to obtain and main these details for 6 years so that it may be used in the future by law enforcement for any type of investigation and not necessarily related to ML/TF.

Powers to investigate and sanction

552. The sanction for the violation of the Protocol and Code of Conduct is the cancellation of certificate of registration after six months notice. If the case is a criminal matter, it will be referred to the Police for further investigation. NGOs, whose certificates are cancelled, may re-apply for a review of their status to the Board of the Agency. The police can freeze an account of an NGO at the request of the Agency pending final investigation of the case against the NGO. Under the ML Act, the GCDD measures, and the Anti-terrorism Act, NGOs are regarded as any other corporate entity and will be subject to the sanctions applicable to groups who collect or provide assistance to terrorists.

553. Charities and the potential role they may play in the funding of terrorism are provided for in Section 26-33 of the Anti-terrorism Act, 2003. The Attorney-General can sign a certificate when there are reasonable grounds to believe that a registered charity is concerned with terrorist financing. On the issuance of this certificate, the matter would then be referred to the National Security Council for review and consideration. The review may result in de-registration of the registered charity. This procedure is however subject to appeal by the NGO to the National Security Council.

554. The Agency has not sensitized NGOs about terrorist financing but is aware that terrorist financing is an emerging threat. Accordingly, the Agency proposes to organize a forum to sensitize NGOs on the subject. The Agency has received some complaints from faith based organizations about dwindling funds probably due to tightened controls from remitting countries. They acknowledged that there is need to check the source of funds of NGOs. TANGO members did not appear to be sensitized about terrorist financing matters and were not forthcoming on any questions on that matter from the Assessors.

Domestic cooperation

555. The Agency collaborates with the local police force and the National Intelligence Agency and provides them with information about the

suspicious activities of NGOs. The Government expects the NGOs to provide information in their annual report about their funding partners but it is difficult to monitor the link between international NGOs and their foreign donors. The Agency works closely with the CBG and financial institutions in the verification of funds that are remitted to NGOs either from a local or international source. The financial records are easily accessible and available to law enforcement agencies. However, the FIU has not developed any strategy regarding how to work with the NGO Agency in the possible filing of STRs and development of guidance for that sector.

International cooperation

556. The Agency collaborates with embassies and other international organization who may wish to verify the background of a specific NGO domiciled in The Gambia. This cooperation is available in a prompt and effective manner.

5.3.2 Recommendations and comments

557. In general, The Gambia authorities has taken remarkable steps to provide for the comprehensive registration and monitoring of NGOs as required by FATF SR VIII. There are mechanisms in place for the verification of those behind the NGOs and charities. The financial records are also available for law enforcement purpose in order to determine if the NGO is involved in raising funds from illicit sources. The powers to sanction charities also for terrorist funding or for any other criminal activity are available to prosecution and law enforcement authorities. However, the Agency responsible for the monitoring of the NGOs is not aware of its mandate with regards to compliance with CFT measures. The onsite examination of NGOs and verification of financial records are restricted to ensuring judicial application of funds. Although the Agency will report to the Police if any suspicious activity is detected, no attempt has been made to provide guidance to the sector regarding what may trigger a CFT investigation. The FIU has not established interface or cooperation mechanisms with the NGO Agency. The system of registration for NGO vehicles is commendable as a safeguard on misuse of charity status of these bodies.

558. The authorities would need to take additional steps to improve coordination, and information sharing across all the relevant agencies. Additional measures to be recommended include,

- TANGO requires additional assistance to strengthen its self monitoring mechanisms.
- Sensitization on CFT is crucial both for the Agency and for NGOs. The FIU should organize a forum for NPOs to apprise them of the CDD guidelines issued by the Bank.
- The review of the NGO Agency Decree should take into account the need to have regulatory guidelines on CFT to complement those in the Anti-Terrorism Act.
- It may be useful for The Gambian authorities to consider laws from other Commonwealth jurisdictions on NPOs to guide the process of The Gambia review.
- The revised law should not however discourage NGOs from providing assistance to those who need their services.

5.3.3 Compliance with Special Recommendation VIII

Rec.	Rating	Summary of Factors Underlying Rating
SR.VIII	**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 are not effective

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National co-operation and co-ordination (R31 & 32)

6.1.1 Description and Analysis

559. The mechanism for the implementation of AML/CFT measures in The Gambia is only just evolving. With the setting up of the FIU and the appointment of the CBG as the implementation agency for the ML Act, efforts are now being made to strengthen the cooperation mechanism across relevant agencies.

560. In February, 2008, an Inter ministerial committee was established to ensure domestic cooperation in the coordination of AML/CFT matters in The Gambia. The Committee met for the first time in March and April, 2008, just before the onsite visit to coordinate the participation of relevant agencies in the mutual evaluation onsite visit by GIABA.

561. The membership of the committee at the moment includes only the National Coordinator for GIABA activities in The Gambia, who is also the Executive Director of the Drugs Enforcement Agency, the Director of FIU/FSD, the representative of the AG, and representative of the Secretary of State for Finance. Most agencies like the police, Customs, immigration, office of the Registrar General, insurance commissioner, foreign exchange department of the CBG, and the NIA are not represented on the committee.

Policy development fora

562. There is no AML/CFT policy development forum in place in The Gambia. The ML Act requires the Supervisory Authority – in this case the FIU - to develop AML/CFT policies and recommend future policy actions to the Secretary of State. In the absence of a strong cooperation framework, no policy has been developed for the enhancement of the implementation of the AML/CFT measures.

Specialized AML subject matter groups

563. There is no cooperation across the agencies on specialized issues such as asset recovery, investigation techniques in financial crime matters or cash smuggling across the borders.

FIU & law enforcement agencies and other national institutions

564. The FIU has not interacted with the law enforcement agencies. No law enforcement official is represented among the staff of the FIU. With the exception of the DEA, no other LEA is represented in the inter-ministerial committee.

Additional Elements:

565. The Inter ministerial committee is expected to provide the forum for discussions of AML/CFT policy matters in the country. It has just been established and will need some time to undertake the task of establishing interface between various agencies. There is no ongoing consultation between the FIU and the DNFBPs which are covered under the law.

6.1.2 Recommendations and comments

566. The Gambia has taken the first step in establishing a high-level inter-ministerial committee and the FIU. The next steps would be to –

- Expand the Committee to include representatives of the Police, Customs, NIA, NGO Agency, and SROs for DNFBPs.
- Commence the development of a national strategy to ensure wide circulation of policy documents and broad consultation with all stakeholders.
- The FIU needs more personnel and adequate funding to make it functional and capable of developing appropriate policies and guidance notes for its engagement with other national institutions and law enforcement agencies

6.1.3 Compliance with Recommendation 31

Rec.	Rating	Summary of Factors Underlying Rating
R.31	**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 membership of 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. • 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.

6.2 THE CONVENTION AND THE UN SPECIAL RESOLUTIONS (R.35 AND SR.1)

6.2.1 Description and Analysis

Recommendation 35 and Special Recommendation 1

567. The Recommendation requires UN Members to sign, ratify, and fully implement the following recommendations:

- United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention);
- United Nations Convention against Transnational Organized Crime (Palermo Convention);
- International Convention for the Suppression of the Financing of Terrorism (CFT Convention);

568. The Gambia has ratified the following Conventions on the following dates:

- The Gambia ratified the Vienna Convention on the 23 April 1996.
- The Palermo Convention was signed on the 14 December 2000 and ratified on the 5 May 2003.
- The Financing of Terrorism Convention has not been ratified; however, the country has implemented its provisions by virtue of Anti-Terrorism Act, 2002.

569. These Conventions have been implemented through the enactment of the following national laws:

  - The Vienna Convention has been implemented in the Drugs Control Act, 2003 (as amended in 2005 – now titled Drug Control Amendment Act, 2005). The Act provides for the regulation of the use and possession of controlled drugs, prohibited drugs and ancillary matters. The Money Laundering Act, 2003 also covers relevant aspects of the Vienna Convention.
  - The Palermo Convention has been implemented in the Money Laundering Act, 2003 ((No. 9 of 2003). The MLA criminalizes money laundering, provides for the supervision and punishment of money laundering and related matters.
  - The provisions of the UN Conventions against terrorism have been implemented in the Anti-Terrorism Act, 2002 (No.6 of 2003). The ATA criminalizes terrorist financing and terrorism, and provides for the pre-emptive measures of search, seizure, asset confiscation and related matters.

Special Recommendation 1

<u>CFT Convention</u>

570. Although The Gambia has not ratified the Convention on the Suppression of Terrorist Financing (SFT), FT is criminalized under the Anti-Terrorism Act, 2002 (No. 6 of 2003) and extends to both legal and natural persons. Natural and legal persons are subject to civil and criminal sanctions. The Act further criminalizes financing of terrorism, terrorist acts, and terrorist groups. The criminalization extends to those who attempt to commit

terrorist financing, those who support them, and those who collect or provide resources and funds for the commission of terrorist Acts. It also covers all the ancillary offences of conspiracy, aiding and abetting the commission of terrorist financing offence.

Implementation of UN Security Council Resolutions (UN/S/RES – applying SR III)

571. The Gambia is implementing its international obligation under the UN/SC/Resolution on terrorist financing including 1267 and its successor resolutions and 1373. The Gambia has submitted reports to the UN 1373 Committee in 2003 and to the 1455 Committee in 2004. The Anti-Terrorism Act provides for the freezing, confiscation and forfeiture of assets of terrorists, and terrorist groups. While there are no procedures in place for the implementation of SR III, the CBG distributes lists of designated persons received from the UN or the US OFAC lists to financial institutions. The mechanism for the implementation of SR III requires further improvement and coordination.

International Cooperation

572. The Anti-Terrorism Act permits multilateral and bilateral cooperation with the international community in the fight against terrorism and terrorist financing. The Gambia has provided assistance to some countries under this framework. The process can be made more effective when the FIU becomes functional.

Additional elements

573. The Gambia has signed various bilateral and multilateral AML instruments such as:

- ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- OAU Convention on the Prevention and Combating of Terrorism, 1999; and

- the Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers;

6.2.2 Recommendations and comments

574. The Republic of The Gambia needs to ratify the Convention for the Suppression of the Financing of Terrorism despite the enactment of the Anti-Terrorism Act. As noted under SR III, the mechanisms for the implementation of UN/SC/Resolutions require additional actions by the Government in order to make it more effective, and result-oriented. The overall implementation of SR.I will be made more effective if the authorities adopt the following recommendations:

- Improve the timely distribution of the lists of designated persons.
- Take steps to ensure the analysis of information received from the FIs by the FIU in a prompt manner,
- Provide feed back to FIs by the FIU.
- Implement an effective procedure for the freezing and unfreezing the assets of listed persons.
- The FIU should be made functional as soon as possible to permit the development of guidance notes for FIs.
- Develop mechanisms for the coordination of national and international cooperation across relevant agencies.

6.2.3 Compliance with Recommendation 35 and Special Recommendation 1

Rec.	Rating	Summary of Factors Underlying Rating
R.35	**LC**	• The FT Convention has not been ratified. • The implementation of the ML Act, Anti-terrorism Act, and the Drugs Act is not effective across all the agencies.
SR. 1	**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.

6.3 Mutual Legal Assistance (R.36-38, SR V, R. 32)

6.3.1 *Description and Analysis*

Legislation

575. Mutual Legal Assistance (MLA) provisions can be found in Part VI of the Money Laundering Act 2003 (No 9 of 2003) and in Part VI of the Anti-Terrorism Act (No.6 of 2003). Mutual legal assistance in The Gambia is based on the principle of reciprocity.

576. Section 32 of the Money Laundering Act, 2003 provides that the Court or the competent authority may receive a request from the Court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds or instrumentalities connected to money laundering offences, and may take appropriate actions.

577. Section 32 (3) of the ML Act further provides that a final order or judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to a money laundering offence issued by a court or other competent authority of another State, may be recognized as evidence that the property or proceeds or instrumentalities referred to in the order or judgment may be subject to forfeiture in accordance with the law.

578. The court or the competent authority under 32 (4) may receive and take appropriate measures with respect to a request from a court or other competent authority of another State, for assistance related to any civil, criminal or administrative investigation, prosecution or proceedings, as the case may be, involving money laundering offence or violations of any provisions of the Act.

579. Assistance under 32 (4) section may include, (i) providing original or certified copies of relevant documents and record from financial institutions and government agencies; (ii) obtaining testimony in the requested State; (iii) facilitating the voluntary presence or availability in the requesting State, of persons, including those in custody, to give testimony; (iv) locating or identifying persons; (v) service of documents; (vi) examining of objects and places; (vii) executing searches and seizures; (viii) providing information and evidentiary items and provisional measures.

Recommendation 36 and SR V

Laws

580. The Gambia does not have a Mutual Legal Assistance Act but there is a provision in Part V1 of the Anti-Terrorism Act on the mutual legal assistance and extradition in cases of terrorism which largely accord with the CFT Convention. Under section 39-47 of the Anti-Terrorism Act, requests can be made to the Government of The Gambia to search for and gather evidence related to terrorists acts. Prisoners may also be transferred to other countries to act as witnesses.

MLA channels that can be used by The Gambian authorities

581. The authorities of The Gambia use the same MLA channels as requesting States. Section 39 covers situations where a foreign state is requesting for assistance in a terrorist case from The Gambia while Section 42 covers cases where The Gambia requires the assistance or wishes to request for assistance from a foreign state.

582. Under Section 39, the process is initiated by the Secretary of State for Foreign Affairs (SOSFA) after consultation with the AG. Such a request may be granted or rejected. If rejected, the SOSFA will inform the foreign State the reason for refusing or delaying the granting of the request.

583. Where it is to be granted, the SOSFA will apply to a judge in chambers for an order in writing for – (i) search and entry of specified premises; (ii) search of any specified person; (iii) removal of any relevant document or material; (iv) an attachment order; (v) property tracking order or an order to freeze or forfeiture of property. The Judge may make the order as he/she deems fit, including any condition as to the payment of debts, sale, transfer or disposal of any property. Where the request is related to the release of a prisoner in The Gambia, the SOS in consultation with the AG shall issue an order for the transfer of such a person to the requesting country.

584. With regards to Section 42 of the ATA, it provides that the Secretary of State may after consultation with the Attorney-General, make a request to any foreign State to provide evidence or information relevant to an offence

under the Act or for the restraint or forfeiture of property located in that State and which is liable to be forfeited by reason of it being a terrorist property. The request is signed by the Secretary of State for Foreign Affairs as the appropriate authority to request such information from a foreign state. In such a situation, the SOS will submit an application to the Judge in Chambers.

585. Evidence taken pursuant to a request under Section 42 in any proceedings in a foreign State, may if it is authenticated, *be prima facie* admissible in any proceedings to which the evidence relates. A document is authenticated if it meets the following requirements: (i) If it is signed or certified by a judge or magistrate or officer of a foreign State; (ii) if it is authenticated by the oath or affirmation of a witness or is sealed with an official or public seal of a Secretary of State, of Foreign State.

Restriction in the granting of MLA requests

586. Section 32 (6) of the ML Act, 2003 provide that the MLA shall only be provided to countries with which The Gambia has entered into mutual assistance treaties on a bilateral or multilateral basis and all assistance shall be subject to the terms of the treaties.

Timeliness of responses to MLA requests

587. The Gambian authorities informed the assessors that the time for response to mutual legal assistance requests depend on the circumstances, and the subject matter of the request. This is because the MLA process depends on the application of the due process of law, including obtaining an order for the court for the conduct of searches or for production of documents. The Gambian officials further emphasized that response to mutual legal assistance is sometimes cumbersome due to the difference in the legal system of the requesting State and that of The Gambia. This is generally the case when the country is a Francophone country.

Mutual Legal Assistance Treaties

588. There are bilateral arrangements on the exchange of information on security matters. Co-operation agreements also exist in judicial and criminal investigations between The Gambia and other States.

Multilateral agreements

589. This can be found in a range of international and regional conventions and protocols that Gambia is party to. They include,

- United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), 1988;
- United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000;
- Cap 235 LFN 1990 on Mutual Legal Assistance with Commonwealth Member States;
- ECOWAS/GIABA Statute aimed at combating money laundering and terrorist financing in the West African Region;
- ECOWAS Protocol on Mutual Legal Assistance;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- OAU Convention on the Prevention and Combating of Terrorism, 1999;
- the Plan of Action for the Prevention and Combating of Terrorism adopted by OAU in 2002 at Algiers

Refusal of MLA involving fiscal matters

590. Requests for cooperation may be refused on the ground that tax offence is not a predicate offence under the ML Act. The punishment for filing misleading tax returns or tax fraud is one year which is below the two years penalty threshold required under the ML Act.

Refusal of MLA requests on grounds of banking secrecy provisions

591. Section 36 of the ML Act states that the provisions of the ML Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other law. This provision is however, subject to The Gambia Constitution.

Powers of LEA in relation to MLA requests

592. The LEA can apply the powers to search, compel production of document and seize and obtain transaction records, account files and other relevant records maintained by financial institutions in MLA requests. These

powers are provided in the ML Act and the Anti-terrorism Act. They can apply these powers either on their own by serving a search warrant on the person to be searched or through an order of a competent authority or court.

Avoiding conflict of jurisdiction

593. This element is provided for in section 64 of the Anti-terrorism Act. The section provides as follows:
" 64 (1) A Gambian Court shall have jurisdiction to try an offence and apply the penalties specified in the Act where the act constituting the offence under section 3, 4, 5, 6, 7, 11, 15, 18 or 19 has been done or completed outside The Gambia and, (i) the victim is a citizen of The Gambia or has an effective link with The Gambia or is dealing with or on behalf of the Government of The Gambia; (ii) the alleged offender is in The Gambia; or (iii) the alleged offender is in The Gambia, and The Gambia does not extradite him or her.

594. 64 (2) Notwithstanding anything in this Act or any other enactment, a person who, outside The Gambia, commits an act, or omission that, if committed in The Gambia would be an offence under this Act shall be deemed to commit that act or omission in The Gambia if (i) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to an Act of the National Assembly; (ii) the act or omission is committed on an aircraft registered in The Gambia under the Civil Aviation Act or regulations made under it, or (iii) leased without crew and operated by a person who is qualified under the Civil Aviation Act or regulations made under it to be registered as owner of an aircraft in The Gambia under that Act or those regulations; (iv) the person who commits the act or omission (v) is a citizen of The Gambia, or (vi) is not a citizen of any state but ordinarily resides in The Gambia."

Additional elements

595. The powers of the competent authorities may be available on direct request if there is an understanding between counterparts from different countries and this arrangement is recognized by the laws establishing the counterparts in each of the country.

Recommendations and Comments

596. At the moment, the legal regime for mutual legal assistance is based on different pieces of legislation. The provisions in each law, such as the ML Act and the Anti-terrorism Act (ATA), differ from the provisions in the Drugs Act. The competent authority for mutual legal assistance is the SOSFA. As described above, the procedure for the provision of mutual legal assistance under the ATA is more comprehensive and less restrictive than the ML Act.

597. The Assessors were of the view that The Gambia legal system will benefit from a comprehensive MLA legislation which will bring together all the various MLA provisions in different laws in to one document. The authorities would need to develop MLA guidelines or procedures for the law enforcement agencies in order to reduce the time currently required for the processing of MLA requests. The Assessors recommended that the MLA legislation should be enacted in accordance with the UNCAC provisions on MLA which has been described as a good example of a model MLA regime.

598. The difficulty in the implementation of the bilateral agreements on mutual legal assistance should be identified especially where language is a problem or different legal systems between Francophone and Anglophone has posed challenges in the past.

599. Section 36 of the ML Act should be reviewed in order to remove the restriction related to granting of MLA requests only to countries that have signed bilateral or multilateral treaties with The Gambia. It should be possible to provide MLA in cases where FIU, LEAs, CBG counterparts request for prompt response to a request based on MOU or other less formal mechanisms.

Recommendation 37 (dual criminality relating to mutual legal assistance) and SR V

600. Dual criminality is required for the purpose of granting MLA in criminal cases except where this is excluded in a bilateral or multilateral treaty between the two parties. Dual criminality is required even for non – intrusive, and non-compulsory measures because assistance can only be

granted under the ML Act if there is an existing bilateral and multilateral treaty between The Gambia and a requesting country.

601. Under Section 17 (1) (a) (ii) of the ML Act, a predicate offence for money laundering would only be considered for MLA purposes if it is punishable by imprisonment for a term of not less than two years.

602. Under the AT Act, requests can be granted by waiving the conditions specified under Section 44 (3) of the Act where the Secretary of State is satisfied that there is sufficient compliance to enable him or execute the request. With regards to the transfer of prisoners for purpose of trial in a foreign country, the SOSFA can commence the proceedings after consultation with the AG without recourse to the court. Thus, it seems that there is a tendency towards providing broader cooperation under the Anti-terrorism Act as opposed to the ML Act.

Recommendations and comments

603. The ML Act is too restrictive in the application and granting of MLA requests. The restrictions related to signing of bilateral and multilateral treaties should be reviewed. The threshold set for predicate offences of money laundering should be reduced to enable it come within the acceptable international standard and thereby enhance international cooperation in this regard.

Recommendation 38 and SR V

604. The ML Act provides adequately in Sections 28, 29 and 32 that the request of another country should be handled by a Court or competent authority in The Gambia for the purpose of identifying, tracing, freezing, seizing or forfeiting the property or instrumentalities connected to money laundering.

605. However, the list of predicate offences in the Second Schedule to the ML Act is not in consonance with the designated offences in the FATF. FOR Property to be forfeited, it has to be subject to a court order and based on the conviction of the alleged offender for the laundering of proceeds from a predicate offence. Where such a predicate offence is not provided for either under the schedule to the ML Act or if it does not fall within the two

years prison term under section 17, it would be impossible for competent authorities to provide effective and timely assistance as required by R.38

Property of corresponding value

606. The granting of MLA covers property of corresponding value under Section 29 (2) the ML Act which permits the courts to order the forfeiture of any other property of the person convicted for an equivalent value or in the alternative order that the person convicted pay a fine of the equivalent value.

Mechanism for coordinating asset seizure and confiscation actions with other countries

607. There is no mechanism in place in The Gambia for coordinating asset seizure and confiscation actions with other countries.

Consideration of asset forfeiture fund and asset sharing

608. The ML Act and the ATA do not provide for the establishment of asset forfeiture fund. However, under the Drug Control Act, there is a requirement for funds from sale of confiscated assets to be channeled into a fund that will be used by the Drug Enforcement Agency and for the rehabilitation of drug victims. The ML Act does not provide the legislative framework for sharing of confiscated assets; however, the Attorney General may negotiate assets sharing formula with other countries where confiscation is directly or indirectly the result of co-coordinated law enforcement activities.

Additional elements

609. Gambian laws may permit the enforcement of foreign non-criminal confiscation orders even though civil based forfeiture is not yet recognized under existing laws once it can be shown that the order was signed by the appropriate authority in that other country.

Recommendation 32 (statistics)

610. No statistics were provided by the Department of State for Foreign Affairs or the Justice Department on number of MLA Requests received or granted.

6.3.2 Recommendations and comments

611. The ML Act and the Anti-terrorism Act permits the provision of response to MLA requests relating to the identification, freezing and seizure or confiscation of laundered properties from proceeds or instrumentalities used in and instrumentalities intended to be used in the commission of money laundering and terrorist financing offences or other predicate offences. However, such a request will only be granted by the courts if the predicate offence is listed in the schedule to the ML Act and if the penalty prescribed for the predicate offence is within the two years imprisonment term or above as prescribed in the law.

612. The Assessors recommended that the following actions should be taken in order to meet the requirements of these Recommendations:

- The ML Act should be reviewed to reduce the penalty for predicate offences to the threshold set by FATF or to include all the minimum designated categories of offences in the FATF glossary.
- The response to MLA requests from other countries should be made timely and effective.
- The restrictions related to withholding cooperation pending the signing of bilateral and multilateral treaties should be reviewed.
- The law enforcement agencies should put a mechanism in place for coordinating asset seizure and confiscation with other countries.
- The authorities should consider establishing an asset forfeiture fund for or authorizing the sharing of assets with other countries.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.36	**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.

		• There is excessive restriction on the process related to granting of MLA requests under the ML Act • Only 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.
R.37	**PC**	• Dual criminality is required for the granting of assistance under the ML Act. • 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.
R.38	**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.
SR. V	**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.

6.4 Extradition (R.39, 37 & SR.V)

6.4.1 *Description and Analysis*

Recommendation 39 and Special Recommendation V

Legislation

613. There is an Extradition Act (No. 10 of 1986) which provides for the extradition of fugitive persons to, and from Commonwealth countries as well as foreign States. Section 27 of the ML Act provides that the Extradition Act shall be applied to money laundering related offences. Section 35 of the ML Act further provides that money laundering shall be an offence for the purpose of any law relating to extradition or the rendering of fugitives. Any person who commits any of the offences under the list of extraditable offences in the Schedule to the Extradition Act and who is present in The Gambia can be extradited, including Gambian nationals.

614. Within the context of the terrorism Act, Section 45 of the Act states that for the purposes of the Extradition Act, an offence under the Act shall be deemed to be an extraditable offence and not a political offence. A person may be extradited from The Gambia in accordance with the Extradition Act or under a relevant extradition agreement, on the request of an extradition partner for the purpose of prosecuting the person or imposing a sentence on or enforcing a sentence imposed on the person.

The process for granting extradition

615. Under Section 10 of the Extradition Act and the Anti-terrorism Act, an extradition request can be initiated through a request submitted to the court by the AG. If the person subject to the extradition order does not raise any objection, the court, may, without any proceedings grant the order. If the person does not consent to the extradition and remains silent, the court shall proceed to determine the persons' guilt and determine if he/she should be extradited.

616. If the person who is subject to an application for the extradition order is undergoing a sentence in The Gambia for an offence against a law of The Gambia, the court may order a temporary extradition of the person to a foreign State if it is satisfied that the person is liable to be extradited and it is

in the interest of justice to extradite the person. The AG will obtain an undertaking from the requesting country (i) that the person will be tried for the offence of which he is accused;(ii) the return of the person to The Gambia to complete the sentence in The Gambia and (iii) the custody of the person while traveling.

617. The Act provides that no person shall be extradited, except in pursuance of an Order of the Attorney-General (in this Act referred to as an "authority to proceed"), issued as a result of a request made to the Attorney-General by or on behalf of the Government of the foreign State in which the person to be extradited is accused or was convicted. The foreign State shall provide with the request the following information:

a) in the case of a person accused of an offence, a warrant for his arrest issued in that country;

b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement if any, of such sentence which has been served, together with, in each case, the particulars of the person whose extradition is required, and the facts upon which, and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under the provisions of section 9 of this Act.

618. On receipt of such a request, the Attorney-General may issue an authority to proceed, unless it appears to him that an order for extradition of the person concerned could not lawfully be made or would not in fact be made in accordance with the provisions of this Act.

Dual criminality and extradition **(Recommendation 37 and SR. V)**

619. Under section 6 (a) (b) of the Extradition Act, the dual criminality rule applies in The Gambia to all extraditable offences as listed in the Schedule to the Act. The Schedule does not list terrorism or terrorist financing as one of the offences under the Act but the terrorist Act, 2002 made adequate provisions for extradition of persons in terrorist related cases. It would appear however, that the dual criminality rule applies to money laundering offences as well as the terrorist financing cases by extension. This is because the principle of dual criminality is a fundamental legal principle under the Constitution of The Gambia.

Restrictions on Extradition

620. The Extradition Act provides a list of offences which are extraditable and any offence not under the list and which is punishable by an imprisonment term of less than 12 months will not be subject to extradition. The Act requires dual criminality rule to be applied in determining if an offence is an extraditable one.

621. A person shall not be extradited if the offence for which the extradition is accused or convicted of is (i) a political offence; (ii) if he is being requested for to be punished on account of his race, religion, nationality, or political opinion; or (iii) if he will be prejudiced at his trial, or punished or detained or restricted in his personal liberty by reason of race, religion, nationality, or political opinion.

622. Additionally, if the person had already served his complete sentence and has been acquitted of the same offence for which he is being requested for, then The AG will refuse the extradition request.

623. In all the cases described above, the AG is required by law to obtain an undertaking from the requesting State that the person will be tried only for the offence of which he is accused.

Efficiency of Extradition Process

624. There is no record to show the number of extradition requests granted or responded to by the competent authorities. There is nothing to show that the extradition process is efficient. The Assessors were of the opinion that in the absence of a regulation or guidance to law enforcement agencies and prosecutors, and in the absence of any statistics, that the Act was not been efficiently implemented.

Statistics

625. The authorities did not provide any statistics with respect to extradition cases which they have undertaken either with regard to money laundering or terrorist financing.

6.4.2 Recommendations and comments

626. The Gambian's extradition law is broad and has significantly covered the requirements of R.39. However, the Extradition Act would be more efficiently implemented if the list of extraditable offences and the 12months imprisonment term threshold is removed from the Act in order to allow the Act to be extended to as many offences as possible. The authorities should develop measures and procedures to enhance the efficiency of the extradition processes. The Extradition process should be simplified to permit timely transmission of requests from foreign State agencies to counterpart agencies in The Gambia in order to fast track the requests.

Additional Elements

627. There is no simplified process in place. Every request must be channeled through the AG. Persons can only be extradited based on judgment of the court. There is a mechanism for waiving the court proceedings where the person to be extradited does not object to the extradition.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.37	**PC**	• The restriction of extradition requests to the list of extraditable offences inhibits cooperation. • Dual criminality is required in all extraditable offences.
R.39	**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.
SR. V	**LC**	• Cooperation is only restricted to those who has signed treaties with The Gambia.

6.5 Other Forms of International Cooperation (R.40, SR.V & R. 32)

6.5.1 *Description and Analysis*

Recommendation 40 and SR V

628. The Gambia applies the principle of reciprocity in providing international cooperation to other countries. There are arrangements in place for cooperation at the high level which requires all the exchange of communication on international cooperation with counterparts in the police, judiciary, financial sector supervisory authorities and the prosecutor to pass through the Secretary of State for Foreign Affairs.

629. In the absence of a comprehensive MLA legislation, officials rely on precedents that exist in previous cases, and on the respective laws establishing a particular offence. Under the ML Act, Section 32 states that "the court or the competent authority shall cooperate with the court of the competent authority of another State by taking appropriate measures to provide assistance in matters concerning money laundering, *in accordance with this Act, and within the limits of their respective legal systems"*

630. The Assessors were of the view that even though there was an attempt to confer some level of independence to the competent authority in this Act, the last line in this paragraph requires the competent authority to pass through the formal channel or the SOSFA. Section 32 (6) further limits the scope of the Act by making the international cooperation assistance available to only countries that have existing bilateral and multilateral agreement with The Gambia. The CBG is however, permitted under the CBG Act to sign confidential undertaking with other supervisory authorities for the exchange of information. On this basis, the CBG was of the opinion that it will be possible for the FIU to enter into MOUs with other FIUs by relying on the CBG mandate in this regard.

<u>Gateways and Mechanisms for Cooperation</u>

631. Informal mechanisms may be utilized for the provision of cooperation assistance to other counterparts. Such mechanisms, which occur on adhoc

basis, include the signing of Memorandum of Understanding. Security agencies and financial sector supervisory authorities informed the Assessors that they may enter into Memorandum of Understanding arrangements with counterparts in other countries.

632. However, there is no rapid mechanism or procedure in place to ensure spontaneous response. Security agencies informed the Assessors that they may be able to provide rapid intelligence information where no formal request is filed in order to interdict an offender where the offender may escape. Every formal request is expected to go through the SOSFA for processing and onwards transmission to the requesting party, institution, or competent authorities of another country.

FIU to FIU cooperation

634. The FIU is not functional and has not adhered fully to the Egmont Group Principles. No procedure has been put in place to determine the extent to which the FIU will be able to cooperate directly with other FIUs. There is no ongoing cooperation with other FIUs.

Cooperation by Law Enforcement Agencies

635. There are bilateral arrangements on the exchange of information on security matters. Co-operation agreements also exist in judicial and criminal investigations between The Gambia and other States. The Gambia is a member of the Police Chiefs forum at the regional level. The forum permits Police Chiefs of ECOWAS Member States to meet often to discuss and exchange information on international terrorism, trans-national organized crime, trafficking in drugs and arms, illegal movement of sensitive materials amongst others.

Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts

636. Generally, mutual legal assistance works through the INTERPOL arrangement and is based on reciprocity. Cooperation exists with International Police (INTERPOL). The LEAs in The Gambia also belong to regional and international organizations. Some of the LEAs belong to regional organizations where information may be exchanged at a very basic

level and on adhoc basis such as the African Union Terrorism Units. They are able to conduct investigation on behalf of other authorities after proper authorization have been obtained from the SOSFA.

No undue restrictions on exchange of information

637. Information exchange is possible between respective agencies and between counterparts in other countries on an informal request. Cooperation can only be provided on the basis of reciprocity.

Cooperation involving fiscal matters

638. Requests for cooperation may be refused on the ground that fiscal matters are involved because tax offence is not a predicate offence under the ML Act. The punishment for filing misleading tax returns or tax fraud is one year which is below the two years penalty threshold required under the ML Act.

Regulatory cooperation/secrecy or confidentiality and cooperation

639. The ML Act, Section 36 precludes the application of Banking Secrecy under The Act and makes disclosure only subject to Constitutional provisions. Legal professional privileges will also be taken into consideration under this section.

CBG statistics of MOUs or requests from other jurisdictions -

640. The CBG has received requests from other CBGs. The CBG informed the Assessors that they are able to sign MOUs with other CBGs if the matter is based on information related to the mandate of the CBG as permitted under Section 60 of the FIA and not otherwise. The provision permits the FIA to receive and give information to a bank supervisor of another country after obtaining assurances of confidentiality. It may also enter into an agreement with other bank supervisors for the exchange of confidential information.

641. The CBG has signed such MOU with a few countries.

Safeguards in the use of exchanged information

642. Safeguards exist in the various agencies with regards to information obtained from other countries. The law enforcement agencies are careful as a policy in disclosing such confidential information. The officials are also bound by the official oath which precludes them from disclosing official information without proper authority. The CBG requires an undertaking of confidentiality with other counterparts regarding information exchanged between both parties.

Timely Response to Requests

643. In the absence of statistics and records of previous cooperation requests other than anecdotal references, the Assessors formed the opinion that the process for cooperation is cumbersome particularly with third States (or States that do not have any existing treaty arrangements with The Gambia)

Additional Elements

644. Mechanisms are in place for the exchange of information in an indirect manner. The direct exchange of information with counterparts is mostly on an adhoc basis and as a matter of policy is not encouraged. However, with regards to the CBG, exchange of information with other bank supervisors is based on a confidentiality undertaking is permitted.

645. The Gambia requires information about the request in order to be able to process the request accordingly. The FIU is not functional and therefore the procedure for granting of requests from other FIUs has not being developed.

6.5.2 Recommendations and comments

646. The competent authorities are, sometimes, able to provide assistance to their counterparts in other countries. Law enforcement agencies can do this on an adhoc basis but will require a formal request to be channeled through the office of the SOSFA. For the financial supervisory authority, the CBG Act permits the entering into an arrangement with other counterparts in other countries based on a confidentiality undertaking. It is expected that the FIU may benefit from the same provision since it is operating under the CBG.

647. The Assessors recommended as follows:

- Improvement in the provision of timely responses to the requests from other countries.
- The FIU should be made functional and procedures developed to enhance its opportunity of joining the Egmont Group so as to be able to exchange and receive intelligence information on money laundering and terrorist financing from other countries.
- Exchange of information with other counterparts should be improved through the signing of MOUs and arrangements with them.
- Tax matters should be made a predicate of money laundering so that requests for international cooperation in this regard can be granted.
- There should be sufficient security mechanisms in place to protect confidential information form other countries.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

Rec.	Rating	Summary of Factors Underlying Rating
R.40	**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.
SR. V	**LC**	• Response to information is not spontaneous and timely. • Counterparts are not permitted to exchange information without regard to the SOSFA.

7. OTHER ISSUES

7.1 Resources and Statistics

Recommendation 30

648. There is ongoing effort to train staff of the Supervisory Authority and FIU but there is need for further training. There is some level of independence in the prudential supervisory process but additional resources including personnel, and more specialized training on the implementation of AML/CFT measures would be required.

649. Although the law enforcement agencies have been provided with adequate powers to investigate and prosecute money laundering and terrorist financing, they have not applied these powers effectively despite the fact that the ML Act came into effect since 2003.

650. The Assessors formed the view that the LEAs lacked the requisite skills, experience, and capacity to deal with money laundering threats in particular, and terrorist financing. The LEAs would need to reassess their mandates and review their capacity to address the threats that are likely to face in relation to money laundering, terrorism, and terrorist financing.

651. The Gambia competent authorities are not maintaining statistics on AML/CFT matters. It is therefore difficult to assess the effectiveness and efficiency of the AML/CFT regime in the country. Statistics were not available from the FIU on money laundering and terrorist financing cases. This may be due to the fact that the FIU has not become functional. Statistics were also not available at the Departments of Justice, Foreign Affairs, NIA, and the Police on cases prosecuted or investigated on money laundering, terrorist financing, extradition or mutual legal assistance, including information on assets frozen, confiscated and forfeited.

Rec.	Rating	Summary of Factors Underlying Rating
R.30	**NC**	• The ML Act does not provide for 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 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 to 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 lacksthe 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.
R. 32	**NC**	• No statistics were provided on STRs received by the FIU • There is no data system for the recording of receipted data on STRs and 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

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The ratings of compliance are made in accordance with FATF Recommendations based on the four levels mentioned in the 2004 Methodology namely, (Compliant-(C), Largely Compliant (LC), Partially Compliant (PC), Non- Compliant (NC), or could in exceptional cases be marked as not applicable (N/A)

Compliant	The Recommendation is fully observed with respect to all essential criteria
Largely Compliant	They are only minor short comings, with a large majority of the essential criteria being met
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria
Non-Compliant	There are major shortcomings, with a large majority of the essential criteria not being met
Not Applicable	A requirement or part of a requirement does not apply , due to the structural, legal or institutional features of a country, e.g. if particular type of financial institution does not exist in that country

Forty Recommendations	**Rating**	**Summary of factors underlying rating**
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 be relevant agencies has not been effective.
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.
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.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• International exchange of financial information is restricted to countries which has signed bilateral and multilateral treaties with The Gambia. • Secrecy provision clauses in other laws and potentially new laws may inhibit access to financial information or intelligence.
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.
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 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
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.
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
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 Ml Act.
10. Record keeping	**PC**	• The Assessors were not able to review examination manual for insurance industry to ascertain that the coverage include record keeping; • 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;
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
12. DNFBP–R.5, 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 • 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. Applying R.6. • 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 • 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.
14. Protection & no tipping-off	**C**	
15. Internal controls,	**NC**	• The CBG is not efficient in the monitoring

compliance & audit		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.
16. DNFBP–R.13-15 & 21	**NC**	There has been no action to implement the provisions of Recommendation 16 by The Gambian Authorities. 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. 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. 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
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.
19. Other forms of reporting	**C**	
20. Other DNFPBs & secure transaction 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. • 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
22. Foreign branches & 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.
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 • Resources available to supervision authorities are limited
24. DNFBP - regulation, supervision 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.

25. Guidelines & 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
Institutional and other measures		
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 • 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.
29. Supervisors	**NC**	• There has been no effective implementation of supervisory powers under the ML Act. • Supervision of FIs, NFIs and DNFBPs for AML/CFT compliance has not commenced • There is no measure in place for ongoing supervision and monitoring of AML/CFT compliance by FIs
30. Resources, integrity and training	**NC**	• The ML Act does not provide for 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 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.
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 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
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. • 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
International Cooperation		
35. Conventions	**LC**	• The FT Convention has not been ratified. • The implementation of the ML Act, Anti-terrorism Act, and the Drugs Act is not effective across all the agencies.

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. • 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.
38. MLA on 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.

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.
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.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implémentation of UN instruments/conventions	**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 • 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**	• 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. • 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.
SR.V International cooperation	**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
SR.VI AML requirements for	**NC**	• The CBG/FIU has not issued any guidance

money/value transfer services		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 non-compliance with the ML Act. • 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
SR.VIII Nonprofit organizations	**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.
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. • 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.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT Systems	Recommended Actions (listed in the order of priority)
1. General	
2. Legal System and Related Institutional measures	
2.1 Criminalization of ML (R.1 & 2)	• The MLA should 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 and should be reduced to 1 year imprisonment term or less in order to accommodate all serious offences in The Gambia Criminal Code and other relevant laws. • The law should clearly designate the authorities responsible for the implementation of the various elements of the Act. • There should be a clear definition of the agency responsible for the enforcement of the ML Act. • The investigators and prosecutors responsible for the implementation of the ML Act should be trained and equipped with the necessary human resources and funding to enhance the effective implementation of the law.
2.2 Criminalization of Terrorist Financing (SR.I)	• The relevant agencies involved in its implementation should be trained and provided with the required human resources and funding to undertake the challenges that terrorist financing poses to global security. • It is recommended that the Attorney General, the CBG, the Police, the Secretary of State for Defense, the National Guard, financial institutions, and the civil society should be made aware of their responsibilities under the Act. • More information should be provided in terms of ongoing investigation or future investigations to relevant agencies to enable them assist in the gathering of intelligence or in reporting suspicious acts that may result in terrorist financing.

	• The domestic cooperation framework among the agencies should be improved and the FIU should take the responsibility of developing further guidance and a national strategy in the combat of terrorist financing offences.
2.3 Confiscation, freezing and seizing the proceeds of crime (R.3)	• Adequate measures should be put in place for the efficient tracing and identification of illicit funds and terrorist funds. • The FIU should be strengthened to enable it receive and analyze STRs, • The authorities are requested to provide training to the police; the prosecutors and the officials of the FIU and the Central Bank to enable them develop and implement the existing measures for freezing and confiscation.
2.4 freezing of funds used for terrorist financing (SR.III)	• There is need for a fully functional FIU which will lead to an effective implementation of SR III; • The FIU should provide additional guidance to the FIs for the effective implementation of the Act; • Furthermore the distribution of the lists of designated persons and entities should be forwarded to other reporting entities and not only to banks. • The CBG should set up a coordinating committee with the police and the security agencies with regards to the fr • The FIU should develop procedures for the unfreezing of funds and delisting of persons on the UNSC/RES 1373 list, including guidance on UNSC/RES 1267 • The CBG, through the FIU should develop a monitoring mechanism in place to ensure compliance with the freezing measures in the country.
2.5 The financial intelligence units and its functions	• The ML Act should be revised to clearly provide for the operational independence of the FIU; • The reporting of STRs to the FIU as the national center for the receipt of such reports should be clearly provided in the ML Act. At the moment, the Act provides that the LEA or any other competent authority can receive reports from the FIs;

	• Adequate funding should be provided to the FIU to enable it hire competent staff and equip its offices; • The personnel of the FIU should be hired and screened independent of the FSD; • The new staff of the FIU should be trained to undertake their primary role of receiving, analyzing and disseminating STRs, including the development of guidance and policy recommendations on how to improve the AML/CFT measures in the country • The FIU should commence the electronic receipt of STRs in a secured environment; • The FIU should provide detailed guidance to FIs, NFIs, and DNFBPs regarding their obligations under the Act and should develop and provide training programs to reporting entities to improve the reporting of STRs; • The ML Act should be reviewed to permit the FIU ability to share information spontaneously with other counterparts through the Egmont Group; • The FIU should be made functional as soon as possible to enable it join the Egmont Group of FIUs; • The FIU should establish a coordination committee comprising of the relevant government agencies such as the NIA. DEA, Police, Customs, Immigration, AG's Chambers, the Company Registrar, Department of State for Foreign Affairs, Finance, Tourism and Interior to exchange intelligence and information on issues patterning to money laundering and terrorist financing. • The FIU should be permitted to publish annual reports and send feedback to the FIs and DNFBPs
2.6 Law enforcement, prosecution authorities and other competent authorities (R. 27 & 28)	• The LEAs would need to reassess their mandate and review their capacities in order to be able to address the threats that are likely to face their financial systems from money laundering, terrorism, and terrorist financing.
2.7 Cross Border Declaration and Disclosure (SR IX)	• Require inbound and outbound travelers to fill in a declaration form concerning the amount of currency or negotiable instruments they are carrying. • Give explicit power to the Customs department to request further information as to the origin

	and intended use of transported funds and negotiable instruments. • Give explicit power to the Customs department to stop or restrain transported funds and negotiable instruments in order to ascertain whether evidence of money laundering or terrorist financing exists • Ensure that the Customs department transmits copies of positive declarations on a monthly basis to the FIU and set a proper coordination framework between the two organizations. • Give explicit instructions to the Customs department to begin collating statistical data on all its relevant actions regarding its law enforcement activities. • Give explicit power to an Authority to investigate and prosecute where necessary once notified by the Customs department. • Train the Customs department on how to combat money laundering and terrorist financing, particularly at the middle and low level, because they are the ones who deal with interception of cash and negotiable instruments at the airports, borders and sea.
Preventive measures – Financial Institutions	
3.1 Risk of money laundering and terrorist financing (R. 5)	
3.2 Customer due diligence including enhanced or reduced measures (R.6-8)	**Recommendation 5** • The CBG should commence full implementation of the ML Act and the GCDD through the process of proactive monitoring of compliance of the AML/CFT measures by FIs. • The GCDD should be adopted as a regulation by the National Assembly in order to create a direct obligation for the FIs to ensure a comprehensive implementation of the R. 5 requirements. • FIs should be trained on how to apply the risk-based approach in order to increase the level of implementation of the ML Act and the GCDD by FIs. • The authorities should consider developing further guidance notes and typologies on the various CDD measures in order to provide feed back and best practices on the implementation of R. 5 to the FIs.

	Recommendation 6: • The authorities should require that the FIs put in place appropriate risk management systems to be able to assess on the basis of materiality and risk whether a potential customer, an existing customer or beneficial owner is a PEP. • There should be a direct obligation to obtain senior management approval to continue the business relationship entered into with a PEP before the person became a PEP. • Additionally, there should be a direct obligation either in the MLA or the GCDD document for the FIs to establish the source of wealth/funds of PEP customers. • There should be an effective risk management system in place to check the risk profiles of PEPs or those associated with them. ***Recommendation 7*** • The ML Act or the GCDD should create a direct obligation for the documentation of the respective AML/CFT responsibilities of each institution. • The issue of "payable -through accounts should be clearly addressed in the GCDD and the ML Act. • There is no efficient mechanism in place for the monitoring of the implementation of R. 7 by FIs ***Recommendation 8:*** • The authorities should commence the full implementation of this recommendation by requiring FIs to effectively develop their internal systems in collaboration with the telecommunication companies to eliminate risks associated with internet banking.
3.3 Third parties and introduced business (R.9)	N/A
3.4 financial institution secrecy or confidentiality (R.4)	• The Assessors recommended that the authorities should review of all their laws to ensure that none of the existing or new laws will inhibit the implementation of AML/CFT measures in the country. • Additionally, Section 32(6) of the MLA should be reviewed to ensure that it does not inhibit sharing of financial information amongst competent authorities and financial institutions domestically and internationally.

3.5 Record keeping and wire transfer rules (R 10 &SR VII)	**Recommendation 10:** The Supervisory Authority should ensure that it covers all rules relating to record keeping in its supervision and examination program. **SR. VII** • The FIU has not issued legislation or guidance regarding the implementation of SR.VII to the financial sector. • Issue specific legislation and explicit guidance notes to the financial sector regarding SR.VII. • Sanctions and penalties should be provided for non-compliance with SR.VII. • The implementation of the record keeping requirements should cover all reporting entities. • R. 5 and other CDD measures should apply to one off transactions relating to wire transfers. • The Central Bank should verify that the requirements of SR.VII are being adhered to, when appropriate, as part of its on-site inspection programme.
3.6 Monitoring of transactions and relationships (R. 11& 21)	**Recommendation 11:** The FIs should be directed to keep records of of unusual transactions and make it available to the supervisory authorities when required. **Recommendation 21:** • The CBG should ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries • Counter-measures should be put in place when dealing with countries that do not apply or insufficiently apply the FATF Recommendations. • The CBG should include in their examination procedures manual examination of FIs' compliance with FATF Recommendations.
3.7 Suspicious transactions reports and other reporting (R.	**Recommendation 13 & SR IV:** • The Money Laundering Act should be revised to

13,14,19, 25, & SR IV)	provide for the minimum designated predicate offence or adopt a broader approach which is to include all crimes within the minimum term of 6months imprisonment as a predicate offence. • Terrorist financing should be clearly included as a predicate of money laundering • Reporting entities should be directed to submit STRs related to financing of terrorism to the FIU. • Tax matters should be included in the reporting of STRs. **Recommendation 19:** • The ML Act should be reviewed to include the FIU in the receipt of CTRs and should be required to set up a data base for the storage of the CTRs and the STRs. • The ML Act should guarantee the security of electronic data related to STRs and CTRs which must be made available to investigation authorities. • The FIU needs to set up a secured, well staffed and well equipped ICT department for the purpose of receipt and analysis of STRs and if permitted CTRs.
3.8 Internal controls, compliance, audit and foreign branches (R.15 &22)	**Recommendation 15:** • With regards to Recommendation 15, the CBG should ensure that the Examination manual covers all measures relating to internal control, compliance function, screening procedures, employee training, and the independent audit function. • There should be a direct obligation in the Act for the appointment of Compliance Officers at the Senior Management level. • Training on AML/CFT should be provided to all management and junior staff responsible for AML/CFT implementation in the FIs. • Access to information on records of transactions should be accessible to compliance officers and selected staff members of the FIs. **Recommendation 22:** • In order to effectively implement Recommendation 22, the MLA should be reviewed to ensure that the FIs can apply AML/CFT measures to foreign branches and subsidiaries when they are established. This requirement can also be included in the guidelines to FIs as well as in it's the examination manual.

	• FIs should also be required to communicate to the CBG about their inability to perform their AML/CFT obligations in a host country.
3.9 Shell banks (R.18)	• The MLA should be revised to include provisions consistent with FATF Recommendation 18. • The CBG should ensure that the examination manual includes the surveillance of institutions who may be transacting with shell banks in other jurisdictions or have plans of setting up shell banks in The Gambia. .
3.10 The supervisory and oversight system- competent authorities and SROs, Role, functions, duties, and powers, (including sanctions) (R. 23, 29, 17 & 25)	**Recommendation 23** • The CBG should formally cover all the AML/CFT measures in its supervision and onsite examination. • The ML Act should be reviewed to cover the FATF Recommendations comprehensively with regards to DNFBPs, and other unlicensed and unregulated sector. • Onsite examinations should be extended to the DNFBPs included in the Act. • The FIU should monitor and ensure compliance by FIs, and NFIs with requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations. **Recommendation 25:** • The FIU should develop appropriate regulations and guidance notes including typologies, and ML/FT trends for the FIs • The FIU should conduct risk assessments to determine the vulnerable sectors for the purpose of developing further regulations and applying its limited resources in high risk sectors. • The CBG should take steps to implement the sanctions contained in the FIA and MLA 2003. • Provide guidance notes and train financial institutions and DNFBPs on how to implement the guidance notes • Develop a feedback mechanism based on the FATF Best Practices Guidelines on Providing Feedback to FIs and Other Persons. **Recommendation 17:**

	• The powers to apply sanctions should be diligently utilized if and when necessary; • Sanctions should apply to all FIs, NFIs, and DNFBPs
3.11 Money value transfer services (SR. VI)	• The Assessors recommended that the CBG/FIU should undertake a risk assessment of this sector in order to determine its vulnerability. • Further steps should be taken to develop appropriate AML/CFT guidance for this sector. Monitoring for AML/CFT compliance should commence without further delay.
4. Preventive Measures – Non Financial Businesses and Professions (DNFBPs)	
4.1 Customer due diligence and record keeping (R. 12)	• Amend Schedule 1 of the Money Laundering Act 2003 to make the required relevant provisions apply to all DNFBPs as provided in the FATF glossary. • Bring all DNFBPs under regulatory and supervision measures for AML/CFT purposes either under a governmental department or a relevant SRO. • Provide, or direct relevant SROs to provide, appropriate AML/CFT guidance to all DNFBPs. • Include an exemption for STR obligations for legal professionals when the matter in question is subject to legal privileges. • Develop a cooperation and coordination mechanism between the FIU and DNFBPs for effective reporting and monitoring.
4.2 Suspicious transaction reporting (R.16)	• Amend the Money Laundering Act 2003 to make the required relevant provisions apply to all DNFBPs • Bring DNFBPs under regulatory control for AML/CFT purposes either under a government department or a relevant SRO • Require a relevant SRO to provide, appropriate

	AML/CFT guidance to DNFBPs • Include an exemption for STR obligations for legal professionals when the matter relates to, or is subject to legal privileges.
4.3 Regulation, supervision and monitoring (R.24-25)	• Amending the Money Laundering Act 2003 to make the required relevant provisions apply to DNFBPs. • Bring all the DNFBPs under regulatory control for AML/CFT purposes either under a government department or a relevant SRO. • Require a relevant SRO to provide, appropriate AML/CFT guidance to DNFBPs.
4.4 Other non-financial businesses and professions (R.20)	• Conducting an assessment of the level of ML & TF risk posed by non financial businesses and professions (other than DNFBPs). • Ensure that there are effective monitoring and supervision of these businesses when they are covered under the ML Act. • Adopt appropriate measures to reduce the circulation and use of cash in commercial transactions • Encourage the use of non-cash means of payment that facilitate the identification of the participants concerned.
5. Legal Persons and Arrangements & Non-Profit Organizations	
5.1 Legal Persons – Access to beneficial ownership and control information	• The Assessors recommended that the office of the RG should be provided with enough personnel and budget to undertake its tasks under the company code. • Additionally, the RG should establish a database for all types of companies, business names, and NPOs so as to facilitate the request for information in a timely manner. • The RG should commence the verification of information provided in the registration forms in order to ensure that they are valid.
5.2 Legal Arrangements – Access to beneficial ownership	• The Assessors recommended that the office of the RG should be provided with enough personnel and

and control information	budget to undertake its tasks under the company code and other laws in this regard. • Additionally, the RG should establish a database for all types of companies, business names, and NPOs and the beneficial owners registered in all cases. • The information should be electronically driven so as to facilitate the request for information in a timely manner. • The RG should commence the verification of information provided in the registration forms in order to ensure that they are valid.
5.3 Non-profit organizations	• TANGO requires additional assistance to strengthen its self monitoring mechanisms. • Sensitization on CFT is crucial both for the Agency and for NGOs. The FIU should organize a forum for NPOs to apprise them of the CDD guidelines issued by the Bank. • The review of the NGO Agency Decree should take into account the need to have regulatory guidelines on CFT to complement those in the Anti-Terrorism Act. • It may be useful for The Gambian authorities to consider laws from other Commonwealth jurisdictions on NPOs to guide the process of The Gambia review. • The revised law should not however discourage NGOs from providing assistance to those who need their services.
6. National and International Cooperation	
6.1 National co-operation (R.31)	• Expand the Committee to include representatives of the Police, Customs, NIA, NGO Agency, and SROs for DNFBPs. • Commence the development of a national strategy to ensure wide circulation of policy documents and broad consultation with all stakeholders. • The FIU needs more personnel and adequate funding to make it functional and capable of developing appropriate policies and guidance notes for its engagement with other national institutions and law enforcement agencies.

6.2 The Conventions and UN Special Resolutions (R. 35 & SR I)	• Improve the timely distribution of the lists of designated persons. • Take steps to ensure the analysis of information received from the FIs by the FIU in a prompt manner, • Provide prompt feed back to FIs by the FIU. • Implement an effective procedure for the freezing and unfreezing of delisted persons. • The FIU should be made functional as soon as possible to permit the development of guidance notes for FIs. • Develop mechanisms for the coordination of national and international cooperation across relevant agencies.
6.3 Mutual legal assistance (R. 36-38 & SR V)	**Recommendation 36** • The Assessors were of the view that The Gambia legal system will benefit from a comprehensive MLA legislation which will bring together all the various MLA provisions in different laws in to one document. • The authorities would need to develop MLA guidelines or procedures for the law enforcement agencies in order to reduce the time currently required for the processing of MLA requests. • The Assessors recommended that the MLA legislation should be enacted in accordance with the UNCAC provisions on MLA which has been described as a good example of a model MLA regime. • The difficulty in the implementation of the bilateral agreements on mutual legal assistance should be identified especially where language is a problem or different legal systems between Francophone and Anglophone has posed challenges in the past. • . It should be possible to provide MLA in cases where FIU, LEAs, CBG counterparts request for prompt response to a request based on MOU or other less formal mechanisms. • The ML Act is too restrictive in the application and

	granting of MLA requests. The restrictions related to signing of bilateral and multilateral treaties should be reviewed. • The threshold set for predicate offences of money laundering should be reduced to enable it come within the acceptable international standard and thereby enhance international cooperation in this regard. **Recommendation 38** • The ML Act should be reviewed to reduce the penalty for predicate offences to the threshold set by FATF. • In the alternative, The Gambia should include all the minimum designated categories of offences in the FATF glossary in the prescribed offences in the ML Act. • The response to MLA requests from other countries should be made timely and effective. **SRV:** • The law enforcement agencies should put a mechanism in place for coordinating asset seizure and confiscation with other countries. • The authorities should consider establishing an asset forfeiture fund for or authorizing the sharing of assets with other countries.
6.4 Extradition (R.39,37 & SR V)	Recommendation 39 • The Extradition Act would be more efficiently implemented if the list of extraditable offences and the 12months imprisonment term threshold is removed from the Act in order to allow the Act to be extended to as many offences as is possible. • The authorities should develop measures and procedures to enhance the efficiency of the extradition processes. • The Extradition process should be simplified to permit timely transmission of requests from foreign State agencies to counterpart agencies in The Gambia in order to fast track the requests.

6.5 Other forms of co-operation (R.40 & SR.V)	• Improvement in the provision of timely responses to the requests from other countries. • The FIU should be made functional and procedures developed to enhance its opportunity of joining the Egmont Group so as to be able to exchange and receive intelligence information on money laundering and terrorist financing from other countries. • Exchange of information with other counterparts should be improved through the signing of MOUs and arrangements with them. • Tax matters should be made a predicate of money laundering so that requests for international cooperation in this regard can be granted. • There should be sufficient security mechanisms in place to protect confidential information
7. Other issues	
7.1	**Recommendation 30:** • There is need for additional resources including personnel, and more specialized training for the financial supervisory authorities, the FIU, and the law enforcement agencies to enhance the effective implementation of AML/CFT measures. • The relevant agencies should be provided with the required human resources and funding to undertake the challenges that terrorist financing poses to global security. • The LEAs would need to reassess their mandates and review their capacities in order to be able to address the threats that are likely to face The Gambia financial system from money laundering, terrorism, and terrorist financing. **Recommendation 32:** • There is need for a data system for the recording of receipted data on STRs and CTRs. • The FIU should publish annual reports to enable it provide feedback to reporting entities and to the public. • Statistics on prosecutions and investigations of money laundering cases under the ML Act or the Drug Control Act should be maintained by the relevant agencies or in a centralized data system. • Records of assets seized, frozen, confiscated and forfeited should also be maintained. • The AG's Chambers or the DPP should maintain

	records on mutual legal assistance and extradition matters initiated and concluded by the SOSFA or by the AG's Chambers. • The authorities should consider setting up a central data system in the FIU. The data system should be available to all the relevant supervisory authorities and LEAs to store information about cases investigated and prosecuted, including recovered assets and other related matters.

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

ANNEX 1: DETAILS OF BODIES MET ON THE MUTUAL EVALUATION ONSITE MISSION: MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS

Annex 1:

- Department of State for Justice
- Department of State for Finance
- Income Tax Division
- Customs Division
- Central Bank of The Gambia
- Department of State for Foreign Affairs
- Bankers Association
- National Intelligence Agency
- Department of State for Trade, Industry and Development
- Department of State for Tourism and Culture
- Association of NGOs: TANGO
- Reliance Finance Services
- Department of State for the Interior
- The Gambia Police
- National Drug Enforcement Agency
- Insurance Association
- J. Financial Services
- Standard Chartered Bank
- The Gambia Bar Association
- Department of Lands
- Registrar General of Companies
- Dunes Casino
- International Insurance Company
- Guaranty Trust Bank
- The Gambia Investment Promotion and Free Zone
- Association of Accountants

ANNEX 2:

LIST OF LAWS

- National Intelligence Agency - Decree, 1995
- Trafficking in Persons Act, 2007
- Guidelines on Customer Due Diligence, 2007
- Financial Institutions Act, 2003
- Insurance Act 2001 (amended in 2007)
- Central Bank of The Gambia Act 2005
- Money Laundering Act, 2003
- Extradition Act, Chapter 13
- Economic Crime Decree, 1994
- Drug Control Act, 2003 (and 2005 amendment)
- Business registration Act, 2005
- State Lands (Amendment) Regulations 2007
- Customs Act (CAP) 86
- Police Act
- Criminal Code
- Tourism Act 2003
- Income and Sales Tax (Amendment Act) (No. 2) 2007
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Regulations and other Guidance Notes:

- FIU Data supply form to other Agencies
- Suspicious or unusual transaction reports form
- Prudential guidelines on foreign currency deposits and related transactions
- Instructions 13 Return of fees and charges levied by Banks
- Licensing of foreign exchange bureau
- Regulations for the operations of foreign exchange bureau

- Micro Finance Policy
- Guidelines for the licensing of Financial Institutions
- Mutual Evaluation Response Template
- IMF Country Report – The Gambia: Second Review under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility
- Financial Supervision Department – Examination Plan 2008
- Annual report 2005 : Developments in the Domestic Economy
- Corporate Governance Guideline
- Consolidated Statement of Assets and Liabilities
- Standard Chartered : Transmission of correspondence
- Guideline on the Uniform Bank Rating System
- The Gambia Bankers Association : Certificate of incorporation
- Central Bank of The Gambia : 2007 Annual Budget
- The Central Bank of The Gambia : Credit Reference bureau (CRB) Terms and Conditions
- Memorandum between the Central Bank of The Gambia and the Superintendence of Banks and other Financial Institutions of The Bolivarian Republic of Venezuela : Concerning Cooperation in the Exchange of Financial Intelligence related to Money Laundering
- Financial Supervision Dept – Staff Training Program - 2007 to date
- Central Bank of The Gambia : Setting Up of a FIU in The Gambia
- Financial Supervision Department Presentation on Customer Due Diligence for Bureaux de change.
- Gambia Revenue Authority – Application for Taxpayer Identification Number
- United Nations : Letter dated 10 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1973 (2001) concerning counter-terrorism addressed to the President of the Security Council