



**EASTERN AND SOUTHERN
AFRICA ANTI-MONEY
LAUNDERING GROUP**

Mutual Evaluation Report

Anti-Money Laundering and
Combating the Financing of Terrorism

August 2008

THE REPUBLIC OF SEYCHELLES

The Republic of Seychelles is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This evaluation was conducted by the ESAAMLG and was adopted as a 1st mutual evaluation by its Task Force of Senior Officials on 20 August 2008 and approved by its Council of Ministers on 22 August 2008.

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Acronyms

AML	Anti Money Laundering
AML Act	Anti-Money Laundering Act, 2006
AML/CFT	Anti Money Laundering/Combating the Financing of Terrorism
CBS	Central Bank of Seychelles
CDD	Customer due Diligence
CFT	Combating the Financing of Terrorism
CSL	Company holding a Special Licence under the Companies (Special Licences) Act 2003
CSL Act	Companies (Special Licences) Act 2003
CSP	Corporate Service Providers
DNFBP(s)	Designated non-financial businesses and professions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force on Money Laundering
FIA	Financial Institutions Act, 2004
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
ICSP Act	International Corporate Service Providers Act 2003
IAIS	International Association of Insurance Supervisors
IBC	International Business Companies
ITZ	International Trade Zone
KYC	Know Your Customer
ML	Money Laundering
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NBFIs	Non Bank Financial Institutions
NCCT	Non-Cooperative Countries and Territories
NCC	Non Cooperative Country
PTA	Prevention of Terrorism Act
SADC	Southern African Development Community

SCR	Seychellois Rupee
SIBA	Seychelles International Business Authority
EARPCCO	East Africa Regional Police Chiefs Cooperation Organization
RA Act	Registration of Associations Act
STRs	Suspicious Transaction Reports
TCSP	Trust and Corporate Service Providers
TSP	Trust Service Provider
TF	Terrorist Financing
TRANSEC	Seychelles Police Academy, Administration, Finance and Transport Security
PEPs	Politically Exposed Persons
UN	United Nations
WCO	World Customs Organisation

PREFACE

Information and methodology used for the evaluation of the
Republic of Seychelles

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of The Republic of the Seychelles (Seychelles) was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004¹. The evaluation was based on the laws, regulations and other materials supplied by the Seychelles and information obtained by the evaluation team during its on-site visit to the Seychelles from the 20th of November to the 1st of December 2006. During the on-site visit the evaluation team met with officials and representatives of all the relevant Seychelles government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by a team of evaluators composed of representatives from the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) and a World Bank Observer. The evaluation team comprised of Mr. Fitz Graham (Legal Expert Swaziland), Mr. Esaka Mugasa (Law Enforcement, Tanzania), Ms. Ursula M'Crystal (Financial Intelligence Centre, South Africa), Ms. Chanda Lubasi-Punabantu (Financial Expert, Central Bank, Zambia), Ms. Yotsna Lalji (Financial Expert, Financial Services Commission, Mauritius) and Mr. Stuart Yikona (World Bank). The ESAAMLG Secretariat was represented by Dr. E J Kisanga, Executive Secretary and Mr. W. Blackburn, UN Mentor. 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 (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Seychelles as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out the Seychelles levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

The finalisation of this report was subject to significant delay with the result that it was considered and adopted at the ESAAMLG August 2008 meetings. In the course of subsequent exchange of correspondence, the Seychelles authorities have provided additional information to indicate that certain measures had been implemented after the onsite visit but before the adoption of the report. Under the mutual evaluation procedures established by the ESAAMLG, these subsequent measures cannot be taken into account in the compliance ratings. To enable member countries and other interested parties to take

¹ As updated in June 2006

note of the developments that had taken place after the onsite visit but before the discussion and adoption of the report we have included Table 3 which sets out the nature of such measures. However, the evaluators have not analysed the substance or effectiveness of the measures.

The ESAAMLG Secretariat and the evaluation team would like to express their gratitude to the authorities in the Seychelles for their cooperation and hospitality throughout the evaluation mission.

Executive Summary

Background Information

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in Seychelles as of the time of the on-site visit (20 November -01 December 2006), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Seychelles' level of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

2. Seychelles is a small island economy in the Indian Ocean. Economic growth, since its independence, has been led by the tourist sector, which employs about 30% of the labour force and provides more than 70% of hard currency earnings, and by the tuna fishing industry. In recent years, the government has encouraged foreign investment to upgrade hotels and other services. At the same time, the government has moved to reduce the dependence on tourism by promoting the development of farming, fishing, and small-scale manufacturing.

3. The offshore sector is another emerging player in the Seychelles economy. In 2006, the Seychelles witnessed a substantial increase in its international business level namely with the registration of 8237 international business companies (IBCs). This represents an increase of 16% over the year 2005. As at the date of the mutual evaluation there were over 30,000 IBCs registered in the Seychelles. The Seychelles offshore sector is estimated to be generating a turnover of over USD25 million annually.

4. The risk of money laundering is perceived as low by the authorities and private sector in Seychelles and there is a general consensus among operators in the private sector (other than banks) that money laundering, if at all in Seychelles, could only be conducted through the banks.

Legal systems and related Institutional measures

5. The Seychelles adopted its first AML legislation in 1996 with the enactment of the Anti-Money Laundering Act 1996. Seychelles has recently enacted a number of legislations to modernise and strengthen its AML/CFT legal framework. In 2006, it enacted a new Anti-Money Laundering Act 2006 (AML Act) which replaces the Anti-Money Laundering Act of 1996. The AML Act transposes into the AML/CFT framework several requirements of the revised recommendations of the FATF.

6. Money laundering is criminalised under the AML Act. The money laundering offence covers the conversion or transfer, concealment or disguise, acquisition and possession of property in a manner largely consistent with the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)

and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention).

7. Seychelles has adopted a threshold approach to define the scope of predicate offences. Any act or omission against any law of Seychelles punishable by imprisonment for life or for a period exceeding 12 months or by a fine exceeding R6500 will constitute a predicate offence. Money laundering applies to both natural and legal persons, and proof of knowledge, intent or purpose can be derived from surrounding facts. Natural persons are liable to a fine of R. 3,000,000 and/or imprisonment for 15 years, while a body corporate is liable to a fine of R. 5,000,000 and/or revocation of business licence.

8. Assets used in the commission of a crime that are property of the offender may be forfeited upon conviction. In cases of money laundering, the courts may forfeit money or property constituting the proceeds of crime: all money and property in the possession of the person convicted for Money laundering are deemed to have been derived from money laundering. Forfeiture of substitute assets is possible, but it is not clear whether this is also possible for assets of equivalent value. Assets may be temporarily seized as evidence, but the AML Act does not stipulate special provisions for temporary seizures.

9. The statistics indicate that in 2006 there were 41 suspected money laundering cases. Most of these investigations are still underway and 2 are pending before the court.

10. The new AML Act also provides for the establishment of a Financial Intelligence Unit within the Central Bank of the Seychelles and extends the list of reporting entities covered under the law to include a range of DNFBPs such as accountants, auditors, lawyers, real estate agents, casinos, dealers in precious stones or metals and offshore banks.

11. Seychelles has also taken significant legislative steps to fight terrorism and terrorist financing with the adoption of the Prevention of Terrorism Act in 2004. There have been no reported incidences of terrorist acts or indications of terrorist financing in Seychelles. The UNSCR 1267 lists of designated persons and entities are circulated to Banks which are required to report to the Central Bank of the Seychelles on a positive or negative report. So far, no positive match with the 1267 designations has been identified.

12. Several institutions participate in the national fight against ML and TF. These include:

Financial Intelligence Unit (FIU)

13. The Financial Intelligence Unit became operational in July 2006. It is the focal point for receiving, analyzing, and disseminating reports of transactions related to money laundering or the financing of terrorism to the appropriate law enforcement and supervisory agencies in Seychelles. The FIU also conducts examinations of the reporting entities and, may in consultation with supervisory authorities, issue guidance related to customer identification, identification of suspicious transactions, and record keeping and

reporting obligations. No such guidelines had been issued by the FIU at the time of the onsite visit.

Central Bank of Seychelles

14. The FIU operates as a unit within the Central Bank of Seychelles. The board of the Central Bank is responsible for the FIU and the director of the FIU reports to the Board on the exercise and performance of his powers and duties under the AML Act. The Central Bank is also responsible for licensing and supervising Banks and other financial institutions and has a duty under the law to report any suspicious transactions to the FIU.

Attorney General's Office

15. The Attorney General's office has been involved in drafting of the AML/CFT legislation with the aim to strengthen the AML/CFT framework in the Seychelles. The Attorney General is the central Authority for mutual legal assistance and also initiates prosecution in cases involving money laundering.

Seychelles International Business Authority (SIBA)

16. SIBA is an independent authority set up to monitor, supervise, and co-ordinate the conduct of international business from within Seychelles and to promote Seychelles as a centre for international business activities. It is also responsible for licensing and supervising Trust and Corporate Service Providers. As the supervisory authority for the offshore sector, SIBA must report suspicious transactions to the FIU.

Seychelles Police

17. The police are responsible, *inter alia*, for general policing duties, preventing and interdicting crime and implementation of public and state security policy. A special team within the police comprising of four police officers is responsible for investigating money laundering and other financial crimes. In 2006 there were 41 suspected money laundering cases. Most of these investigations are still underway and 2 were pending before the courts at the time of the onsite visit.

Customs Division

18. The Customs in Seychelles is headed and controlled by the Comptroller of Trades Tax. All goods imported from the time of importation until removal for home consumption and all goods for exportation until the time of exportation are under the control of Customs. Further all goods on board any ship, boat or aircraft whilst within the limits of any port or airport are subject to the control of customs. The FIU has authority under the section 19(c) of the AML Act to request information from any law enforcement agency including the Comptroller of Trades Tax. The FIU must also send any report, any information derived from such report or any other information it receives to the

Comptroller of Trades Tax if on the basis of its analysis and assessment the FIU has reasonable grounds to suspect that the transaction is unlawful.

Preventive measures-Financial Institutions

19. Not all the categories of financial institutions as defined in the FATF Recommendations operate in the Seychelles. The financial services sector in the Seychelles is relatively small and comprises of 6 commercial banks, 2 bureaux de change, one Credit Union, 2 insurance companies, a specialised development bank and a housing finance company. In 2006, finance and services represented 11% of the GDP at current market prices.

20. The Central Bank of the Seychelles is responsible for the supervision of the commercial banks, the bureaux de change and the Credit Union. Banks and bureaux de change are licensed and supervised under the Financial Institutions Act 1994. The Development Bank of Seychelles is set up under statute and has no designated supervisor. It falls within the oversight of the Ministry of Finance.

21. Insurance companies are governed by the Insurance Act 1994 and fall under the supervision of the Insurance Authority, which is established under the Insurance Act. The main areas of business are general insurance and life insurance. A person may with the approval of the Insurance Authority provide services as an insurance broker or as an insurance agent. There are 8 insurance brokers and 40 insurance agents operating in Seychelles.

22. Seychelles intends to establish a Non-Bank Financial Services Authority that will serve as an autonomous statutory body that will regulate and supervise the non-bank financial services institutions including insurance companies, the securities industry and mutual funds.

23. One of the commercial banks operating in the Seychelles is also licensed by the Central Bank under the Financial Institutions Act 2004 to provide offshore banking business. Offshore banking business is defined under the Financial Institutions Act 2004 as banking business solely conducted with non-residents in currencies other than the Seychelles Rupee.

24. There are 4 offshore insurance companies licensed by the Insurance Authority under the Insurance Act 1994 to provide non-domestic insurance business, that is, insurance business exclusively carried on outside Seychelles for the issue of offshore policies.

25. Considering that Seychelles has enacted AML legislation since 1996, the level of AML awareness amongst financial institution is relatively low. Insurance entities have not implemented the requirements of the AML Act. The commercial banks in the Seychelles have to some extent adopted and implemented AML/CFT policies and procedures.

26. The verification of identity of the customers is largely undertaken by banks; however there is no level playing field in the manner in which this is applied. This is mainly due to lack of guidance and in the absence of such guidance the international banks apply Group AML/CFT standards as opposed to adherence to the provisions of the AML Act. Some of the banks are still guided by the Guidance Notes issued by the CBS under the 1996 AML Act.

27. There is no express provision under the AML Act which requires financial institutions to identify the beneficial owner as defined under the FATF Recommendations and to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source. However, under section 4(2)(c)(ii) of the AML Act, where a transaction is conducted by a legal entity, the financial institution must obtain information relating to the principal owners and the beneficiaries and the control structure. Regrettably, the AML Act does not define the terms principal owners or beneficiaries.

28. In the absence of such definitions in the AML Act or any guidelines the practice amongst most financial institutions is to verify and identify the identity of the registered shareholder who may or may not be the beneficial owner. The practice amongst commercial banks is not consistent. The two commercial banks which were interviewed by the team were both subsidiaries of international banks and had different requirements under their internal policies. These internal policies were basically modelled on the AML/CFT manual of the parent company. One of the commercial banks identified and verified the identity of all shareholders whilst the other identified and verified the identity of shareholders holding 25% or more in a company.

29. The FIU has a compliance monitoring function under the AML Act. It is tasked with the responsibility for ensuring that all financial institutions comply with the requirements of the AML Act. As at the date of the onsite visit the FIU had undertaken only one onsite inspection.

30. Financial institutions and their directors and officers are liable to criminal sanctions for failure to comply with the requirements of the AML Act. No sanctions had been applied as at the date of the mutual evaluation.

Preventive measures-Designated Non-Financial Businesses and Professions

31. Despite its relatively small size, the full range of DNFBPs styles conducts business in Seychelles.

32. The legal framework provided by the AML Act applies to all the categories of DNFBPs operating in the Seychelles. In practice, DNFBPs (other than TCSPs) have recently been brought within the scope of the AML law with the enactment of the AML Act in 2006. While the FIU is the designated competent authority no supervision was being undertaken at the time of the onsite visit and compliance with the provisions of the AML Act is not effective.

33. The TCSPs were relatively more aware of their AML/CFT obligations. However, the level of compliance by TCSPs with the requirements of the AML Act appeared to be minimal. The general view held by the TCSPs interviewed by the mutual evaluation team was that the requirements of the AML Act were far too onerous and could not be implemented by the TCSPs bearing in mind the size of their operation. The banks were viewed to have the resources to fully implement the AML/CFT procedures. Consequently, not all TCSPs have adopted and implemented internal AML/CFT policies and procedures in line with the requirements of the Act.

Legal Persons and Arrangements & Non-Profit Organisations

Legal persons

Companies

34. Domestic companies may be formed and registered under the Companies Act 1972. As at the date of the on-site visit there were 3,500 companies registered with the Registrar of Companies. Company records kept with the registrar of companies are available for public inspection. There is no requirement under the Companies Act for a company to keep records of beneficial owners.

35. In addition to issuing ordinary and preference shares, a company registered under the Companies Act may with the permission of the Financial Secretary issue bearer share certificates or bearer debentures. Bearer shares and bearer debentures are negotiable instruments and title to those shares and debentures may be transferred by delivery. Where a company issues a bearer share or a bearer debenture it must provide for the payment of dividends or interests by the issue of coupons to bearer. Such coupons are also negotiable instruments.

36. Information on beneficial owners of domestic companies may not always be available with the authorities in Seychelles.

International Business Companies (IBCs)

37. IBCs are registered with the Registrar of International Companies (the functions are carried out by the SIBA) through Registered Agents-which are licensed corporate service providers. There is no requirement for upfront disclosure of the beneficial owners of IBCs with the SIBA. The practice amongst some of the CSPs is to sell bulk IBCs to intermediaries overseas. The intermediaries are not always supervised and regulated for AML/CFT purposes. The CSPs have indicated that they do not always hold information on the beneficial owners of the IBCs sold in bulk to intermediaries. Shelf IBCs are also sold online by some of the CSPs operating in the Seychelles.

38. While the FIU seems to have extensive powers under section 23 of the AML Act, it does not appear from the provisions of the International Business Companies Act or the

AML Act that the FIU may have access to the registers that an IBC is required to keep under the IBC Act unless the IBC consents to it. In addition, the deficiencies in the application of CDD measures by CSPs in practice undermine the ability of competent authorities to have access to accurate information on the beneficial ownership and control of an IBC.

Companies holding a Special Licence under the Company (Special Licences) Act 2003

39. A company which proposes to apply for a special licence under the Company (Special Licences) Act 2003 ('CSL Act') must be registered by the Registrar of Companies under the Companies Act 1972 through the SIBA. An IBC or a company incorporated under the laws of a jurisdiction outside the Seychelles may continue as a company incorporated in accordance with the provisions of the CSL Act.

40. For the purposes of an application, an applicant must provide SIBA with the name and addresses of the directors and shareholders of the proposed company and where the any shareholder is a nominee the name and addresses of the person on whose behalf the shares are held by the nominee must be also be provided to SIBA.

41. There is no requirement under the Act to provide information to the SIBA where there is a change in the beneficial ownership of the company. A CSL is prohibited from issuing bearer shares.

42. SIBA is bound by a duty of secrecy under the CSL Act and is permitted to disclose information only as permitted under the law. This may undermine timely access to beneficial ownership and control information by competent authorities.

Trusts

43. The legal framework for domestic trusts does not exist in the Seychelles.

International Trusts

44. An international trust may be established under the International Trust Act 1994 (ITA). An international trust is defined under the ITA as a trust or constructive trust in respect of which-

- (a) the settlor is not any time during the duration of the trust a resident of the Seychelles;
- (b) at all times at least one of the trustees is a resident of Seychelles, an IBC (authorised by the SIBA) or a financial institution.

45. As at the date of the mutual evaluation there were 160 trusts on the Register of International Trusts.

46. A resident trustee must file a declaration of trust with the SIBA-which in turn is required to file the declaration in a Register of International Trusts and give the

declaration a reference number. The reference number of a declaration of trust is the reference by which the international trust is identified and can be used officially to refer to the international trust. In accordance with the provision of the ITA, the declaration of trust must not contain the name of the settlor or beneficiary unless the beneficiary is a Seychellois or a body corporate resident in Seychelles.

47. A trust service provider (TSP) is a reporting entity for the purposes of the AML Act and is required to undertake CDD measures in accordance with the provisions of the AML Act. There is however, no specific guidance in the AML Act or issued by the FIU on CDD measures that must be applied with respect to trusts. There is no express requirement to keep details of the settlor, trustees, or any protector. However, one of the TSP interviewed by the team indicated that it did undertake CDD measures with respect to the settlor, beneficiary and protectors with respect to an international trust.

48. Information on the beneficiaries and settlors of international trusts may not always be available and the duty of confidentiality under the IT Act may undermine the availability of timely information to competent authorities.

Non-profit organisations

49. NPOs must register with the Registration of Associations Act (RA Act). An association may be formed for a number of purposes provided that it is not contrary to law, morality and public policy. As at the date of the mutual evaluation there were 214 associations registered with the Registrar. There has been no risk assessment of the sector for AML/CFT purposes. While the Registration of Associations Act enacted in 1959 and has been amended from time to time, Seychelles has not conducted a review of the adequacy of the laws and regulations that related to NPOs. There has been no systematic gathering of information regarding the risk of misuse of NPOs for terrorist financing. Seychelles has not conducted outreach for the NPO sector with a view to protecting the sector from terrorist financing abuse.

National and International Co-operation

50. With the Mutual Assistance in Criminal Matters Act, the Extradition Act and the Prevention of Terrorism Act Seychelles has in place comprehensive laws that enable it to provide a wide range of assistance at the request of a foreign state. Both ML and TF are extraditable offences. These laws have however not been used in AML/CFT matters. Their effectiveness could not therefore be assessed by the team.

51. The Republic of Seychelles acceded to the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and has signed and ratified the United Nations Convention Against Transnational Organized Crime (Palermo Convention) and International Convention for the Suppression of the Financing of Terrorism in 2003 and 2004 respectively..

Other issues

52. Overall, the Republic of Seychelles has put into an adequate legal and regulatory regime to address ML and TF threats that it can build on in the years ahead to develop a robust AML/CFT system that meets the international standards set by the FATF.

53. The Republic of Seychelles would need to address the deficiencies identified in this evaluation report in strengthening the legal and institutional framework it has developed and making it effective in the short and medium term.

54. As a jurisdiction which is committed to expanding its offshore financial services sector, Seychelles needs to take concerted actions to address the AML/CFT deficiencies identified to enable the country to benefit from a well regulated offshore sector in the years ahead.

55. The capacity of the institutions involved in the fight against ML and TF to implement all the AML/CFT measures on their own is limited. They will therefore require technical assistance to build this capacity over time. This report provides an opportunity to technical assistance providers to engage with the Republic of Seychelles in assisting the institutions to implement AML/CFT measures in a prioritised way which takes account of the capacity challenges that they face.

Mutual Evaluation Report

1. General

1.1 General Information on the Republic of Seychelles

56. The Republic of Seychelles is situated in the western Indian Ocean, North West of Madagascar and consists of 115 granite and coral islands which cover a total area of 455.3 square kilometres. Victoria which is the situated on the biggest island Mahé, is the economic and administrative centre of the islands.

57. Seychelles obtained independence from the British in June 1976 and has a multi-party political system with an executive President as head of State and government. The President heads a cabinet of 10 ministers which includes the Vice President. The Constitution, which is the supreme law of the land, established the separation of powers between the Executive, Legislative and Judiciary. Legislative power is vested in a unicameral National Assembly of 34 members. General elections for the National Assembly are held every 5 years with 25 members directly elected from the constituencies and 9 other members proportionately elected.

58. In 2005, the population of Seychelles was estimated around 80,654 and consisted mainly of French, African, Chinese, Indian and Arab origin. Creole, a derivative of French, is understood and spoken by all Seychellois and became the first official language in 1981. The other official languages are English and French.

59. Seychelles legal system is based on English common law and the Napoleonic Code. Civil law is based on the French Napoleonic Code adapted to Seychelles and is known as the Civil Code of the Seychelles. Company law is based on English common law. The judicial system consists of magistrates' courts, the Supreme Court, and a Court of Appeal. The Court of Appeal hears appeals from the Supreme Court in both civil and criminal cases. The Supreme Court has jurisdiction of first instance and acts as court of appeal in respect of cases from the magistrates' courts. Criminal cases are heard in magistrates' courts or the Supreme Court depending on the seriousness of the charge. Juries are called only in cases of murder or treason. The constitution guarantees normal legal protections to defendants including public trials and the right to counsel.

60. Since independence, per capita output expanded to roughly seven times the old near-subsistence level. Economic growth has been led by the tourist sector, which employs about 30% of the labour force and provides more than 70% of hard currency earnings, and by tuna fishing. In recent years, the government has encouraged foreign investment to upgrade hotels and other services. At the same time, the government has moved to reduce the dependence on tourism by promoting the development of farming, fishing, and small-scale manufacturing.

61. Tight controls on exchange rates and the scarcity of foreign exchange have impaired short-term economic prospects. The GDP of the Seychelles is broken into three general

areas represented by the following 2006 estimates. The areas are agriculture: 3.2%, industry: 30.1% and services: 66.7%. The Seychelles Agricultural products are: coconuts, cinnamon, vanilla, sweet potatoes, cassava (tapioca), bananas; poultry and tuna. The industrial products are: fishing, tourism, processing of coconuts and vanilla, coir (coconut fibre) rope, boat building, printing, furniture and beverages. Seychelles main export items are canned tuna (90% of domestic exports) and fresh and frozen fish. The items are exported mainly to Italy, France and Germany. The main imports into the country include manufactured food, live animals, machinery, transport equipment and petroleum products. Imports originate from Italy, South Africa, France, UK and Singapore. The major trading partners of the Seychelles are UK, France, US, Spain, Japan, Netherlands, Thailand, Saudi Arabia, South Africa Singapore and Taiwan.

62. The offshore sector is another emerging player in the Seychelles economy. In 2006, the Seychelles witnessed a substantial increase in its international business level namely with the registration of 8237 international business companies (IBCs). This represents an increase of 16% over the year 2005. As at the date of the mutual evaluation there were over 30,000 IBCs registered in the Seychelles. The Seychelles offshore sector is estimated to be generating a turnover of over USD25 million annually.

63. The Republic of Seychelles is a member of the United Nations, the African Union, the Commonwealth and La Francophonie.

1.2 General Situation of Money Laundering and Financing of Terrorism

64. There is no comprehensive study of the amount of money earned from criminal activity or how it is laundered. The Seychellois authorities consider drug trafficking, parallel market operations, theft and fraud as the major source of illegal proceeds. Seychelles is a consumer country mainly for Cannabis Resin (Hashish) and Marijuana but lately, a shift to harder drugs like heroin and cocaine has been noted. Over the recent past, several Seychellois nationals have been arrested in Kenya, India, Mauritius and Tanzania on charges of drug trafficking. Tight exchange control regulations have facilitated a parallel market for foreign currency exchange based on evasion of exchange control regulations.

65. One special area of concern is the offshore sector which has grown significantly over the past few years. As at the date of the on-site visit there were more than 30,000 registered international business companies (IBCs) that paid no taxes in the Seychelles. These are used mainly for private wealth management and real estate investments. The practice among some operators in the offshore sector is to sell IBCs in bulk to foreign intermediaries for consumption by end users on whom very little or virtually no information is available in the Seychelles. IBCs may issue bearer shares and it did not appear to the mutual evaluation team that there was effective adequate control to prevent unlawful use of those IBCs for money laundering or terrorist financing purposes.

66. Another area of concern is the Eden Island residential marina development project which allows foreigners to buy and own property on a private island off the coast of Mahé.

The development aims at becoming a world class super yacht marina and also includes a retail centre which features leading brands. Every owner and his/her family can qualify for permanent residency in Seychelles. High net worth individuals are targeted as potential investors in this project and the influx of capital through the banking sector once the project kicks off is estimated to be very high. The risk of abuse for ML/TF purposes is perceived to be high.

67. The risk of money laundering is perceived as low by the authorities and private sector in Seychelles and there was a general consensus among operators in the private sector (other than banks) that money laundering, if at all in Seychelles, could only be conducted through the banks. The Trust and Corporate Service Providers, the operators in the offshore sector, rely heavily on banks to undertake customer due diligence. The level of awareness in the private sector (other than banks) is also low.

68. In 2006, Transparency International's Corruption Perceptions Index ranked the Seychelles number 63 which indicates that corruption is a serious issue in the Seychelles. The fight against corruption does not appear to be one of Seychelles immediate political priorities. There has been no initiative to modernise the existing anti-corruption legislation- which is found under Chapter X of the Seychelles Penal Code, to cover all forms, phases and stages of corruption crimes. The UN Convention against Corruption was signed by Seychelles in 2004 and ratified in November 2005.

69. Employees in the public service must comply with the laws in force and are expected to serve the public in a fair and responsible way. In carrying out their duties and discharging their responsibilities, public officials must comply with the 2003 Public Service Code of Ethics and Conduct and must in particular abide by principles of integrity, loyalty, transparency, neutrality. By virtue of the constitution disciplinary powers over employees in the public service are vested in the President as the executive authority.

70. There have been no reported incidences of terrorist acts or indications of terrorist financing in Seychelles. The UNSCR 1267 lists of designated persons and entities are circulated to Banks which are required to report to the Central Bank of the Seychelles on a positive or negative report. So far, no positive match with the 1267 designations was identified.

1.3 Overview of the Financial Sector and DNFBP

71. The financial services sector in the Seychelles is relatively small and comprises of 6 commercial banks, 2 bureaux de change, one micro finance institution, 2 insurance companies, a specialised development bank and a housing finance company. In 2006, finance and services represented 11% of the GDP at current market prices.

Structure of Financial Sector, 2006

	Number of institutions	Total assets (US\$)	Authorized/ Registered and supervised by:	AML Oversight
Commercial banks	6	1.125 billion	CBS	FIU
Insurance companies	2	N/Available	MOF	
Insurance brokers	8		MOF	
Insurance agents	40		MOF	
Foreign exchange	2	0.331 million	CBS	
Money transmitters	2		CBS	
Credit union	1	10.196 million	CBS	

72. The Central Bank of the Seychelles is responsible for the supervision of the commercial banks, the bureaux de change and the micro finance institution. Banks and bureaux de change are licensed and supervised under the Financial Institutions Act 1994. The Development Bank of Seychelles has no designated supervisor.

73. Insurance companies are governed by the Insurance Act 1994 and fall under the supervision of the Insurance Authority, which is established under the Insurance Act. The main areas of business are general insurance and life insurance. A person may with the approval of the Insurance Authority provide services as an insurance broker or as an insurance agent.

74. While a Securities Industry Act was enacted in 1995, a Securities market is yet to be developed in the Seychelles. At the time of the mutual evaluation, a new Securities Act was under preparation. The new securities legislation aims at achieving the Government's goals of expanding the financial services sector and developing a capital market in the Seychelles.

75. Seychelles intends to establish a Non-Bank Financial Services Authority that will serve as an autonomous statutory body that will regulate and supervise the non-bank financial services institutions including insurance companies, the securities industry and mutual funds.

76. The Seychelles Credit Union was established in 1930 under the Cooperatives Act. Membership to the credit union is open to every resident of the Seychelles and as at the date of the on-site visit the credit union had over 10,000 members. The Seychelles credit union is supervised by the Central Bank of Seychelles.

77. The Seychelles Housing Development Corporation is a parastatal housing finance company supervised by the Ministry of Finance and the Ministry of Land Use and Habitat.

78. The offshore sector which is legally separated from the domestic sector was established in 1994 with the enactment of, *inter alia*, the Seychelles International Business Authority Act 1994 (SIBA Act) and the International Business Companies Act 1994 (IBC Act). The SIBA Act established the Seychelles International Business Authority (the

SIBA), an independent authority, to monitor, supervise, and co-ordinate the conduct of international business from within Seychelles and to promote the Seychelles as a centre for international business activities.

79. One of the commercial banks operating in the Seychelles is also licensed by the Central Bank under the Financial Institutions Act 2004 to provide offshore banking business. Offshore banking business is defined under the Financial Institutions Act 2004 as banking business solely conducted with non-residents in currencies other than the Seychelles Rupee.

80. There are 4 offshore insurance companies licensed by the Insurance Authority under the Insurance Act 1994 to provide non-domestic insurance business, that is, insurance business exclusively carried on outside Seychelles for the issue of offshore policies.

Overview of Designated non-financial businesses and professions (DNFBPs)

81. Despite its relatively small size, the full range of DNFBPs styles conducts business in Seychelles. The legal framework provided by the Anti-Money Laundering Act 2006 applies to all the categories of DNFBPs operating in the Seychelles.

Structure of the DNFBP Sector, 2006

Type of DNFBP	Size of Sector	Regulated/ Licensed	AML Requirement in domestic law	AML Oversight
Real estate agents	6	Licensing Authority/Board of Real Estates	Yes	FIU
Casinos				
Gaming Machine Arcade	1	Licensing Authority	Yes	FIU
Casino	4			
Lottery Dealers in precious metals and precious stones	1	Licensing Authority	Yes	FIU
Law Practitioner	26	Licensing Authority	Yes	FIU

s	22			
Barristers and Attorneys	4			
Notaries				
Accountants	8	Licensing Authority	Yes	FIU
Auditors	17	Licensing Authority/Reg istrar of Companies	Yes	FIU
Trust Service Providers	18	SIBA	Yes	FIU
Corporate Service Providers	35	SIBA	Yes	FIU

Real Estate Agents

82. The role of real estate agents in the Seychelles is to act as an intermediary between a vendor and purchaser of a property whilst the transaction is conducted by a notary. The Seychelles currently has four (4) real estate businesses registered by the Licensing Authority under the Licences Act. The Board of Real Estates is responsible for ensuring ethical conduct and good practice amongst real estate agents and for exercising disciplinary control over real estate agents.

Casinos

83. The licensing and supervision of casinos is conducted by the Seychelles Licensing Authority. There are currently three (3) registered casinos, four (4) amusement arcades and one (1) lottery registered in the Seychelles.

Dealers in precious metal and precious stones

84. There is currently one (1) precious stones dealer which has been operating in Seychelles for the last three (3) years. The Company is also registered with the SIBA and operates in the international trade zone (ITZ). Its main area of business is retail diamonds and is the only diamond trading company in the country. The company follows the Kimberley process in its operations. 99% of its business is transacted through credit cards and debit cards, with 1% being transacted in cash, usually under the sum of \$1,000. The

supervision of the ITZ company is conducted by SIBA which receives submissions of all the import and export sales reports on a monthly basis.

Lawyers, notaries and other independent legal professionals

85. In the Seychelles, the legal profession is split between attorneys, barristers and notaries and is governed by the Law Practitioners Act. Members of the legal profession are trained mostly from the UK and Mauritius. All practicing lawyers must be licensed by the Seychelles Licensing Authority and must renew their licence on an annual basis. Under the Law Practitioners Act, the Chief Justice may on receipt of a complaint against a law practitioner exercise disciplinary powers. There are currently twenty two (22) barristers and attorneys, with eighteen of these being members of the Bar Association. Membership to the Bar Association is not compulsory. There is presently no code of ethics through which the Bar Association may govern the behaviour of the barristers in the country.

Accountants and Auditors

86. At present there is no professional accounting body in the Seychelles however accountants must be licensed by the Seychelles Licensing Authority. Most of the accountants operating in the country are qualified from India or the United Kingdom and are members of the professional accounting bodies in India or the UK. As such, they must adhere to and apply the respective rules and codes of practice of these accounting bodies in their respective areas of operation. Pursuant to the provisions of the Companies Act, 1972, an auditor must be a member of a body of accountants recognised by the Minister of Finance or must be authorised by the Registrar of Companies.

Trust and Corporate Service Providers (Offshore sector)

87. Corporate Service Providers operating in the offshore sector are licensed by the SIBA under the International Corporate Service Providers Act 2003 (ICSP Act) to carry on the business of providing international corporate services to International Business Companies and Companies with Special Licences. The services include, provision of registered agent services to international business companies, directorship services, registered office facility and nominee shareholding.

88. A trust service provider is also licensed by the SIBA under the ICSP Act to provide international Trustee services, including services connected with the formation or administration of international trusts and serving as resident trustee of an international trust.

89. As at 22 November 2006, there were 35 licensed CSPs providing services to 32,472 international business companies and 70 Company Special Licences and 18 Trust Service Providers providing trusteeship services to 160 International Trusts.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements and Non profit organisations

Companies

90. Companies may be formed and registered in the Seychelles under the provisions of the Companies Act, 1972. A minimum of two persons may incorporate a company with limited liability. All applications for the incorporation of a company submitted to the Registrar of Companies must be accompanied by a signed declaration by a barrister, attorney or notary to certify that all of the requirements for the incorporation of the company under the Companies Act 1972 have been complied with. As a matter of practice, all applications for the incorporation of a company are submitted to the Registrar of Companies through a law practitioner who prepares the Memorandum and Articles of Association. As at the date of the on-site visit there were over 1,500 public companies registered under the Companies Act, 1972.

91. Every company must have at least two directors, a secretary and a registered office in the Seychelles. Corporate directors are not allowed under the Companies Act, 1972. In addition to issuing ordinary and preference shares, a company registered under the Companies Act may with the permission of the Financial Secretary issue bearer share certificates or bearer debentures. Bearer shares and bearer debentures are negotiable instruments and title to those shares and debentures may be transferred by delivery. Where a company issues a bearer share or a bearer debenture it must provide for the payment of dividends or interests by the issue of coupons to bearer. Such coupons are also negotiable instruments.

92. In addition to holding movable assets, a company may hold lands in any part of the Seychelles.

93. The Companies Act also provides for the incorporation and registration of proprietary companies and overseas companies. Proprietary companies are subject to a number of restrictions and may not have more than 50 shareholders or issue shares to the public. Corporate members or directors are not allowed for proprietary companies. All directors of the proprietary companies are members of the company. Proprietary companies are subject to the requirements to keep a register of its members and directors and all changes thereto must be notified to the Registrar of Companies. A proprietary company cannot issue preference and bearer shares. As at the date of the mutual evaluation there were 2,352 proprietary companies registered in Seychelles.

94. Overseas companies are companies that are incorporated in a jurisdiction other than the Seychelles and which establish a place of business or carry business in the Seychelles. All overseas companies have to be registered with the Registrar of Companies and must provide particulars of their directors and members to the Registrar of Companies. As at the date of the mutual evaluation there were 18 overseas companies registered with the Registrar of Companies.

International Business Companies (IBCs)

95. IBCs are registered with the Registrar of International Companies (the functions are carried out by the SIBA) through Registered Agents-which are licensed corporate service providers. One or more persons may by subscribing to a Memorandum incorporate a company under the IBC Act. A company incorporated under the laws of a jurisdiction outside Seychelles may where it satisfies the requirements of the IBC Act continue as a company incorporated under the IBC Act.

96. The business affairs of an IBC must be managed by a board of directors that consists of one or more persons who may be individuals or companies. In addition to issuing ordinary shares, an IBC may issue shares to bearer. Under the IBC Act a share issued to bearer is transferable by delivery of the share certificate.

97. IBCs are subject to a number of restrictions. They cannot carry on businesses in Seychelles and cannot carry on the business of banking, insurance, trust business or the business of providing registered office for companies. They must at all times have a registered office and a registered agent in the Seychelles.

98. An IBC must keep at its registered office or such other place as the directors determine, a share register, a register of its directors and officers and such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company. There is no requirement for the share register to contain details of the beneficial owner of the shares. Only the name and address of the person who holds the registered share must be recorded in the share register. There is no requirement to file information on directors and shareholders of IBCs with the Registrar of International Companies.

Companies holding a Special Licence under the Company (Special Licences) Act 2003

99. A company which proposes to apply for a special licence under the Company (Special Licences) Act 2003 ('CSL Act') must be registered by the Registrar of Companies under the Companies Act 1972 and must limit its objects in its memorandum to one of the activities set out in Schedule 1 to the CSL Act. These include investment management and advice, offshore banking, offshore insurance, and the business of an investment company, a holding company a marketing company. An IBC or a company incorporated under the laws of a jurisdiction outside the Seychelles may continue as a company incorporated in accordance with the provisions of the CSL Act.

100. A company which proposes to hold a special licence under the CSL Act must submit its application to the Registrar of Companies through the SIBA and can only be registered with the approval of the SIBA. For the purposes of an application, an applicant must provide the name and addresses of the directors and shareholders of the proposed company and where the any shareholder is a nominee the name and addresses of the person on whose behalf the shares are held by the nominee must be provided.

101. There is no requirement under the Act to provide information to the SIBA where there is a change in the beneficial ownership of the company. However, a company holding a special licence (CSL) may issue shares to nominee shareholders provided that the names and addresses of the beneficial owners are recorded in the register of shares. A CSL is prohibited from issuing bearer shares.

102. A CSL must within not more than 90 days after the end of its financial year submit an annual return and documents relating to its accounts to the SIBA.

Trusts

103. The legal framework for trusts does not exist in the Seychelles.

International Trusts

104. An international trust may be established under the International Trust Act 1994 (ITA). An international trust is defined under the ITA as a trust or constructive trust in respect of which-

- the settlor is not any time during the duration of the trust a resident of the Seychelles;
- at all times at least one of the trustee is a resident of Seychelles, an IBC (authorised by the SIBA) or a financial institution.

105. Generally, any property other than property situated in the Seychelles may be held on trust. However, with the approval of the SIBA, the trustee of an international trust may own immovable property as may be required for office accommodation of the trustee and may invest in securities and hold other investments in the Seychelles. As at the date of the mutual evaluation there were 160 trusts on the Register of International Trusts.

Non-profit organisations (NPO)

106. NPOs must register with the Registration of Associations Act. An association may be formed for a number of purposes provided that it is not contrary to law, morality and public policy. As at the date of the mutual evaluation there were 214 associations registered with the Registrar of Companies who also acts as the Registrar of Association. There has been no risk assessment of the sector for AML/CFT purposes.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

107. Seychelles has recently adopted a number of AML/CFT provisions. In 2006 it enacted a new Anti-Money Laundering Act 2006 (AML Act) which replaces the Anti-Money Laundering Act of 1996. The AML Act transposes into the AML/CFT framework several requirements of the revised recommendations of the FATF.

108. The new AML Act provides for the establishment of a Financial Intelligence Unit within the Central Bank of the Seychelles and extends the list of reporting entities covered under the law to include a range of DNFBPs such as accountants, auditors, lawyers, real estate agents, casinos, dealers in precious stones or metals and offshore banks. It provides for an explicit confidentiality waiver and safe harbour provisions in relation to reporting entities and their staff when submitting suspicious transaction reports in good faith.

109. Seychelles also passed the Prevention of Terrorism Act in 2004.

b. The institutional framework for combating money laundering and terrorist financing

Financial Intelligence Unit (FIU)

110. The FIU was established under Section 16 of the AML Act as the focal point for receiving, analyzing, and disseminating reports of transactions related to money laundering or the financing of terrorism to the appropriate law enforcement and supervisory agencies in Seychelles. The FIU also conducts examinations of the reporting entities and, may in consultation with supervisory authorities, issue guidance related to customer identification, identification of suspicious transactions, and record keeping and reporting obligations.

Central Bank of Seychelles

111. The FIU operates as a unit within the Central Bank of Seychelles. The board of the Central Bank is responsible for the FIU and the director of the FIU reports to the Board on the exercise and performance of his powers and duties under the AML Act. The Central Bank is also responsible for licensing and supervising Banks and other financial institutions and has a duty under the law to report any suspicious transactions to the FIU.

Attorney General's Office

112. The Attorney General's office has been involved in drafting of the AML/CFT legislation with the aim to strengthen the AML/CFT framework in the Seychelles. The Attorney General is the central Authority for mutual legal assistance and also initiates prosecution in cases involving money laundering.

Seychelles International Business Authority (SIBA)

113. SIBA is an independent authority set up to monitor, supervise, and co-ordinate the conduct of international business from within Seychelles and to promote Seychelles as a centre for international business activities. It is also responsible for licensing and supervising Trust and Corporate Service Providers. As the supervisory authority for the offshore sector, SIBA must report suspicious transactions to the FIU.

Seychelles Police

114. The police are responsible, inter alia, for general policing duties, preventing and interdicting crime and implementation of public and state security policy. A special team within the police comprising of four police officers is responsible for investigating money laundering and other financial crimes. In 2006 there were 41 suspected money laundering cases. Most of these investigations are still underway and 2 are pending before the court.

Customs Division

115. The Customs in Seychelles is headed and controlled by the Comptroller of Trades Tax. All goods imported from the time of importation until removal for home consumption and all goods for exportation until the time of exportation are under the control of Customs. Further all goods on board any ship, boat or aircraft whilst within the limits of any port or airport are subject to the control of customs. The FIU has authority under the section 19(c) of the AML Act to request information from any law enforcement agency including the Comptroller of Trades Tax. The FIU must also send any report, any information derived from such report or any other information it receives to the Comptroller of Trades Tax if on the basis of its analysis and assessment the FIU has reasonable grounds to suspect that the transaction is unlawful.

c. Approach concerning risk

116. Seychelles has not undertaken a risk assessment for AML/CFT purposes.

d. Progress since the last mutual evaluation

117. A review of the financial sector regulation and supervision in Seychelles was conducted in 2002 by the IMF in the context of offshore financial centre assessment programme. The review exercise focused on observance of international supervisory standards in the banking sector and arrangements for AML/CFT. The report of the IMF was published in October 2004.

118. The report highlighted a number of weaknesses and deficiencies in the AML/CFT legal and institutional frameworks in Seychelles and made recommendations for strengthening the AML/CFT systems. These include-

- The provisions of the AML Act 1996 should be amended to provide for customer identification and record keeping procedures.
- Legal provisions should make it clear that suspicious transaction reports must be submitted promptly without undue delay and that reporting entities and should provide safe harbour provisions for reporting entities and their staff when making suspicious transaction reports in good faith and the maximum penalties for non-compliance with specific reporting and other obligations imposed under the AML Act 1996 should be increased.
- The AML Act 1996 should be amended to require the appointment of a compliance officer.

- To ensure high standards of integrity in the financial and corporate sector, the Financial Institutions Act and the AML Act 1996 should be amended to provide for CBS approval of any subsequent changes in management, directors and significant shareholders.
- Legislation criminalising terrorism, terrorist organisations and terrorist financing should be adopted as soon as possible.
- The authorities should continue their efforts to ratify the International Convention for the Suppression of the Financing of Terrorism and the Palermo Convention as soon as possible.
- The Central Bank Act should be amended to clearly set out that the CBS may exercise the function of a financial intelligence unit.
- The flow of information between the various governments entities involved in the AML/CFT effort should be improved and a forum to combine the financial expertise of CBS staff with the investigative knowledge of the police force should be put in place.
- The CBS should carry out onsite inspections focusing on AML/CFT issues and intensify training sessions on recent best practices regarding AML/CFT issues.
- Banks should increase their focus on identifying the ultimate beneficial owners of funds.
- The procedures for cooperation and exchange of information with central banks and foreign regulatory authorities should be enhanced and formalised.
- With respect to IBCs, SIBA should increase its level of oversight and carry out plans to strengthen the licensing of registered agents and trustees. Rigorous customer identification procedures for IBCs need to be put in place.

119. In response to the recommended actions, Seychelles enacted a series of new legislation including the Anti Money Laundering Act 2006, the Central Bank of Seychelles Act 2004, the Prevention of Terrorism Act 2004, the Financial Institutions Act 2004 and the International Corporate Services Providers Act 2003. In the evaluators' opinion, Seychelles has made significant progress in strengthening its AML/CFT legal and institutional frameworks since the IMF evaluation.

120. The new AML Act provides for the establishment of a Financial Intelligence Unit within the Central Bank of the Seychelles and extends the list of reporting entities covered under the law to include a range of DNFBPs such as accountants, auditors, lawyers, real estate agents, casinos, dealers in precious stones or metals and offshore banks. It provides for an explicit confidentiality waiver and safe harbour provisions in relation to reporting entities and their staff when submitting suspicious transaction reports in good faith.

121. Some of the weaknesses identified however still have to be addressed by the authorities in the Seychelles. These are discussed further in the report below.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis

122. Seychelles was amongst the first countries in the region to enact legislation to criminalise money laundering when the Anti-Money Laundering Act was enacted in 1996. Under that Act the Central Bank of Seychelles played the role of an FIU. In reaction to an assessment carried out by the IMF in 2002, and in order to keep up with the fast evolving requirements for countering money laundering, the Seychelles reviewed its AML legislation and a new AML Act was enacted in 2006.

Legal framework

123. Anti-Money Laundering Act 2006 (AML Act). No Regulations have been prescribed under the AML Act although the Act does provide for the making of regulations.

Recommendation 1

Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence)

124. Money Laundering is criminalized under section 3 of the AML Act. The money laundering offence covers the conversion or transfer, concealment or disguise, acquisition and possession of property in a manner largely consistent with the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention).

Laundered Property (c.1.2)

125. Section 3(1) of the AML Act provides that any person who converts or transfers property knowing or having reason to believe that the property is the proceeds of a crime, conceals or disguises the true nature of the property knowing or having reason to believe that the property is the proceeds of a crime, acquires, possesses or uses property or has reason to believe that the property is the proceeds of a crime, commits the offence of money laundering. The definition of the offence of money laundering under Section 3(1) extends to any type of property that directly or indirectly represents the proceeds of crime.

126. The definition of property under the AML Act is comprehensive and comprises-

“currency and assets of any kind, whether corporeal or incorporeal, movable or immovable and legal documents or instruments in any form including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit whether situated in Seychelles or elsewhere and includes any legal or equitable interest in such property.”

Proving Property is the Proceeds of Crime (c. 1.2.1)

127. The law does not require that a person must first be convicted of a predicate offence before he can be convicted of the offence of ML. Hence a person may be convicted of the offence of ML even though no one has been convicted of the predicate offence. The Authorities pointed out that it is possible to charge a person with the offence of money laundering even if that person did not participate in the predicate offence and that it is possible to charge the one person with both the predicate offence and the offence of money laundering as separate offences. However, no authority or evidence was presented in support of this assertion.

Scope of the Predicate Offences (c. 1.3 & c. 1.4)

128. Under Section 2 of the AML Act, the definition of proceeds of crime means-

- An act or omission against any law of Seychelles punishable by imprisonment for life or for a period exceeding 12 months or by a fine exceeding R6500 or both
- An act or omission committed or done outside Seychelles which, if it were committed or done in Seychelles, would constitute an act or omission referred to above.

129. In Seychelles, predicate offence is defined by the term proceeds of crime (see Section 3 (1)). In defining the predicate offence for money laundering, the AML Act uses a threshold approach. Section 2 defines the proceeds of crime as: any money or property that is derived, obtained or realized, directly or indirectly, by any person from: (a) an act or omission against any law of Seychelles punishable by imprisonment for life or for a period exceeding 12 months or by a fine exceeding R6500; or (b) an act or omission committed or done outside Seychelles which, if it were committed or done in Seychelles, would constitute an act or omission referred to in paragraph (a). By virtue of the reference to a reasonably low threshold, this definition ensures that the range of designated categories of offences as envisaged in the Recommendations is covered.

130. Designated **Category of Offences (c. 1.3)**

Designated Category of Offences	Relevant Sections
Participation in an organized criminal group	Chapter IX of the Penal Code

Terrorism, including terrorism financing	Sections 5-9 of the Prevention of Terrorism Act, 2004
Trafficking in human beings and migrant trafficking	Sections 249 and 250 of the Penal Code
Sexual exploitation (including of children)	Sections 130 and 135 to 134 of the Penal Code
Illicit trafficking in narcotic drugs	Section 5 of the Misuse of Drugs Act
Illicit Arms Trafficking	Firearms and Ammunition Act, 1972
Corruption and bribery	Chapters X and XXXVIII of the Penal Code
Illicit trafficking in stolen and other goods	Chapter XXXI the Penal Code
Fraud	Chapters XXX, XXXI, and XXXI to XXXVIII of the Penal Code
Counterfeiting currency	Chapter XXVI of the Penal Code
Counterfeiting and piracy of products	Patents Act, 1901 (Cap 156)
Environmental crime	Environmental Protection Act, 1994; Beach Control Act (Cap 19); Bird's Eggs Act (Cap 16); Boiler Explosion Act (Cap 17); Bread Fruit and Other Trees (Protection) At (Cap 18); Coco de Mer (Management) Decrees (Cap 37); Dumping at Sea Act (Cap 67; Fisheries Act (Cap 81); National Parks and Nature Conservancy Act, (Cap 141); Plant Protection Act (Cap 172); Removal of Soil and Gravel Act (Cap 204) and Wild Animals and Birds Protection Act (247))
Murder, grievous bodily injury	Sections 193 and 221 and section 219 of the Penal Code
Kidnapping, illegal restraint and hostage taking	Sections 239 to 248, Sections 133, 1133A and 139 and section 165 of the Penal Code
Robbery or theft	Chapters XXVI and XXVIII of the Penal Code
Smuggling	Trades Tax Regulations and section 90 of the Penal Code
Extortion	Sections 284 and 285 of the Penal Code
Forgery	Chapters XXXIV and XXXV of the Penal Code
Piracy	Section 65 of the Penal Code
Insider trading and market manipulation	Securities Industry Act, 1995

Extraterritorially Committed Predicate Offences (c. 1.5)

131. Crimes committed abroad may constitute predicate offences for purposes of money laundering if they would have constituted a predicate offence had they occurred domestically (Section 2). The definition of proceeds of crime in section 2 of the AML Act extends to conduct outside of Seychelles that would constitute a predicate offence if committed within Seychelles.

Laundering One's Own Illicit Funds (c. 1.6)

132. The AML Act covers not only those persons who have committed ML offences but also those persons who have committed the predicate offences. This is given effect under Section 3(2) of the AML Act which, amongst other things, makes it an offence for any person who organises or directs others to commit, attempts to commit, conspires to commit or participates as an accomplice to a person committing or attempting to commit the offence of ML.

Ancillary Offences (c. 1.7)

133. Under Section 3(2) any person who organises or directs others to commit, attempts to commit, conspires to commit or participates as an accomplice to a person committing an offence under Section 3(1) commits the offence of money laundering.

134. Section 157 of the Criminal Code provides that when a person is charged with an offence he may be convicted of having attempted to commit that offence, although he has not been charged with the attempt.

Additional Element (c. 1.8)

135. Crimes committed abroad may constitute predicate offences for purposes of money laundering if they would have constituted a predicate offence had they occurred domestically. From the definition of predicate offences under the AML Act, it is clear that predicate offences extend to conduct that occurred in another country. The definition of proceeds of crime in the AML Act, includes property derived from an act or omission which is not a crime in the place where it is committed, but which, if it were committed in the Seychelles would be a crime.

Recommendation 2

Liability of Natural Persons (c. 2.1)

136. Section 3 of the AML Act clearly states that a person commits the offence of ML if he “knows or has reasonable grounds knowing” that the money or property is derived from any unlawful activity.

The Mental Element of the ML Offence (c. 2.2)

137. The offence of ML may be described as offences of basic intent. Under Section 3(3) of the AML Act, knowledge, intent or purpose required as an element of any act referred to in subsection (1) may be inferred from surrounding facts. This means that the offence is not restricted to specific intention. Section 3 of the AML Act clearly states that a person commits the offence of ML if he knows or has reasonable grounds knowing that the money or property is derived from any unlawful activity.

Liability of Legal Persons (c. 2.3 & c. 2.4)

138. The offence of ML extends both to private individuals and to companies or other corporate bodies. Under Section 2 of the AML Act, the definition of “person” means “any natural or legal person and includes a body of persons, whether it has legal personality or not”.

139. Under Section 3(4), where it is necessary in the case of an offence of money laundering alleged to have been committed by a body corporate to establish that state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case may be, had that state of mind.

Sanctions for ML (c. 2.5)

140. Section 57(1) of the AML Act provides for sentences of imprisonment and fines for the offences of ML. The sanction for the offence of money laundering range from imprisonment for 15 years or a fine of R 3,000,000 or both for a natural person or a fine of R 5,000,000 or revocation of business licence in the case of a corporate body or both. The sanction for other attendant offences is 5 years or a fine of R 250,000 in the case of a natural person or a fine of R 500,000 in the case of a corporate body. The sanctions are proportionate, dissuasive and effective. The revocation of licence which may be imposed by the court upon conviction is also an effective measure. By way of comparison, the sanction for terrorism under the PTA is imprisonment for 7 to 30 years and for financing of terrorism it is 7 to 20 years.

2.1.2 Recommendations and Comments

141. No person has so far been convicted for the offence of Money Laundering in the Seychelles. It is not possible to say with any great degree of conviction whether the legal regime is effective. Of the STRs disseminated to the police, only two cases have been referred to the AG’s office for prosecution. One was dismissed due to lack of evidence, and the other is pending in court.

142. The authorities in Seychelles must ensure that all authorities involved in the investigation and prosecution of money laundering cases are fully educated and trained on the specificities of the offence.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none">• Although the offence of ML extends to all types of property regardless of value, in the absence of a judicial pronouncement it cannot be ascertained that when proving that property is the proceeds of crime it would not be necessary that a person be convicted of a predicate offence.• There has been no money laundering conviction under the new law and therefore the effectiveness of the legislation cannot be assessed.
R.2	LC	<ul style="list-style-type: none">• The legislation meets all the essential criteria, however, there has been no money laundering conviction under the new law and therefore the effectiveness of the legislation cannot be assessed.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Legal Framework

Prevention of Terrorism Act, 2004

Criminalization of Financing of Terrorism (c. II.1)

143. Seychelles has ratified the International Convention for the Suppression of the Financing of Terrorism (The Terrorist Financing Convention). Sections 5 and 6 of the Prevention of Terrorism Act, 2004 (PTA) criminalizes the financing of terrorism.

144. Section 5 of the PTA provides that: “Every person who provides or collects, by any means, directly or indirectly, any funds intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall, on conviction, be liable to imprisonment for a term not less than 7 years and not more than 20 years.”

145. Section 6 of the PTA provides that “Every person who, directly or indirectly, collects property or provides, invites a person to provide, or makes available, property or financial or other related services-

- (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or
- (b) knowing that in whole or in part, they will be used by, or will benefit, a terrorist group,

is guilty of an offence and shall on conviction, be liable to imprisonment for a term not less than 7 years and not more than 20 years.

146. The requirement in Article 2 of the Terrorist Financing Convention makes it mandatory that the definition of terrorist act must cover actions set out in a collection of related Conventions listed in the annex to the Terrorist Financing Convention. The definition of “terrorist act” which is contained in section 2 of the Prevention of Terrorism Act 2004 contains a broad list of actions which could be interpreted to cover the acts referred to in the various relevant Conventions.

Conventions referred to in the annex to the Terrorist Financing Convention	Status	Reference in the PTA
Convention for the Suppression of Unlawful Seizure of Aircraft	Ratified	No direct reference
Convention for the Suppression of Unlawful acts against the Safety of Civil Aviation	Ratified	No direct reference
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	Ratified	No direct reference
International Convention against the Taking of Hostages	Ratified	No direct reference
Convention on the Physical Protection of Nuclear Material	Ratified	No direct reference
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	Ratified	No direct reference
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf	Ratified	No direct reference
International Convention for the Suppression of Terrorist Bombings	Ratified	No direct reference

147. There is no reference or distinction made between a terrorist organisation and an individual terrorist, but the definition covers actions that would typically be part of the actions prohibited in the Conventions.

148. Under the PTA, it is not a requirement that the funds were actually used to carry out or attempt to carry out a terrorist act or that the funds be linked to a specific terrorist act. Section 5 speaks of the offence being committed if the “funds will be used... to carry out a terrorist act”. However this provision may be undermined as no definition is given in the PTA for the term “funds”. This may necessitate the prosecution having to prove that certain instrumentalities used in contravention of the PTA are funds for the purpose of that Act.

149. Under the PTA attempts are covered. Under section 20(b) an attempt to commit any offence under the PTA is in itself an offence.

150. Under the criminal code an attempt to commit a crime is a competent verdict to a charge for that crime.

151. Under the PTA it is an offence for a person to participate as an accomplice or to organize or direct others in the commission of a terrorist act. Section 10 makes it an offence for a person to solicit or give support to any terrorist group in the commission of a terrorist act. Section 12 makes it an offence for a person to provide weapons to a terrorist group, or member of a terrorist group. Section 13 makes it an offence to recruit another person to be a member of a terrorist group or to participate in the commission of a terrorist act.

152. Article 2(5) (c) of the Terrorist Financing Convention extends the range of liability to acts of person which are made in the aim of furthering the criminal activity or criminal purpose of a terrorist group as against the commission of purely terrorist acts.

153. The Republic of Seychelles also implements the United Nations resolutions relating to the prevention and suppression of the financing of terrorism acts, particularly the UN Security Council Resolution 1373. The assets of individuals engaging in FT can be seized in Compliance with UNSCR 1373.

154. The criminalization of terrorism is not restricted to terrorist or terrorist organization located in Seychelles only. The act also criminalizes the financing of terrorist or terrorist organizations that are located outside of Seychelles. Section 5 to 9 of the PTA creates different offences as regards to the financing of terrorism. The said sections clearly state that a person commits an offence if amongst other things, funds or property are collected or provided for Terrorist Acts. The definition of Terrorist Act given in Section 2 is not restricted to acts carried out in Seychelles only. Hence a person who collects or provides funds for the commission of terrorist acts outside Seychelles would clearly be committing an offence under the said Sections 5 to 9 of the Act, as long as the collection or the provisions of funds or property was done in Seychelles. Furthermore, Section 15 (f) of the PTA expressly makes it an offence for a person to sponsor the commission of certain acts in a foreign state such as the overthrowing by force or violence the Government of a foreign state.

Predicate Offence for Money Laundering (c. II.2)

155. The AML Act does not make specific reference to a list or schedule of offences, but the threshold for predicate offences (an offence punishable by imprisonment for life or for a period exceeding 12 months or a fine exceeding R 6,500) put the various offences specified in the PTA within the range of predicate offences for money laundering.

Offence under the PTA	Section under the PTA	Penalty under the PTA
Terrorist act that causes the death of a person	4(a)	Life imprisonment
Terrorist act	4(b)	Imprisonment for a

		term of not less than 7 years or more than 30 years
Providing or collecting by any means, whether directly or indirectly, any funds knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act	5	Imprisonment for a term of not less than 7 years or more than 20 years
Directly or indirectly collecting property or providing or inviting a person to provide or making available property or financial or other related services intending that that property or financial or other related services be used in whole or in part in the commission of a terrorist act or knowing that the property or financial or other related services will in whole or in part be used by or benefit a terrorist group	6	Imprisonment for a term of not less than 7 years or more than 20 years
<ul style="list-style-type: none"> • Using property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or • Possessing property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part for the purpose of committing or facilitating the commission of a terrorist act. 	7	Imprisonment for a term of not less than 7 years or more than 20 years
Knowingly entering into, or becoming concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property by concealment, removal out of jurisdiction, transfer to a nominee or in any other way	8	Imprisonment for a term of not less than 7 years or more than 20 years
<p>Knowingly:</p> <ul style="list-style-type: none"> a) Dealing, directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group; b) Entering into, or facilitating, directly or indirectly, any transaction in respect of property, referred to in paragraph (a); or c) Providing financial or other services in respect of property referred to in paragraph (a) at the direction of a terrorist group 	9	Imprisonment for a term of not less than 7 years or more than 20 years
<p>Knowingly, in any manner:</p> <ul style="list-style-type: none"> a) Soliciting support for, or giving support to, any 	10(1)	Imprisonment for a term of not less than

terrorist group, or (b) Soliciting support for, or giving support to, the commission of a terrorist act,		7 years or more than 20 years
Harbouring or concealing, or preventing, hindering or interfering with the apprehension of, any other person knowing, or having reason to believe that such other person: a) Has committed a terrorist act or is planning, or is likely to commit, a terrorist act; or (b) is a member of a terrorist group	11	Imprisonment for a term of not less than 7 years or more than 20 years
Knowingly offering to provide, or providing any weapon to: a) A terrorist group; (b) A member of a terrorist group; (c) Any other person for use by, or for the benefit of a terrorist group or a member of a terrorist group	12	Imprisonment for a term of not less than 7 years or more than 20 years
Knowingly agreeing to recruit, or recruiting another person: a) To be a member of a terrorist group; or (b) To participate in the commission of a terrorist act	13	Imprisonment for a term of not less than 7 years or more than 20 years
Knowingly agreeing to provide training or instruction, or providing training or instruction: a) In the making or use of any weapon; (b) In carrying out a terrorist act; (c) In the practice of military exercises or movements, to a member of a terrorist group or a person engaging in, or preparing to engage in, the commission of a terrorist act	14	Imprisonment for a term of not less than 7 years or more than 20 years
(a) Knowingly promoting or facilitating the doing of any act in a foreign State for the purpose of achieving any of the following objectives whether or not the objective is achieved: (i) The overthrow, by force or violence, of the government of that foreign State; (ii) Causing, by force or violence, the public in that foreign State to be in fear of death or bodily injury; (iii) Causing death of, or bodily injury to, a person who: I. Is the Head of State of that foreign State; or II. Holds or performs any of the duties of a public office of that foreign State;	15	Imprisonment for a term of not less than 7 years or more than 20 years

<p>(b) Recruiting another person to become a member of, or to serve in any capacity with a body or association of persons the objectives of which are, or include, the objectives referred to in paragraph (a);</p> <p>(c) Accumulating, stockpiling or otherwise keeping, any weapons for the purpose of doing any act referred to in paragraph (a);</p> <p>(d) Training or drilling, or participating in the training or drilling of any other person in the use of weapons or in the practice of military exercises or movements to prepare that person to do any act referred to in paragraph (a);</p> <p>(e) Allowing himself or herself to be trained or drilled in the use of weapons or in the practice of military exercises or movements for the purpose of doing any act referred to in paragraph (a);</p> <p>(f) Giving any money or goods to, or performing services for, any other person or body or association of persons for the purpose of doing an act referred to in paragraph (a); or</p> <p>(g) receiving or soliciting money or goods or the performance of services for the purpose of promoting or supporting the doing of an act referred to in paragraph (a);</p>		
<p>(a) Acting in the capacity of owner, occupier, lessee or person in charge of any building, premises, room or place knowingly permitting a meeting of persons to be held in that building, premises, room or place, or</p> <p>(b) Acting in the capacity of owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator, agent or pilot in charge of an aircraft, knowingly permitting that vessel or aircraft to be used: for the purpose of committing an offence under section 15, or</p>	16	Imprisonment for a term of not less than 7 years or more than 20 years

promoting or supporting the commission of an offence under section 15		
Being a member of, or professing to being a member of a terrorist group	18	Imprisonment for a term of not less than 7 years or more than 20 years
Arranging, managing or assisting in arranging or managing a meeting which he or she knows is: a) To support a terrorist group; (b) To further the activities of a terrorist group; (c) To be addressed by a person who belongs or professes to belong to a terrorist group	19	Imprisonment for a term of not less than 7 years or more than 20 years
(a) Aiding and abetting the commission of; (b) Attempting to commit; (c) Conspiring to commit; or (d) Counselling or procuring the commission of, offences under this Act	20	Imprisonment for a term of not less than 7 years or more than 20 or 30 years as the case may be

Jurisdiction for Terrorist Financing Offence (c. II.3)

156. The PTA does not expressly provide that the TF offence apply regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

157. The authorities in Seychelles have indicated that the criminalization of terrorism is not restricted to terrorist or terrorist organization located in Seychelles only. The Act also criminalizes the financing of terrorist or terrorist organizations that are located outside of Seychelles. FT is criminalized both in Seychelles as well as outside of Seychelles. The definition of Terrorist Act given in Section 2 is not restricted to acts carried out in Seychelles only. Hence a person who collects or provides funds for the commission of terrorist acts outside Seychelles would clearly be committing an offence under the said Sections 5 to 9 of the Act, as long as the collection or the provisions of funds or property was done in Seychelles. Furthermore, Section 15 (f) of the PTA expressly makes it an offence for a person to sponsor the commission of certain acts in a foreign state such as the overthrowing by force or violence the Government of a foreign state.

158. The legislation has not been tested. Effectiveness cannot therefore be assessed.

C.II.4 The Mental Element of the TF Offence (applying c. 2.2 in R.2)

159. The PTA does stipulate an objective test for the intentional element for the financing of terrorism. Sections 5 and 11 provide that the offence is committed if a person knows or has reasonable grounds to believe that the funds will be used to carry out a terrorist act. However, the provisions of sections 6 to 10 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the

PTA are couched in terms which make them offences of specific intent. The said sections either specifically use the terms “knowing” or “intending” in defining the relevant offences or are silent on intent.

160. The authorities in the Seychelles have indicated that the offence of ML and certain offences regarding FT may be described as offences of basic intent. This means that the offence is not restricted to specific intention. Section 5 of the PTA provides that a person commits an offence if amongst other things, he collects or provides funds “knowingly or having reasonable grounds to believe that the funds will be used (...). The above mentioned offence even though does not provide that intention element of the offences of ML and FT may be inferred from objective factual circumstances, they nevertheless achieve that objective by providing reasonable ground to believe or to know as part of the mental element of the crime. However, Sections 6 to 9 of the PTA is couched in terms which make them offences of specific intent. The said sections use the terms knowing or intending, in defining the relevant offences. The said sections 6 to 9 do not make any provisions with regard to the fact that the intentional element of the offences may be inferred from the objective factual circumstances.

161. The evaluation team was also not made aware of any established case law in Seychelles that confirms that the requisite intentional element of the offence of TF may be inferred from objective factual circumstances.

Liability of Legal Persons (c. 2.3 & c. 2.4 in R.2)

162. Legal persons are covered in the under Part II of the PTA which provides for the process for declaring an entity which has knowingly committed; attempted to commit; participated in committing or facilitated the commission of a terrorist act, whether on its own or acting on behalf of, at the direction of or in association with another entity which has knowingly committed; attempted to commit; participated in committing or facilitated the commission of a terrorist act, to be a specified entity. In section 2 of the PTA, the term “entity” is defined as meaning a person, group, trust, partnership, fund or an unincorporated association or organization. In the said section 2, terrorist group is defined as meaning “an entity that has as one of its purposes, the committing of, or the facilitation of the commission of a terrorist act.”

163. It must be noted that the PTA excludes an incorporated entity.

Sanctions for FT (applying c. 2.5 in R.2)

164. The sanctions provided in the PTA represent fairly high sanctions. Section 39 provides for an additional administrative sanction which is the refusal to grant or the revocation of the registration of an association which the Minister responsible for Internal Affairs has certified upon reasonable grounds has made, is making or is likely to make available any resources, directly or indirectly, to a terrorist group

2.2.2 Recommendations and Comments

165. The PTA should in addition to the general definition of terrorism contain specific reference to the relevant Conventions when defining “terrorist act”.

166. The PTA should contain a definition of the term “funds” to include the specific species of funds contained in the Terrorist Financing Convention. This would ensure that the term used in the PTA is sufficiently wide enough to be effective.

167. Sections 6 and 7 of the PTA should be based on an objective test for intent. It is no different from section 5 except that section 5 refers to funds whilst sections 6 and 7 refer to property.

168. The PTA should cover incorporated entities.

169. The effectiveness of the legislation cannot be assessed as there has been no reported case in practice.

2. 2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none">• There is no express reference made to terrorist acts, a terrorist organisation and an individual terrorist• The PTA does not provide for the definition of the term “fund” as set out in the TF Convention. The absence of such a definition may undermine the offence of TF under section 5 of the PTA.• The PTA does not expressly provide that the TF offence apply regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.• The PTA does not expressly provide that the intentional element of the offence of TF may be inferred from objective factual circumstances.• Effectiveness cannot be assessed.

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

2. 3.1 Description and Analysis

Legal Framework

Anti Money Laundering Act 2006
Prevention of Terrorism Act 2004
Criminal Procedure Code
Misuse of Drugs Act.

170. Both the Anti Money Laundering Act, 2006 and the Prevention of Terrorism Act, 2004, contain provisions for the confiscation, freezing and seizing of the proceeds of crime.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1)

171. Section 32(1) of the AML Act provides (which covers both ML and FT) for the forfeiture to the State of any property that a person has derived directly or indirectly from the offence of ML or of FT. Concerning the FT offences, Section 37(1) of the PTA makes provisions for the forfeiture of property owned or controlled by, or on behalf of, a terrorist group or property that has been, is being, or will be used in whole or in part, to commit, or facilitate the commission of, a terrorist act where a judge is satisfied on a balance of probabilities. Section 153 of the Criminal Procedure Code (Cap 54) provides a mechanism for the forfeiture to the State of property which was used or intended to be used in the commission of any offence (which would cover all the predicate offences). Forfeiture of property under the AML Act and the Criminal Procedure Code is dependent on a conviction for the offence, whereas forfeiture under the PTA is not dependent on conviction.

172. The provisions of section 32 of the AML Act provide for the forfeiture of the proceeds derived from ML and FT, as well as for the instrumentalities used and intended to be used in the commission of the offences of ML and FT (section 32(2)). The provisions of section 37 of the PTA provide for the forfeiture of the instrumentalities used and intended to be used for that purpose.

173. Section 32(1) of the AML Act provides for the forfeiture to the Republic of any property that a person has derived directly or indirectly from the offence of ML or of FT. As regards to property used or intended to be the commission of the AML or predicate offences, Section 153 of the Criminal Procedure Code (Cap 54) provides that "...all the things produced by the offence or which may have been used or were intended to be used for committing an offence, shall be forfeited to the Republic of the Seychelles. Hence, with regards to predicate offences, it is only upon the conviction of the predicate offences that property used or intended to be used in the commission of the predicate offences will be forfeited.

174. Concerning the FT offences, Section 37 (1) of the PTA makes provision for the forfeiture of property that has been, is being, or will be used to commit, or facilitate the commission of a terrorist act. As regards property that is the proceeds of an FT offence,

Section 153B of the Criminal Procedure Code (Cap 54, Act 15 of 1995) provides for forfeiture of proceeds of crimes in general. Both the Section 26(1) AML Act and the Section 36 PTA make provisions for the restraining or seizing of property that may be subject to a forfeiture order. Applications under both acts may be made *ex-parte*.

175. In Seychelles there are generally no provisions in the law that expressly provide for the confiscation of the property of organizations that are found primarily criminal in nature. Provided that such a law can be justified under Article 26(2) (a) of the Constitution of Seychelles, such provision may be included into the law to give effect to the above-mentioned proposal. However, Section 37(1) of the PTA does provide for forfeiture orders to be made in respect of “property owned or controlled by, or on behalf of, a terrorist group”. Section 32(3) of the AML Act contains provisions for the confiscation of property of corresponding value in the event that property that is subject to the forfeiture order is not available.

176. The proposal under Criterion 3.1(c) would again be subject to Article 26(2) (a) of the Constitution. However, Section 37(4) of the PTA does provide that a judge can make a forfeiture order upon an application made under Section 37(1), if on a balance of probabilities the judge is satisfied that the property comes within subsection (1)(a) or (b) of Section 37. Since the burden of proof under 37(4) is that a civil standard rather than that of a criminal standard, (that is beyond a reasonable doubt), then Section 37(4) to a certain extent satisfies the request of Criterion 7.4.

Confiscation of proceeds of proceeds of crime (c. 3.1.1 applying c. 3.1)

177. Section 32 (1) and (2) of the AML Act provide for the forfeiture of any property that a person has derived directly or indirectly from the offence of ML or of FT. The range of the property that may be forfeited under section 32 of the AML Act is wide enough to include income profits and other benefits. Also, section 32(5) of the AML Act makes provision for the process to be followed by a Court when making a forfeiture order under that section which relates to property held by a third party. This indicates that the intention under section 32 of the AML is to include property held by a third party. Section 37 of the PTA is more express in that it refers to property controlled by or on behalf of a terrorist group.

178. Two things are worth noting on section 37 of the PTA: Firstly, the wording of that section extends the forfeiture provisions to property of a terrorist group whether or not that property was actually utilised or intended to be utilised in the commission of an offence. Secondly, although this may be somewhat academic, the reference to terrorist group could be interpreted to exclude an individual terrorist.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2)

179. Under Section 26(1) of the AML Act, a police officer investigating an offence of ML or FT and who has reasonable grounds to believe that any money or property involved in such offence is held by, or is under the control of, any person may, with the approval of

the Attorney-General, make an application in writing accompanied by an affidavit to a judge of the Supreme Court in Chambers for a restraining order prohibiting that person from disposing of or otherwise dealing with the property except in such manner as may be specified in the order.

Ex Parte Application for Provisional Measures (c. 3.3)

180. The AML Act is silent on the issue of whether an application for seizure may be made ex parte.

181. Section 36 (1) of the PTA provides that where a judge of the Supreme Court is satisfied on an ex parte application made to the judge in chambers, supported by an affidavit, that there are reasonable grounds to believe that there is in any building, place or vessel, any property in respect of which a forfeiture order may be made under section 37 the judge may issue a warrant for the seizure of such property or a restraint order prohibiting any person from disposing of, or otherwise dealing in that property.

Identification and Tracing of Property (c. 3.4)

182. The PTA does not expressly provide powers for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime. Under section 32(11) of the AML Act, where a person is convicted of an unlawful activity, an offence of money laundering or of financing of terrorism, the Court may after the conviction of the person, for the purpose of tracing of the property, make such order or give such direction as the Court thinks necessary. The powers to trace property under the AML Act apply only after a conviction has been secured.

183. However Section 35 of the PTA does provide for any one who has got in his or her possession any property owned by terrorist group to inform the Commissioner of Police about the fact (Section 35 (1) of the PTA).

184. Furthermore, pursuant to the provision of Section 35(2) of the PTA Financial Institutions must provide a quarterly report to the FIU as to whether or not, they have in their possession or control any property belonging to terrorist groups and if so, financial institutions must provide particulars thereof.

185. Moreover, a financial institution also has an obligation to inform the Commissioner of Police of any transaction that takes place in the course of its business activity which it suspects to be related to the commission of a terrorist act. Hence, whilst Section 35 imposes a duty to report it does not expressly grant the Police powers to request for such information at their own initiative. However, under Section 95 of the Criminal Procedure Code (Cap 54) contains a general power which allows the Police to request for a search warrant where amongst other things “ anything which is necessary to the conduct of an investigation is found in any building, ship carriage..”. Hence, the Police can use such powers if they want to trace any property as regards an offence under the PTA. Law

enforcement agencies have the necessary powers to identify and trace property suspected of being the proceeds of crime

Protection of Bona Fide Third Parties (c. 3.5)

186. Both the AML Act and the PTA protect the interests that any third party may have in a property that is subject to a forfeiture order. See Section 37(6), 37(7), 37 (8) of the PTA 2004 and Section 32 (6), (7), (8) and (9) of the AML Act 2006.

187. Section 29 of the PTA provides that on conviction of any person for an offence under that Act and before making an order for the forfeiture of any property used for or in connection with or received as payment or reward for the commission of that offence, the court shall give every person appearing to have an interest in the property an opportunity to be heard. Section 37(6) of PTA provides for notice to be given to an interested third party when the Attorney-General makes an application for forfeiture. Section 37(7) of the PTA provides that the judge hearing the application for forfeiture shall order that the interests of a third party (stipulated in the order) should not be affected by the order where the judge is satisfied that the person has an interest, has taken all reasonable steps to ensure that the property is not utilised in furtherance of the commission of a terrorist act and is not a member of a terrorist group. Section 37(8) of the PTA provides that a person who has an interest in property which has been forfeited may within 60 days after the forfeiture order was made, make an application to the Supreme Court for the variance or setting aside of the order.

188. Under the AML Act, protection of bona fide third parties is covered under Section 32(5), which provides that a court shall not make an order for forfeiture if the court is satisfied that the person (not being the person convicted) who is in possession of, or purports to own, the property concerned in good faith and for sufficient consideration and without knowing or having reason to believe that the property was at the time of its acquisition property derived from, obtained or realised from the commission of ML or FT.

189. Section 32(6) of the AML Act provides a mechanism whereby a person claiming interest in a property may apply, whether before or after a forfeiture order has been made, to the court for an order declaring the nature, extent and value of that person's interest, directing that the State transfers the property to that person or directing the State to pay the person an amount equal in value to the value of the person's interest in the property, as the case may be.

190. Section 32(7) of the AML Act provides that where the court is satisfied that the person has an interest in the property, has taken all reasonable care to ensure that the property is not the proceeds of a crime or terrorist property or would not be used in the commission of a terrorist act and is not a member of a terrorist group the court may order that the interests of that person (stipulated in the order) should not be affected by the order.

191. Section 32(8) of the AML Act provides that where a court has made a forfeiture order and the conviction of a person in relation to whom the order was made has been

quashed, the order shall cease to have effect and a person who claims to have an interest in any property in respect of which the forfeiture order was made may apply to the court for an order declaring the nature, extent and value of that person's interest, directing that the State transfers the property to that person or directing the State to pay the person an amount equal in value to the value of the person's interest in the property.

192. Section 32(9) of the AML Act which provides that where a court has made a forfeiture order and the conviction of a person in relation to whom the order was made has been quashed, the court shall as soon as is practicable after the order cause notice of such to be given to any person whom the court has reason to believe may have had an interest in any money or property which is the subject of a forfeiture order immediately before the order was made.

Power to Void Actions (c. 3.6)

193. Section 37 of the AML Act provides that the Court, may before making a forfeiture order, set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence unless the conveyance or transfer was made for sufficient consideration to a person acting in good faith and without notice.

Additional elements (c.3.7)

194. There are generally no provisions in the law that expressly provide for the confiscation of the property of organizations that are found primarily criminal in nature. Provided that such a law can be justified under Article 26(2) (a) of the Constitution of Seychelles, such provision may be included into the law to give effect to the above-mentioned proposal. However, Section 37(1) of the PTA does provide forfeiture orders to be made in respect of "property owned or controlled by, or on behalf of, a terrorist group".

195. The proposal under Criterion 3.7(b) would again be subject to Article 26(2)(a) of the Constitution of Seychelles. However, Section 37(4) of the PTA does provide that a judge can make a forfeiture order upon an application made under Section 37 (1), if on a balance of probabilities the judge is satisfied that the property comes within subsection (1)(a) or (b) of Section 37. Since the burden of proof under 37(4) is that a civil standard rather than that of a criminal standard, (that is beyond a reasonable doubt), then Section 37(4) to a certain extent satisfies the request of this Criterion.

196. Section 37 of the AML Act provides that, before making a forfeiture order, a court may set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence, unless the conveyance or transfer was made for sufficient consideration to a person acting in good faith and without notice. This provision would apply to both the offences of ML and FT.

2. 3.2 Recommendations and comments

197. There has been no property frozen, seized or confiscated in relation to ML or FT. The legislation has not been tested and the assessment team was unable to determine whether the legislation is effective or has operational difficulties.

198. The AML Act and the PTA should be amended to ensure that law enforcement agencies have express powers to identify and trace property subject to confiscation or which is suspected of being proceeds of crime.

199. The AML Act should be amended to clarify that applications for seizure of property may be made *ex-parte*.

200. The authorities in Seychelles must ensure that all officers involved in the identification and tracing of property subject to confiscation are fully educated and trained.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • The AML Act and the PTA do not expressly provide powers to law enforcement agencies for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime. • The AML Act is silent on the issue of whether an application for seizure may be made <i>ex parte</i>. • The application of the law has not been tested therefore the effectiveness of the regime cannot be assessed.

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

2.4.1 Description and Analysis

Legal Framework:

Freezing Assets under S/Res/1267 (c. III.1)

201. Sections 3 and 42(2) of the PTA provide the legal basis for the Minister to declare an entity (defined under section 2 of the PTA as a person, group, trust, partnership, fund or an unincorporated association or organisation) as a specified entity.

202. In accordance with the provisions of section 42(2) of the PTA where the Security Council of the United Nations decides in pursuance of Article 41 of the Charter of the United Nations on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures the Minister may by regulations make such provisions as may appear to the Minister to be necessary or expedient to enable those measures to be applied.

203. Further under the provisions of section 42(3) of the PTA, where a regulation under section 42(2) of the PTA declares that there are reasonable grounds to believe that an entity specified in the regulation is engaged in terrorist activity, that entity shall be deemed with effect from the date of publication of the regulation to have been declared a specified entity under section 3(2) of the PTA.

204. Under the provisions of section 3 of the PTA where the Attorney General has reasonable grounds to believe that

(a) an entity has knowingly-

- (i) committed;
- (ii) attempted to commit;
- (iii) participated in committing; or
- (iv) facilitated the commission of

a terrorist act, or

(b) an entity is knowingly acting-

- (i) on behalf of,
- (ii) at the direction of, or
- (iii) in association with

an entity referred to in paragraph (a), the Attorney General may recommend to the Minister that an Order be made in respect of that entity.

205. The Minister may by Order published in the Gazette declare that an entity is a specified entity.

206. The consolidated list of designation made pursuant to UNSCR 1267 and its updates are sent to Seychelles through its Ministry of Foreign Affairs (MoFA). The MoFA sends the list to the CBS and the FIU which further circulate the list to the reporting entities, law enforcement and supervisory agencies.. At the time of the mutual evaluation no Specified Entity Order had been made in respect of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee. There were also no regulations made under section 42(2) of the PTA

207. There are neither any substantive legislative provisions nor procedures in place to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee.

208. Section 36 and 37 of the PTA when read together could provide a mechanism through which the requirements of resolution 1267 could be indirectly met. These two sections provide that an *ex parte* application could be made by the Attorney-General for an

order restraining any person from disposing or dealing with any property owned or controlled by, or on behalf of, a terrorist group. The definition of a terrorist group under section 2 of the PTA includes a specified entity. In practice the application for the restraining order under section 37 of the PTA can only be initiated after a Specified Entity Order has been published in the Gazette.

Freezing Assets under S/Res/1373 (c. III.2)

209. The mechanism described above apply to all relevant UNSCR (section 42 of the PTA), including UNSCR 1373.

Freezing Actions taken by other countries (c. III.3)

210. The procedure to give effect to designations made pursuant to the actions initiated by another country would have to follow the procedure for a Specified Entity Order under section 3(2) of the PTA.

211. It is difficult for the assessment team to establish precisely whether this is indeed the case considering that the provisions of section 3 of the PTA have never been used.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4)

212. Under Section 37(1) of the PTA, the AG may make an application to a judge of the Supreme Court for an order of forfeiture in respect of property owned or controlled by, or on behalf of a terrorist group or property that has been, is being or will be used, in whole or in part, to commit, or facilitate the commission of a terrorist act.

Communication to the Financial Sector (c. III.5)

213. There is no system in place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action.

Guidance to Financial Institutions (c. III.6)

214. No guidance has been provided to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms..

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7)

215. There are no effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8)

216. There are no and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

Access to frozen funds for expenses and other purposes (c. III.9)

217. There are no procedures in place for authorising access to funds or other assets that were frozen pursuant to S/RES/1267 (1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

Review of Freezing Decisions (c. III.10)

218. Under Section 29(1) of the PTA, before the court makes an order for forfeiture of property, the court shall give every person appearing to have interest in the property in respect of which the order is proposed to be made an opportunity to be heard.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

219. The PTA does not expressly provide powers for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime. However Section 35 of the PTA does provide for any one who has got in his or her possession any property owned by terrorist group to inform the Commissioner of Police about the fact (Section 35(1) of the PTA).

220. Furthermore, there is an obligation on Financial Institutions under section 35(2) of the PTA to provide a quarterly report to the FIU as to whether or not, they have in their possession or control any property belonging to terrorist groups and if so, to provide particulars thereof. Moreover, a financial institution also has an obligation to inform the Commissioner of Police of any transaction that takes place in the course of their business activity which they suspect to be related to the commission of a terrorist act. Hence, whilst Section 35 imposes a duty to report it does not expressly grant the Police powers to request for such information on their own initiative. However, Section 95 of the Criminal Procedure Code (Cap 54) contains a general power which allows the Police to request for a search warrant where amongst other things “anything which is necessary to the conduct of an investigation is found in any building, ship carriage...” Hence, the Police can use such powers if they want to trace any property as regards an offence under the PTA.

221. Articles 1131 and 1133 of the Civil Code of Seychelles (Cap 33) will render such contracts void.

222. Under Section 26(1) of the PTA, where the Commissioner of Police has reasonable grounds for suspecting that any property has been used or is being used to commit an offence, he may seize the property.

223. However, Section 95 of the Criminal Procedure Code (Cap 54) contains a general power which allows the Police to request for a search warrant where amongst other things “anything which is necessary to the conduct of an investigation is found in any building, ship carriage...” Hence, the Police can use such powers if they want to trace any property as regards an offence under the PTA.

General Provisions

Protection of Rights of Third Parties (c. III.12)

224. Section 37(6), 37(7) and 37(8) of the PTA protect the interests that any third party may have in a property that is subject to a forfeiture order.

Enforcing the Obligations under SR III (c. III.13)

225. The staff of the FIU will ensure compliance to the relevant legislations by means of on-site inspection of reporting entities. Failure to comply with the requirements of the legislation will result in the imposition of penalties as prescribed by the law.

Additional Elements (c. III.14)

226. The necessary steps are being taken to implement the measures set out in the Best Practices Paper for SR III. Though no cases of freezing of terrorist funds have occurred, the necessary legal authority and procedures to freeze funds or other assets based on information creating reasonable ground to suspect that such funds/assets are terrorist related exist. A national task force team will be established to facilitate communication, co-operation and collaboration with the relevant government agencies.

227. The legislation also provides for co-operation with foreign governments and international institutions.

228. The newly established FIU will in time be in a position to share intelligence information with similar foreign counterparts. The FIU will continue to disseminate lists of designated individuals and terrorist groups to reporting entities in the private sector. The FIU will ensure adequate compliance, controls and reporting in the private sector. The FIU co-ordinate with law enforcement and other security authorities and provide the appropriate feed back to the private sector.

2. 4.2 Recommendations and comments

229. The freezing mechanism is non-existent and the forfeiture mechanism under the PTA suffers from a number of shortcomings. The evaluation team considered that the overall implementation of the measures provided for under the PTA was ineffective.

230. The mere fact that the forfeiture measures under UNSCR 1267 necessitate a Specified Entity Order contravenes the requirements under UNSCR 1267.

231. The Seychelles authorities are recommended to reconsider the mechanisms set out to implement UNSCR 1267 to ensure that all persons and entities designated by UNSCR 1267 are considered as terrorists and their funds and other assets are immediately frozen upon identification.

232. Regulations should be enacted as provided in Section 42(2) of the PTA which provides that the Minister responsible for internal affairs may, by regulations make provisions as may appear to the Minister to be expedient or necessary to give effect to such decisions of the Security Council as the Security Council may call upon its member States to apply. This would be a direct mechanism for facilitating the requirements of the Special Resolutions without having to resort to interpreting the legislation to achieve this end without exposing the CFT measures to legal challenges.

233. A system must be put into place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action.

234. Guidance must be issued to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms.

235. Effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations must be put into place.

236. Effective and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person must be put into place.

237. Procedures must be put into place for authorising access to funds or other assets that were frozen pursuant to S/RES/1267 (1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none">• The procedures in place are not effective and would not enable the freezing without delay funds and other assets of persons designated under UNSCR 1267.• There are no effective procedures in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373.

		<ul style="list-style-type: none"> • There is no system in place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action. • No guidance has been provided to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • There are no effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations. • There are no effective and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
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2.5 The Financial Intelligence Unit and its functions (R.26)

2. 5.1 Description and Analysis

Legal framework

Anti-Money Laundering Act, 2006 (AML Act)

Establishment of FIU as National Centre (c. 26.1)

238. The Seychelles FIU was established on July 1, 2006 as an independent body within the Central Bank of Seychelles. Under Section 19 of the AML Act, the FIU is designated as the principal focal point for receiving, analyzing and dissemination suspicious transaction reports related to ML and FT and to carry out AML/CFT supervision of reporting entities.

239. The Act is quite comprehensive in respect of the establishment and powers of the FIU. The Central Bank received STR reports prior to the establishment of the FIU. No reports are made directly to other supervisory bodies. The FIU does not have any intention to have Regional offices on any other island at this stage and the FIU which is based on Mahé will be the national point for the receipt of all STRs.

Guidelines to Financial Institutions on Reporting STR (c. 26.2)

240. Section 10 of the AML Act specifies the reporting procedures to be adopted by reporting entities when submitting suspicious transactions related to ML and FT to the FIU. Prior to the establishment of the FIU, the Bank Supervision Division (BSD) was responsible for the receipt, analysis and dissemination of STRs on ML. Officers from the BSD have conducted training on AML for staff of all the banks, the Seychelles Credit Union and the Corporate Service Providers. The training covered the reporting procedures and requirements.

241. The Act indicates that reports submitted to the FIU shall be in a form and contain details as prescribed. No Regulations or guidance have been formally drafted or disseminated in this regard, however a reporting form has been designed and disseminated to Banks in November 2006.

242. Although a reporting form has been designed and disseminated to banks in order to guide them in their reporting to the FIU, as yet they have not been provided to other reporting entities. The reporting form is basic and does not cater for multiple or complex transaction reporting. It may not be suitable for all reporting institutions and may require refining by industry. This report is not readily available to reporting or other entities on the FIU/CBS website. Reports are hand delivered to the Central bank and bank statements sometimes only have a covering letter.

Access to Information on Timely Basis by FIU (c. 26.3)

243. Under Section 19 of the AML Act, the FIU has the authority to collect any information that the FIU considers relevant to an offence under this Act or any other law that is publicly available, including commercially available databases, or information that is collected or maintained including information that is stored in databases maintained by the government.

244. The FIU also has the authority to request information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of the Act.

245. Under Section 23 of the Act, the FIU is authorised to enter any premises during working hours and examine records, which are considered relevant to ensuring compliance with the provisions of the Act. The FIU may transmit any information derived from such examination to the appropriate domestic law enforcement authorities if the FIU has reasonable grounds to suspect that the information is relevant to an investigation for non-compliance with this Act, an unlawful activity, a money laundering offence or an offence of financing of terrorism.

246. The FIU has wide-ranging powers to collect information. In particular it has indirect access to information held in the Immigration databases, Police databases, Customs databases, Ministry of Land Use and Habitat databases and Company Registrars databases. In addition, the following entities confirmed that they would share database information with the FIU upon request: banks, insurance companies, and supervisory bodies.

Additional Information (c. 26.4)

247. Section 19(c) of the AML Act authorises the FIU to request information from any reporting entity, any supervisory Agency and any law enforcement agency for the purposes of the Act. Under Section 10(3) of the Act a reporting entity that has made a report to the FIU shall give the FIU or the law enforcement agency that is carrying out the investigation arising from, or relating to, the information contained in the report, any further information that it has about the transaction or attempted transaction or about the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

248. At this stage the banks that have reported have done so under a covering letter and have attached bank statements and occasionally customer information when reporting STRs to the FIU.

249. The FIU does have the necessary powers to obtain additional information as required. When collecting information to build a case and conduct analysis, the FIU checks other reporting entities to determine whether they have any information on the reported person or entity. What is of concern is the lack of procedures to do so.

Dissemination of Information (c. 26.5)

250. Section 19(f) of the AML Act authorises the FIU to disseminate any report, any information derived from such report or any other information it receives to the appropriate law enforcement agency and supervisory authorities if the FIU has reasonable grounds to suspect that the transaction is unlawful.

251. The FIU only disseminates cases where there is a suspicion of ML. So far the FIU has disseminated reports to the Police and the tax authorities.

252. The procedure and safeguards for dissemination are not clear. It was also not immediately clear from interactions with police or the AG whether they fully understood the confidentiality of the disseminated information and role it would play in the evidential arena or possible prosecution.

Operational Independence (c. 26.6)

253. The FIU is established as a unit within the CBS with its own organization and management structure, and its own staff and resources although its budget forms part of the CBS budget. It is housed in a secure part of the CBS building separated from the main central banking activities. The FIU will have operational independence in order to ensure that the decision making process is free from undue influence and interference.

254. The FIU reports to the Board of the CBS. The Director is required under section 17(1) of the Act to report to the Board on the exercise and performance of his powers and duties under the Act. As a unit within the CBS the FIU will only submit a business plan

and proposed budget to the Board in December 2007. A budget will be allocated in January 2008.

255. At this stage the Director and staff are still considered by stakeholders to be synonymous with the CBS. This is also aggravated by the fact that they are housed in the same building, use the CBS network system and junior staff wears the CBS uniform.

256. As the FIU is still reasonably new and is reliant of the CBS for establishment, Board decisions and budget, it is too soon to tell whether they will be in a position to operate freely without any undue interference or influence.

Protection of Information Held by FIU (c. 26.7)

257. Access to the FIU is restricted with information on its databases and files being securely protected. Information is only disseminated in accordance with the requirements of the law.

258. Section 18 of the Act applies to the Director, officers, employees or agents of the FIU while they are in office and after they leave the employ of the FIU. The Section prohibits them from disclosing any information or matter which has been obtained by him or her in the discharge of his or her functions under the Act or which he or she has knowledge of, except for the detection, investigation, prosecution or enforcement of the Act or any other law.

259. These individuals shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the FIU, or a person or an entity about whom a report or information was provided under this Act.

260. Section 21 of the Act prohibits the Attorney-General and every other person acting on behalf of or under the direction of the AG from disclosing any information that they have obtained or to which they have access in the course of their audit of the FIU except in the performance of their functions when ordered by a court of law.

261. Although some restrictions of FIU related information exist in the law they are insufficient to protect the confidentiality of the work of the FIU. During the interviews it was impressed upon the evaluation team that Seychelles is a very small place and that everyone knows everyone else and everything about each other. If insufficient procedures are in place to protect reporters to the FIU then reporting officers and entities may stop reporting for fear of reprisals.

262. The law provides confidentiality clauses for the FIU and the Attorney General. However while analysing reports the FIU may request further information on reported individuals/entities or information from other reporting entities or even further information from government institutions and supervisory bodies. Most of these entities are then not subject to confidentiality clauses within the legislation and in such small community it is the assessors' view that this poses a risk to the confidentiality of the information held by

the FIU. The authorities in the Seychelles have however indicated that the CBS, commercial banks, CSPs, accountants and auditors are bound by a duty of confidentiality by virtue of their contract of employment.

Publication of Annual Reports (c. 26.8)

263. The FIU is newly established and has been operational for 3 months. They have not prepared an annual report or any other reports that relate to trends typologies or statistics.

264. Under Section 17(3) of the AML Act, the Director is required to submit a report on the activities of the FIU during the preceding year to the Board of CBS on or before the 31st day of March each year. The Board shall then table a copy of the report before the National Assembly.

Membership of Egmont Group (c. 26.9)

265. Seychelles is not a member of the Egmont group. The Seychelles FIU will in time apply for membership to the Egmont Group. Approaches have already been made to the Mauritius FIU and the South African FIC to assist and act as sponsors in the Seychelles membership application.

266. As the FIU is able to receive, analyse and disseminate information in relation to the investigation of ML and FT, there does not appear to be a hindrance regarding its eligibility to apply for Egmont membership.

Exchange of Information Among FIUs (c. 26.10)

267. Once accepted as a member of the Egmont Group, the Seychelles FIU will adhere to the Statement of Purpose and its principle of information exchange with similar agencies. In the meantime, the FIU is already exchanging information with similar foreign agencies.

268. Section 20 of the AML Act provides for the disclosure of information to foreign institutions and agencies. It states that the FIU may, with the approval of the Attorney-General (AG), disclose any report or information set out under section 19 of this Act to an institution or agency of a Foreign State or to an international organisation or institution or agency established by the Governments of Foreign States that has the powers and duties similar to that of the FIU. The terms and conditions set out for this disclosure shall be set out in an agreement or arrangement between the FIU and that Foreign State or international organisation, institution or agency regarding the exchange of information under Section 22.

269. Where no agreement or arrangement exists, the FIU and other party may agree at the time of disclosure on terms and conditions that include the restriction of the use of the report or information for the purpose relevant to the investigating and prosecuting of an unlawful activity, ML or FT offence or any other substantially similar offence. The authorities have indicated that all correspondence to a foreign counterpart contains a

stipulation to the effect that the information must be treated in a confidential manner and not further disclosed without the written consent of the FIU.

270. Section 22 of the AML Act states that the FIU may, with the approval of the President, enter into agreements or arrangements in writing with the Government or Foreign State, or an international organisation or an institution or agency established by the governments of foreign states regarding the exchange of information of the FIU and any institution or agency of that State or organisation that has powers and duties similar to those of the FIU. The authorities have indicated that no agreement has been entered into thus far.

271. The FIU may enter into agreements in writing with other FIUs or institutions with similar powers or duties and foreign law enforcement agencies or supervisory authorities in order to exchange information. The authorities have indicated that no agreement has been entered into thus far.

272. The information exchanges shall be information that the FIU or other agency has reasonable grounds to suspect would be relevant to investigating or prosecuting an offence of ML or FT or a substantially similar offence. The authorities have indicated that all information exchanged thus far was related to suspected cases of ML.

273. In addition to the approval of the AG to share information with other FIUs, the FIU is required to share all requests received and sent to other FIUs with the AG.

274. The President is required to approve all agreements or arrangements made to share information. Although there is legislation that caters for the approval of agreements, it also appears that information can be shared spontaneously.

2.5.2 Recommendations and comments

Recommendation 26

275. AML legislation has been in place since 1996 and reporting has been mandatory for quite some time. There appears to be confusion as to what is reportable and what is not. Clear guidelines in this regard must be issued, taking into account what must be reported, when a report must be submitted, timeframes for reporting, details and additional information required to be submitted should be issued as a matter of urgency.

276. The FIU should develop procedures and registers to keep track of requests for additional information and protect the confidentiality thereof.

277. It is suggested that the FIU conducts training for the recipients of their products in relation to the safeguarding and use of the information in investigations and prosecutions as a matter of urgency.

278. It is recommended that the FIU take steps to exert its independence from the CBS by having its own website, letterheads, email addresses and possibly even dress code to impress upon stakeholders the emergence of a new and independent Unit.

279. The FIU should as a matter of urgency put in place the necessary policies and procedures and if need be, MOUs to protect the confidentiality of information that it works with, whether this relates to a report received or any other information received.

280. However efforts should be made to align and streamline section 20 and 22 of the legislation to avoid confusion in relation to the application thereof and who has the ultimate authority to approve the sharing of information and signing of agreements. In line with the international trend it should be considered that the Director be able to conclude sharing agreements with other FIUs.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • The FIU is a new institution with very little experience in implementation of AML/CFT requirements under the new law. • No guidelines had yet been developed for reporting entities. • Although the FIU has sufficient powers to access information effectiveness could not be measured as these powers had not been used and tested at the time of the mutual evaluation. • The FIU had not acquired operation independence. At the time of the onsite visit it was still very reliant on CBS-sharing its computer system, budget, and office premises. • Although the legal framework meets the criteria for Egmont Group membership the FIU was not an Egmont member. The application for membership was under consideration. • While the legal gateway for exchange of information has been provided under the AML Act, the procedure is time consuming as other authorities must be consulted before information is shared.

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

2.6.1 Description and Analysis

Legal Framework

Anti-Money Laundering Act 2006; Prevention of Terrorism Act 2004; Police Force Act (not provided to the evaluation team); Evidence Act; Criminal Procedure Code, the Customs Management Decree and the Immigration Decree.

281. The structure of the Law enforcement Sector in Seychelles includes Seychelles Police Force, Tax and Customs Department, Immigration Department and the Financial Intelligence Unit.

Designation of ML/FT Investigations (c. 27.1)

282. Police have the mandate to investigate all offences including ML and work with the FIU, Immigration, and Revenue Commissioner to ensure that ML and TF offences are properly investigated.

283. Section 6 of the Police Force Act empowers the Police to investigate any offence under the AML Act or PTA. The Seychelles Police has recently undergone a major re-organization including the appointment of a new Commissioner of Police. Foreign experts have been assigned to provide technical assistance which is expected to improve their efficiency. In February 2005 a Financial and Fraud Squad has been established whose main role will be to investigate terrorism, terrorist financing and well as investigate all forms of financial fraud.

284. The Seychelles Police is headed by a Commissioner. Under him there are following Divisions/Branches namely Criminal Investigation, Special Branch, Operations, Special Support, Seychelles Police Academic, Administration and Finance and Transport Security (Transec). The Directorate of Criminal Investigation has established a department of Financial Fraud Squad which is responsible for investigating STR on AML/CFT from the FIU.

285. The Seychelles Police at the national level do share information with other Law enforcement agencies such as Seychelles Revenue Commissioner, Immigration and the Coast Guard informally. At the Regional level they share information through EAPCCO (East Africa Police Chiefs Cooperation Organization). At the International level information is shared through INTERPOL via the Nairobi Sub Regional Bureau.

286. There are no joint operations/investigation teams among the Police, Seychelles Revenue Commissioner, Immigration and Coast Guard.

Customs

287. Seychelles Revenue Commissioner (SRC) does receive names of suspected people and cargo from the Central Bank and Police and rolls the data in the Ascyuda data capturing System within the SRC. There are 120 Customs officers and 90 Domestic Revenue Officers. Detection of goods is information based and there are no scanners at the dock. There are scanners at the Airport only. The Government of Seychelles is in the process of amending the existing Customs Management Decree.

288. Seychelles receives 850 containers in a month. The Examination of the containers at the Dock is not 100 %. They are using Risk Analysis Technique. Customs officials do profile and search Seychelles nationals while not profiling tourist because they are bringing revenue to the country.

289. In Seychelles because of lack of expertise in AML/CFT there is underreporting of STR by Law enforcement agencies.

290. Tax Evasion is not a predicate offence instead is a quasi Criminal offence. In Seychelles AML/CFT proof of offence depends on the Mens Rea element. Asset forfeiture is based on conviction. There are no provisions for protection of witnesses and victims except in Sexual offences only.

291. The Seychelles Revenue Commissioner does liaise with the World Customs Organization. In Seychelles statutes, there are provisions for enforcement of foreign judgments but don't have provisions for sharing of Assets.

Waiver of Arrest of Suspects (c. 27.2)

292. The police do not have the power to postpone or waive the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

Additional Elements

Use of Special Investigative Techniques (c. 27.3 & 27.4)

293. In Seychelles, the investigative techniques are permissible to the extent that they do not breach the constitutional rights of the individual. Investigative techniques and undercover operations are being utilized by the Police during investigations and such techniques will be utilized in cases of suspected ML and FT.

294. As far as undercover operations are concerned, these are permissible. However, with regards to intercepting of correspondence or other means of communication, a court order is necessary as per Article 20 of the Constitution.

Mechanisms for Cooperative / Multi-Agency Investigation Teams (c. 27.5)

295. Cooperative investigations with other jurisdictions like Kenya, Mauritius and India are being undertaken. There is now more cooperation and the exchange of information between the Seychelles Police and their counterparts in Mauritius, India and Tanzania on suspected drug traffickers. The authorities are now considering entering into MOU with Kenya and Madagascar. The Police intend to increase information sharing on suspected drug traffickers with their counterparts in the region with a view to enhance the fight against drug trafficking. The authorities anticipate more changes in the form of increased cooperation between neighbouring countries in combating drug trafficking and ML.

296. The Police have arrangements on information exchange on suspected drug traffickers with their counterparts in Mauritius, India, Kenya and Tanzania. Whenever a local resident or a foreigner suspected of being a drug trafficker leaves the country, the local Police tip off their counterparts in Mauritius, Kenya, Tanzania and India. Similarly, their foreign counterparts alert them whenever suspected traffickers are bound for Seychelles. This has resulted in some local residents suspected of being involved in drug trafficking being arrested in India and some controlled illegal substances have also been seized. The Police are now considering extending the exchange of information with their counterparts in Madagascar and may need to establish a database to record requests for the exchange of information. The Police do not keep statistics of such information exchanges.

297. Information is also exchanged between the member states of the East African Police Chiefs Organization (EARPCCO) Extensive work is being done with the neighbouring jurisdictions and the cooperative investigations have led to the arrest of the suspects and the seizure of controlled illegal substances

Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6)

298. So far, reviews of ML and FT methods and techniques between the FIU and other law enforcement agencies are not being undertaken but the National Task Force on AML established in December 2006 will facilitate this process.

Recommendation 28

Production of Documents and Information (c. 28.1)

299. There are provisions in the PTA for the production of information to the Police force (see Section 35(1), 35(3) of the PTA). Furthermore, Section 95 of the Criminal Procedure Code also makes provisions for search warrants to be issued by courts. Section 49 of the FIA also provides for the production of documents by a financial institution upon an order of the court and also to a police officer authorised under the Evidence (Bankers Books) Act. Section 8 of the Evidence (Bankers Books) Act provides that if it is proven to a judge upon oath that any document in the custody or control of a bank is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge may authorize a police officer to inspect the account and such officer may also take copies of such documents. Moreover, Section 50 of the PTA provides that the Supreme Court may make an order upon the application of the Attorney General, for the production or disclosure of any information by the Central Bank if the information is bona fide required amongst other things for the purpose of any inquiry or trial into or relating to ML or FT.

300. Under Section 26(1) of the AML Act, a police officer may with the approval of the AG make an application in writing accompanied by an affidavit to a Judge of the Supreme Court in Chambers for a restraining order prohibiting a person from disposing of property. Under Section 26(1) of the PTA, the Commissioner of Police may seize the property where there are reasonable grounds for suspecting that the property has been or is being used to commit an offence under the Act.

Taking Witnesses' Statement (c. 28.2)

301. The Police have the powers to take witness statements for use in investigations and prosecutions of ML and FT.

2. 6.2 Recommendations and comments

302. Although, the Law enforcement and Prosecution services have an AML/CFT regime they still do not have a strategic plan to deal with the vices. In all institutions there are shortages of resources, absence of regular Training and capacity building in the area of AML/CFT. The Seychelles Police as investigators of ML/TF offences have very few trained Financial and Cyber Crime Investigators and lack equipment such as computers and surveillance equipment. The authorities have however indicated that since the beginning of 2007, an expert from the Office for Technical Assistance in the US Treasury Department has been to Seychelles to assist the staff of the FIU on all aspects of its operations. These include:

- Provide training to FIU staff
- Provide technical assistance and guidance to the FIU to achieve operational status and efficiency in processing and analyzing STR, supporting law enforcement in domestic and international investigations, and ensuring compliance with AML/CFT laws and regulations;
- Provide training to law enforcement to improve capacity to prevent, detect, investigate and prosecute financial crimes;
- Provide training to public and private stakeholders as to their responsibilities under the AML Act

303. The Law enforcement Agencies mainly Police, FIU, Tax and Customs, Coastal Guard, Immigration, Judiciary mainly Magistrates and Judges need to be trained on AML/CFT issues and provided with the appropriate tools.

304. Sharing of information at National, Regional and International level should be enhanced.

2.6.3 Compliance with Recommendation 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none">• Although the Police are statutorily mandated to investigate ML and TF cases, the Financial Fraud Squad which was recently established have limited capacities, skills and equipment to successfully investigate ML and TF offences.• There are no measures in place to allow police officers to postpone or waive the seizure of money for the purpose of identifying persons involved in ML activities or for evidence gathering.

		<ul style="list-style-type: none"> Given that the AML law was recently enacted there is no method of evaluating the effectiveness of the program at the present time.
R.28	PC	<ul style="list-style-type: none"> Police officers have powers to investigate and seize and obtain evidence. Police officers have the power to take witness statements on for use in investigation and prosecution of ML, TF and other underlying predicate offences. A low level of AML/CFT awareness amongst law enforcement agencies and lack of trained personnel and supporting equipment undermine the quality of investigations.

2.7 | Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Legal framework

There is no specific legal framework at the moment that deals with cash couriers.

Mechanisms to Monitor Cross-border Transportation of Currency (c. IX.1)

305. There is no threshold set for cross-border transportation of currency nor is there a declaration or disclosure requirement/system in Seychelles. However, under Section 1 (3) (d) of the Exchange Control Act (Act 4 of 2001), no person is permitted to bring into or take outside of Seychelles, notes of the value exceeding R2, 000. The Police may under Section 15 of the Criminal Procedure Code, search any person suspected of being in possession or having in his possession anything unlawfully obtained.

306. There are no large cash transactions reporting requirements, which include large foreign currency exchange transactions. Due to the tightening of foreign exchange controls in 2001, the authorities believe that large amounts of cash immediately attract attention in the banking sector and should trigger a suspicious transaction report to the FIU.

307. It is also illegal to be in possession of foreign exchange not lawfully obtained from an authorised dealer. The Police regularly conduct searches in the country of persons suspected of being involved in parallel market operations. If found to be in illegal possession of foreign exchange, the foreign exchange can be forfeited by the court or under Section 1 (3B) of the Exchange Control Act, and the Exchange Controller can direct such person to sell the foreign exchange to an authorised dealer.

308. At the time of the on-site visit, Seychelles had recorded 7 convictions against offenders involved in parallel market operations during 2004.

309. The Police may conduct searches of persons whom they suspect are in illegal possession of foreign exchange, counterfeit foreign currency notes, narcotics, or who are suspected of engaging in ML or FT.

Information on Origin and Use of Currency (c. IX.2)

310. If a person is discovered to be illegally in possession of foreign currency and is unable to justify its source, the foreign currency will be forfeited by the court or under Section 1 (3B) of the Exchange Control Act. The Exchange Controller can direct such person to sell the foreign exchange to an authorised dealer.

311. Any person found to be in possession of counterfeit notes will be detained by the Police and the counterfeit notes will be confiscated. Custom officers do conduct routine search of persons who are acting suspicious or whom are suspected of engaging in illegal activities.

Restraint of Currency (c. IX.3)

312. There is no disclosure or declaration requirement in place. Should a person be suspected of being involved in ML or FT the authorities will have to investigate the matter in terms of the relevant ML and FT legislation. It is doubtful whether they would be in a position to restrain the currency while this investigation is ongoing.

Retention of Currency and Identification Data by Authorities (c. IX.4)

313. In the absence of a declaration or disclosure requirement there are no measures in place for retention of data collected on bearers of currency or negotiable instruments.

Access of Information to FIU (c. IX.5)

314. At this stage there is no disclosure or declaration requirement in the Seychelles. However should a person illegally be in possession of foreign currency not lawfully obtained and the persons are suspected of engaging in ML or FT, the FIU would presumably be notified.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6)

315. There is co-ordination between the Police, Immigration and Customs which has resulted in seizures of counterfeit notes and narcotics as well as the suspects. If a local person is discovered to be illegally in possession of foreign currency and is unable to justify its source, the foreign currency will be confiscated by the Police and the unlawful funds will be submitted to the Exchange Controller. If a foreigner is found to be in possession of large amounts of cash for which he cannot justify, he will be questioned by the law enforcement agency who will determine whether he is committing an offence under the AML Act or the PTA.

International Cooperation among Customs, Immigration and Related Authorities (c. IX.7)

316. Both the Customs and Immigration authorities do not have any agreements with their foreign counterparts but should they have any queries or require information, written requests will be made to the relevant immigration authority via the Ministry of Foreign Affairs. The Customs authorities have indicated that there is little foreign cooperation apart from UK Customs which is of limited use as the majority of the commercial traffic is from South Africa, Kenya, Dubai and Singapore.

317. Information can also be shared internationally through the AG's offices under the Mutual Assistance in Criminal Matters Act.

Sanctions (c. IX.8)

318. If a non-resident is found to be in possession of large amounts of cash for which he cannot justify, he will be questioned by the law enforcement agency who will determine whether he is committing an offence under the AML Act or the PTA. If found to have contravened the requirements of either of these two pieces of legislation, the police will conduct the necessary investigation and refer the matter to the AG's office for criminal prosecution. Should the offender be found guilty the relevant penalties will be imposed. This procedure does not apply to instances of non declaration or disclosure.

Sanctions (c. IX.9)

319. If found to be in illegal possession of foreign exchange, the foreign exchange can be forfeited by the court or under Section 1 (3B) of the Exchange Control Act, the Exchange Controller can direct such person to sell the foreign exchange to an authorised dealer. However there is no specific system in place for the non-disclosure or non declaration of a person who is physical cross border transportation of currency or bearer negotiable instruments.

Confiscation of Currency (c. IX.10)

320. There is no legislation that deals with this specifically in the Seychelles.

Confiscation of Currency Related to FT (c. IX.11 applying c. III.1-III.10 in SR III,)

321. Persons whose names appear of the UN Sanction list and who are found to be in possession of funds related to FT in contravention of the PTA will have the funds frozen and the necessary penalties will be applied to the suspect.

Unusual Movement of Precious Metal and Stones (c. IX.12)

322. The CBS Act provides for an Exchange Controller whose permission is required to buy or borrow gold in Seychelles. There is no requirement to report cross-border movements of significant amounts of gold or other high value items such as diamonds or

gems as long as they are for personal use. There is no large scale trade of gold, diamond and gems in Seychelles but an import permit is required for the importation of such items for business purposes and these must be declared to the Customs office or else they could be seized and subsequently confiscated.

323. If during the course of their duties Customs officials discover unusual amounts of precious metals or precious stones for which the person cannot justify, the items will be detained for further investigation and the necessary charges brought against the offender.

324. The Police through Interpol can contact their foreign counterparts in the country from which the items originated to obtain further information on the offender and the items. If necessary, the authorities of the two countries can then agree on mutual legal assistance legislation governing this issue.

Systems to Ensure Proper Use of Information (c. IX.13 & 14)

325. There is no cross border disclosure or declaration requirement and therefore no database.

2.7.2 Recommendations and comments

326. There is no disclosure or declaration requirement in place in the Seychelles. Even though this requirement can to some small degree be dealt with through exchange control thresholds, this will not be enough to meet this criterion.

327. The Seychelles should take urgent steps to draft the necessary legislation and accompanying Regulations and include the requirements under SR.IX. All relevant law enforcement and other agencies should be consulted in this process. It would appear that the Customs officials are somewhat aware of the risks and are actively detecting some irregularities. However the jurisdiction urgently needs the necessary legislation and the designation of an appropriate authority that should be responsible for acting in terms of these requirements. This will include the creation of and awareness surrounding a declaration. Disclosure form, data capture and information usage from the form, processes for the restraint of the cash or negotiable instruments and reporting requirements to the FIU.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"> There is no disclosure or declaration requirement in place in the Seychelles. Even though this requirement can to some small degree be dealt with through exchange control thresholds, this will not be enough to meet this criterion. A reporting system to the FIU on suspicious cross border transportation of cash or other negotiable instruments has not yet been put into place.

		<ul style="list-style-type: none"> • In the absence of a disclosure or declaration system to detect physical transportation of currency and negotiable instruments in Seychelles international cooperation will be difficult to implement. • There is no explicit requirement to report unusual cross border movement of gold or diamonds to competent authorities of other countries.
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3. PREVENTIVE MEASURES- FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

328. The anti-money laundering measures applicable to the Seychelles financial sector are provided in the Anti-Money Laundering Act, 2006 (hereinafter referred to as “AML Act”). The AML Act defines a reporting entity and activities that are deemed to be vulnerable to money laundering. The definition of reporting entity under the Act includes some of the financial institutions as defined by the FATF for the purposes of the 40+9 Recommendations-

- Financial leasing;
- Money transmission services;
- A person dealing in securities and money market instruments;
- An insurer, insurance broker or insurance agent;
- A person conducting individual or collective portfolio management;
- Off shore banks;
- A person that carries out on a business of issuing, selling or redeeming travellers cheques, bankers drafts or similar instruments;
- Financial guarantees and commitments;
- A person dealing in safe custody services, money-brokering;
- Safekeeping administration of cash or liquid securities on behalf of other persons;
- Money and currency changing;
- Investing, administering or managing funds or money on behalf of other persons

329. However, not all categories of the financial institutions operate in the Seychelles. There is no stock exchange or securities market in the Seychelles. The table below describes the categories of financial institutions that operate in Seychelles.

Categories of financial institutions operating in Seychelles, 2006

	Number of institutions
Commercial banks	6
Insurance companies	2
Insurance brokers	2
Insurance agents	
Foreign exchange	2
Money transmitters	2
Credit union	1

3.1 Risk of money laundering or terrorist financing

330. The Seychelles Authorities have not undertaken a comprehensive risk assessment of money laundering and terrorist financing and do not adopt a risk based AML/CFT framework. All financial institutions are subject to the same obligations under the AML Act. The financial institutions are required to apply the AML/CFT measures in their entirety and are not permitted to adopt any simplified measures with respect to areas that they deem to be of little or low risk.

331. However, pursuant to section 4(7) of the AML Act CDD and record keeping obligations do not apply where the transaction is an occasional transaction not exceeding US\$10,000 unless the reporting entity has reason to suspect that the transaction is unlawful or in such other circumstances as may be prescribed. As at the date of the onsite visit no regulations have been made in this respect.

332. As the Seychelles economy opens up and becomes more global, the risk of money laundering increases. For example, as the Eden Island property program takes off, more foreign high net worth individuals will be buying expensive property in Seychelles and settling the transactions through the banking sector in Seychelles. The Eden Island is also a yacht marina and includes a commercial centre which features leading brands. With regard to the balance of risk of money laundering and terrorist financing to financial institutions, the evaluation team concluded that the potential risk was significantly higher in the banking sector as compared to the other sectors. The assessment team has however noted that as at the date of the mutual evaluation the FIU had already started its onsite inspection programmes and had conducted onsite inspections with regard to a commercial bank which held both a domestic and an offshore banking licence to ensure compliance with AML/CFT requirements.

333. Bureaus de change and insurance entities have not implemented internal AML/CFT procedures and the level of awareness was also very limited. The ML/TF risks are not being managed in these sectors. However, the evaluation team considers that the risk of ML/TF in the insurance sector as compared to the banking sector is relatively lower. The customer base of the insurance entities is largely domestic.

334. The two bureaus de change also operate offices at the airport and deal mostly with tourists. The risk of money laundering is perceived to be low by the bureaus operators due to the restriction on the amount that may be exchanged. Pursuant to the Foreign Earnings Act, visiting tourists in the Seychelles are expected to pay for virtually all services whilst in the Seychelles in foreign exchange. In accordance with the letter issued by the CBS on 08 May 2002, the Bureaus de Change have been requested to advise tourists that they may exchange a maximum of US\$200 per person. The assessment team has however noted that as at the date of the mutual evaluation the FIU had already started its onsite inspection programmes and had conducted onsite inspections with regard to a bureau de change to ensure compliance with AML/CFT requirements. Further staff members of the bureaus de change had also receive AML training between 2004 (under the repealed AML Act) and 2006 (under the new AML Act).

335. In general, reporting entities, other than banks, under the AML Act do not perceive the Seychelles as a high risk jurisdiction for the facilitation of money laundering and terrorist financing. The common view was that money laundering occurred only through banks.

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

3.2.1 Description and Analysis

Legal framework

Anti – Money Laundering Act 2006

Financial Institutions Act 2004

Central Bank of Seychelles Act, 2004

336. The AML Act is the primary legislation which imposes Customer Due Diligence obligations on financial institutions, including, banks, money transmission services, insurance entities and bureaux de change. The AML Act 2006 came into operation on 08 May 2006 and replaces the Anti Money Laundering Act 1996.

Anonymous Account (c. 5.1)

337. Under Section 7(1) of the AML Act, financial institutions are required to maintain accounts in the true names of the account holders. Pursuant to the provisions of section 7(2) of the AML Act, they are not permitted to open, operate or maintain any anonymous accounts or any account which is in a fictitious, false or incorrect name. Furthermore, Section 48 of the AML Act provides for a criminal offence for breach of the above mentioned provision. The mutual evaluation team interviewed two banks and both confirmed that they did not open or maintain anonymous accounts. The FIU had also indicated that it had conducted an onsite inspection with respect to a commercial bank that held both a domestic and an offshore banking licence and the records were verified to ensure that no anonymous accounts were being maintained..

338. The AML Act does not expressly refer to numbered accounts however, pursuant to the provisions of section 7(1) of the AML Act, financial institutions can only maintain accounts in the true names of the account holders. Accordingly, it does not appear that a financial institution can maintain numbered accounts.

339. As at the date of the on-site visit, the FIU had inspected only one of the commercial banks which held both a domestic and an offshore banking licence. On this basis it is too early to say whether there is effective implementation of this requirement under the AML Act.

340. The Seychelles Credit Union, issued an AML/CFT Guidance Manual in August 2005. The manual takes account of the provisions of the AML Act 1996 but was not updated following the enactment of the AML Act in 2006. While the manual sets out the

requirement for customer identification and provides that the Credit Union should not enter into a business relationship until the identity of the customer is satisfactorily established it does not specifically prohibit the opening of anonymous account.

341. As at the date of the mutual evaluation insurance entities had not implemented AML/CFT measures.

When CDD Measures Required (c. 5.2)

342. Under section 4(1) of the AML Act a financial institution must before or within a reasonable time after entering into a business relationship ascertain the identity of a customer when-

- It enters into a continuing business relationship or in the absence of such a relationship it conducts any transaction;
- It carries out an electronic funds transfer;
- there is a suspicion of money laundering or financing of terrorism; or
- it has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

343. In general banks operating in the Seychelles undertake verification of identity of clients at the time of opening client accounts. During discussions held with the Bankers' Association, the Banks present at the meeting confirmed that they did verify the identity of the client and no accounts were opened until all identity documentation were submitted by the client.

344. The mutual evaluation team met with one insurance company which conducted composite insurance business. The insurance company displayed a very low level of awareness of its obligations under the AML Act. However, it was noted that the proposal form which the insurance company uses requires the client to provide identification details but there is no practice for these information to be independently verified.

Required CDD measures (c. 5.3)

345. Pursuant to section 4(1) of the AML Act, a financial institution must before or within a reasonable time after entering into a business relationship ascertain the identity of a customer on the basis of any official or other identifying document and verify such identity on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer. Section 2 of the AML Act defines a customer in relation to a transaction or an account as including

—

- A person (defined in section 2 of the AML Act as any natural or legal person and includes body of persons whether it has legal personality or not) in whose name a transaction or account is arranged, opened or undertaken;
- A signatory to a transaction or account;
- Any person to whom a transaction has been assigned or transferred;

- Any person who is authorised to conduct a transaction; or
- Such other person as may be prescribed (as at the date of the on-site visit no regulations had been prescribed in this respect).

346. Where the transaction is conducted by a natural person, adequately identify and verify his/her identity including information relating to his name, address and occupation, the national identity card, passport or other applicable official identifying document and the source of wealth and property of the person.

347. Where the transaction is conducted by a legal entity, identify it and verify its legal existence and structure, including information relating to-

- The customer's name, legal form , address and directors;
- The principal owners and the beneficiaries and the control structure
- Provisions regulating the power to bind the entity

and verify that any person purporting to act on behalf of the customer is so authorised, and identify such person.

CBS Guidance Notes 1998

348. In 1998, the Central Bank issued Guidance Notes on AML Procedures for Seychelles Banks and other Financial Institutions to assist them to comply with their obligations under the AML Act 1996. While these Guidance Notes contain useful information, they do not take account of new the requirements under the AML Act. Moreover, these Guidance Notes are not enforceable. The team noted that some of the banks operating in the Seychelles still refer to these Guidance Notes.

349. Under these Guidance Notes, financial institutions should obtain the following information from Seychelles resident personal customers-

- True name and/or names used
- Correct permanent Seychelles including post box number
- Date of birth

The true names or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible a current valid full passport or national identity card should be requested and the number registered.

In addition, the current permanent address should also be verified. Some of the best means of verifying addresses are:

- Checking an official register such as voters roll
- Making a credit reference agency search

- Requesting sight of an original recent utility bill, local authority tax bill, bank or other financial institution statement
- Checking a telephone directory

350. With respect to non- Seychelles Resident personal customers the Guidance Notes provide that verification procedures similar to those for residents apply. The relevant reference numbers for passports or national identity cards should be recorded. In addition financial institutions may wish to verify identity with a reputable credit or financial institution in the applicant's country of residence.

- (a) Verify the authority of the person that is representing the company/ business
- (b) Verify the identity of two major shareholders, partners of directors;
- (c) Obtain a bank reference

351. Insurance entities and the bureaux de change- operating in the Seychelles are not complying with the CDD measures required under the AML Act. They have not implemented the preventive measures required under the AML Act.

Identification of Legal Persons or Other Arrangements (c. 5.4)

352. Under Section 4(2)(c) of the AML Act where the transaction is conducted by a legal entity, the financial institution must identify it and verify its legal existence and structure including information relating to the customers name, legal form address, directors, the principal owners, the beneficiaries, the control structure, and provisions relating to the power to bind the entity. Additionally, the financial institution must also verify that any person purporting to act on behalf of the customer is so authorised and identify such person.

353. The Act does not contain any specific provisions regarding the verification of identity to be undertaken where the client is a trust. The FIU and the representative of the Bar Association whom the team met have indicated that there is no trust tradition in the Seychelles domestic sector. However, it is possible to set up an International Trust under the International Trust Act 1994. One of the commercial banks which the mutual evaluation team met was licensed to provide non-domestic banking business (offshore banking business). It had in place CDD procedures with respect to trusts. These procedures included the verification of identity of the trustees. But there was no obligation to identify the ultimate beneficial owner under a trust.

354. Further, verification procedures are provided under the CBS Guidance Notes with respect to legal persons. Where the client is a Seychelles registered company the CBS Guidance Note require that Banks obtain the following documents from their clients-

- The original or certified copy of the Certificate of incorporation
- Memorandum and articles of association

- Resolution of the Board of Directors to open an account and confer authority on those who will operate it
- A search of the file at the Companies Registration Office

355. Where the company is an International Business Company, whether registered in the Seychelles or elsewhere, the registered agent applying for the account to the opened should be asked to certify that the applicant is known to him and has presented adequate evidence of proper conduct.

356. Where the company is not registered in the Seychelles the financial institution must seek to identify the directors and influential shareholders of the company in accordance with the requirements for non-Seychelles personal customers. These steps should extend as far as practicable to identifying those who ultimately own and control the company. Evidence that the individual representing the company has necessary authority to do so should be sought and retained. Comparable documents to those listed above for Seychelles companies should be obtained as far as practicable on a request that an account be opened and, within one month of the date of setting up the business

Trusts

357. Under the CBS Guidance Notes where an account is being opened or a transaction being undertaken, on behalf of an undisclosed third party measures should be taken to obtain information as to the identity of the person (whether individual or corporate) and if that is not possible as may be the case for trusts where the settlor and beneficiaries cannot be disclosed by the trustees, the account activity should be monitored and the nature of the relationship noted in the records.

Clubs, Societies, Charities and Non-Profit Organisations

358. With respect to Clubs, Societies, Charities and Non-Profit Organisations – the CBS Guidance Notes requires a financial institution to satisfy itself as to the legitimate purpose of the organisation by, for example, requesting a copy of its constitution. Where there is more than one signatory to the account, the financial institution must verify the identity of at least two signatories and where signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

Unincorporated business

359. In the case of partnerships and other unincorporated businesses whose partners/directors are not known to the bank, financial institutions to whom the CBS Guidance Notes apply must verify the identity of at least two partners in line with the requirements for personal customers.

360. Where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will operate it should be obtained.

Identification of Beneficial Owners (c. 5.5)

361. There is no express provision under the AML Act which requires financial institutions to identify the beneficial owner as defined under the FATF Recommendations and to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source. However, under section 4(2)(c)(ii) of the AML Act, where a transaction is conducted by a legal entity, the financial institution must obtain information relating to the principal owners and the beneficiaries and the control structure. Regrettably, the AML Act does not define the terms principal owners or beneficiaries.

362. In the absence of a definition in the AML Act or any guidelines the practice amongst most financial institutions is to verify and identify the identity of the registered shareholder who may or may not be the beneficial owner. The practice amongst commercial banks is not consistent. The two commercial banks which were interviewed by the team were both subsidiaries of international banks and had different requirements under their internal policies. These internal policies were basically modelled on the AML/CFT manual of the parent company and did not take into account of the requirements under the AML Act. One of the commercial banks identified and verified the identity of all shareholders whilst the other identified and verified the identity of shareholders holding 25% or more in a company.

363. The banks felt that it was difficult to determine the extent to which an entity could go in ascertaining the beneficial owner, especially in cases where another jurisdiction was involved.

364. The Credit Union limits its verification of the shareholders to the major two and not to all the shareholders.

365. While the FIU has indicated that insurance entities have been made aware of their obligations under the AML Act in September 2006 the assessors' have noted that these entities had not implemented CDD measures for AML/CFT purposes.

C.5.5.1

366. Section 4(3) of the AML Act provides that if a natural person conducts a transaction through a reporting entity and the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons then, the reporting entity must also identify and verify the identity of the other person or persons for whom, or for whose ultimate benefit is being conducted.

367. The above provision does not meet the requirement of criterion 5.5.1- in as much as section 4(3) of the AML Act does not apply to all customers of the financial institution. Section 4(3) of the AML Act applies only to customers who are natural persons and where

the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person.

C.5.5.2

368. Pursuant to the provision of section 4(2)(c) where a transaction is conducted by a legal entity the financial institution must obtain information on the control structure of the legal entity. There is no express requirement under the law to obtain information on the natural persons that ultimately own or control or who ultimately effectively control the legal person or arrangement. This criterion is therefore not met.

Information on Purpose and Nature of Business Relationship (c. 5.6)

369. Pursuant to Section 4(2)(a) of the AML Act, a financial institution must when establishing a business relationship, obtain information on the purpose and nature of the business relationship. The reporting entity is expected to identify and verify the nature and purpose of a clients business transaction or when establishing a business relationship.

370. The banks and credit union inquire as to the purpose and nature of the business relationship as well as the source of wealth. In addition, the client is required to provide independent supporting documents to substantiate the information indicated in the application form to enable the bank or credit union evaluate and verify the information provided.

371. The bureaus and insurance entities do not inquire as to the nature and purpose of their clients business. The authorities have indicated that the bureaus only buy foreign currency from tourists and have been requested that they may exchange a minimum of US\$200 per person. Foreign currencies are sold to departing tourists and locals who are required to produce their boarding card.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2)

c. 5.7

372. Section 9(4) of the AML Act places an obligation on reporting entities to conduct ongoing due diligence on the business relationship with a client.

c.5.7.1

373. Section 9(4) of the AML Act provides that a reporting entity must monitor its business relationship and the transactions undertaken throughout the course of the relationship to ensure that its CDD obligations under Section 4 of the Act are met and that the transactions conducted are consistent with the information that the reporting entity has of its customer and the profile of the customer's business. This requirement however, does not make reference to the risk profile or the customer or to source of funds.

c.5.7.2

374. Financial institutions are not required to ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records.

375. One bank is currently in the process of updating client information to comply with the provisions of the AML Act. The tentative target date for completion of the exercise is December 2006.

376. As from August 2005, the credit union, has started to computerise its records and is half way through completing this exercise. The new system will make the photograph And the specimen signature of the client available on-line.

Risk –

Enhanced Due Diligence for Higher Risk Customers (c. 5.8)

377. There are no obligations in the AML Act for financial institutions to perform enhanced due diligence for higher risk customers, business relationship or transaction, such as for non-resident customers, private banking, legal persons or arrangements, or companies that have nominee shareholders or shares in bearer form. Customer verification should meet the identification requirements set out in the AML Act.

378. In practice, some of the banks apply enhanced due diligence measures on the basis of their internal risk assessment exercise. The application of enhanced due diligence measures by the banks is determined on a case-by-case basis. The banks would, for instance, require approval from senior management when establishing the business relationship. In addition, the banks do not accept to engage in any business transactions or relationship with legal entities that involve nominees or bearer shares.

Applying Simplified CDD Measures (c. 5.9 – 5.12)

379. Under the AML Act financial institutions are not permitted to apply simplified CDD measures.

Timing of Verification of Identity (c. 5.13 -5.14 & 5.14.1)

380. Section 4(1) of the AML Act, provides that a reporting entity shall ascertain before or within a reasonable time after entering into a business relationship, the identity of a customer on the basis of any official or other identification document.

381. Even if section 4(1) of the AML Act permits a financial institution to complete the verification of identity within a reasonable time after entering into a business relationship it does not specify the conditions under which this may occur.

382. While there is no requirement on financial institutions to adopt risk management procedures with respect to business relationships established prior to completion of the

verification of identity of the customer the FIU has indicated that the banking institution which was subject to the onsite inspection had such risk management procedures in place.

383. In general banks and the credit union require ensure that the verification of the identity of the client is completed before establishing the business relationship. Where banks open an account before the completion of the verification of identity of the client, no transaction will be allowed to go through the account until all the necessary documentation has been submitted and verified by the banks.

384. The bureaux and the Insurance entities do not undertake any verification of identity of the customer either before or after the establishment a business relationship. The FIU which undertook the onsite inspection of a bureau de change immediately after the onsite visit has indicated that the FIU examiners had verified whether the bureau was establishing the identity of a customer in accordance with the legislation and a recommendation for the bureau to do so was made in the report.

Failure to Complete CDD (c. 5.15 & c. 5.16)

385. Section 5 of the AML Act imposes an obligation on the reporting entity not to proceed with establishing a business relationship or conducting a business transaction where there is insufficient evidence as to adequately identify of the customer. Where satisfactory evidence of identity is not produced to or obtained by the reporting entity, the latter is prohibited under section 5 of the AML Act to proceed with the transaction unless it is directed to do so by the FIU. The reporting entity is further required to report the attempted transaction to the FIU.

386. It would appear that the provisions of section 5 of the AML Act will apply in situations where the financial institution has already commenced the business relationship before completing verification of identity requirements pursuant to the AML Act. However, this cannot be ascertained in the absence of a judicial pronouncement on this issue.

CDD Requirements for Existing Customers (c. 5.17 & 5.18)

387. The enactment of the AML Act 2006 repealed the AML Act 1996. There is no transitional provision regarding the verification of identity of existing customers. It would therefore appear that financial institutions must comply with the provisions of the AML Act 06 with respect to the CDD process only for new business relationships given that the provisions of section 4 of the AML Act apply only at the time of establishing a business relationship or within a reasonable time thereafter. It therefore appears that Financial Institutions are not required to undertake the verification of identity of existing clients.

388. From the discussion held with the Bankers Association, it did not appear that in practice banks in the Seychelles have adopted and implemented procedures regarding existing customers to comply with the CDD requirements under the AML Act. However, one of the members indicated that it had implemented KYC procedures since 2001 and

that it did not have all CDD documentation on existing client relationships to comply with the requirements of the AML Act. It had nonetheless started to review all existing client relationships and planned to complete the exercise by December 2006. One of the other banks indicated that it was not undertaking CDD for existing clients.

389. There is no requirement on financial institutions to perform CDD measures on existing customers if they have anonymous accounts or accounts in fictitious names.

Recommendation 6

Identification, Risk Management and Ongoing Monitoring of Foreign Politically Exposed Persons (c. 6.1; 6.2; 6.2.1; 6.3 & 6.4)

390. Section 4(2)(d) of the AML Act set out the procedures that a reporting entity must put in place with respect to a customer who is a politically exposed person. For the purposes of the AML Act a PEP is defined under section 4(8) of the Act and means *“persons holding prominent public positions in a foreign country such as heads of state or government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of State owned enterprises of national importance, or individuals or undertakings identified as having close family ties or personal or business connections to the aforementioned persons.”*

391. A reporting entity is required to have appropriate risk management systems to determine whether the customer is a politically exposed person and the approval of senior management is required before establishing a business relationship with a PEP.

392. There is no requirement under the AML Act for financial institutions to obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.

393. Under Section 4(2)(d)(iv) of the AML Act, a financial institution must take reasonable measures to establish the source of wealth and source of property of a customer identified as a PEP. There is no requirement to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

394. Further, under Section 4(2)(d)(v) of the AML Act a financial institution must conduct regular enhanced monitoring of the business relationship of a customer identified as a PEP.

395. One of the banks interviewed by the team indicated that it did not have enhanced procedures with respect to PEPs and it would open an account for a PEP if it obtained a good reference. The bank also indicated that it would scrutinise the source of funds. The other bank which was interviewed that it had in place internal policies with respect to PEPs who were considered as high risk customers.

396. Insurance entities have not implemented the requirements of the AML Act with respect to PEPs.

Additional elements (c. 6.5)

Domestic PEPs

397. The provisions of section 4(2)(d) of the AML Act, apply only to foreign PEPs. The definition of PEP under section 4(8) of the Act does not include a domestic PEP. However, the authorities have indicated that since the enactment of the AML Act in 2006, some banks have adopted this policy especially for clients they consider as high risk. In view of the sensitive nature of such a list, details of the list were not revealed to the assessors.

Ratification of the Merida Convention (c. 6.6)

398. The UN Convention against Corruption was signed in 2004 but has not yet been ratified.

Recommendation 7

Respondent Institutions (c. 7.1)

399. Under Section 4(5)(a) of the AML Act, a reporting entity shall in its cross border correspondent banking and other similar relationships-

- adequately identify and verify the identity of the person with whom it conducts such a business relationship,
- gather sufficient information about the nature of the business of the person,
- determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject.

400. The requirement under Section 4(5)(a) of the AML Act, to gather sufficient information about the nature of the business of the person has been couched in general terms and does not indicate that at the end of the information gathering exercise the financial institution should “fully understand” the nature of the respondent’s business.

401. There is also no specific requirement of the financial institution to determine whether the respondent has been subject to a money laundering or terrorist financing investigation or regulatory action.

c.7.2

402. While under section 4(5)(a)(iv) of the AML Act, a financial institution is required to assess the respondent’s anti-money laundering and terrorist financing controls, the financial institution is not required to ascertain that these measures are adequate and effective.

c. 7.3 and 7.4

403. Under the terms of section 4(5)(a)(v) and (vi) of the AML Act, financial institutions in the Seychelles are required-

- to obtain approval from senior management before establishing a new correspondent relationship and
- document their responsibilities and those of the respondent.

404. One of the international banks operating in the Seychelles indicated that its correspondent relationship was routed through its parent company while another international bank indicated that it undertook KYC on the respondent and it followed the policies of its parent company which itself had to meet requirements acceptable to its regulator.

Payable-Through Accounts (c. 7.5)

405. Under Section 4(5)(b) of the AML Act, where the relationship is a payable through account, the reporting entity shall ensure that the person with whom or with which it has established the relationship-

- has verified the identity of and performed on-going due diligence on such of that person's customers as have direct access to accounts of the reporting entity;
- is able to provide the relevant customer identification data upon request to the reporting entity and
- has a physical presence in the Republic under the law under which it is established unless it is part of a group that is subject to supervision as a whole.

406. The banks do maintain payable-through accounts. The most common types of accounts that exist of this nature were the lawyers' client's account. In such instances, the client was expected to provide the bank with the relevant customer identification information to enable the bank to identify and verify the customer to enable the bank to undertake a business transaction pertaining to such an account.

407. However in practice, the banks limit CDD to its account holders and do not follow through to ensure that the same is undertaken of their customer's clients.

Misuse of New Technology for ML/FT (c. 8.1)

408. There are no requirements for financial institutions to have policies in place or take such measures as needed to prevent the misuse of technological developments in ML/FT. The banks have developed policies and procedures in a bid to ensure that developments in technology are not subject to abuse by the misuse of technological developments in money laundering or terrorist financing schemes.

409. Currently, two banks offer telephone-banking facilities to their customers and this is limited to the checking of balances with one bank offers internet banking. Four of the local commercial banks have ATM's which offer cash dispensing and the transfer of funds to a client's other account with the same bank. Re-loadable cards are not available in Seychelles. In respect to all these services being provided, the banks have devised security measures in place to ensure that the facilities are not misused or abused.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1)

410. There are no requirements for financial institutions to have policies in place or take such measures as needed to prevent the misuse of technological developments in ML/FT, or specific and effective CDD procedures that apply to non-face to face customers. The approach that banks have undertaken to mitigate the risk of non-face to face business relationships is to require the establishment of the business relationship to be conducted physically by the client so that the bank can apply the prescribed CDD measures. It is only when the clients identity has been verified by the bank that the client is permitted to conduct transactions. Further, the banks will require the first payment to be carried out through an account in the clients name with another bank subject to similar CDD standards.

3.2.2 Recommendations and comments

411. CDD is not being undertaken by the whole range of financial institutions operating in the Seychelles. While the authorities have indicated that AML training was imparted to insurance entities in September 2006 the assessors found that the level of awareness of the obligations under the AML Act 2006 amongst insurance entities was low and almost non-existent. Accordingly, preventive measures had not been implemented by insurance entities as at the date of the mutual evaluation.

412. While the authorities have indicated that AML training was imparted to bureaux de change in September 2006 the assessors found that there was lack of awareness by the bureaux de change on AML/CFT issues and further of what their obligations and role is under the AML Act. The only institutions that appear to addressing this are the banks and the credit union. However it should be noted that this is only being done to a limited extent. In respect of the banks for example this CDD is being undertaken from a group perspective rather than from domestic one. This is light of the fact that most of the banks in Seychelles are subsidiaries of international banks. There is a heavy reliance on the banks to comply with its parent body and not the domestic requirements. This is evidenced from the fact that procedures and manuals used are group documents with the banks yet to domesticate the local legislative requirements. This is further supported by the CBS expecting the status quo and requiring the banks to domesticate their documentation to make reference to the local requirements.

413. It does not appear that financial institutions apply the same AML/CFT standards across the industry. International banks operating in the Seychelles appear to be more focused on applying the group standards rather than adhering to the requirements of the

AML Act. The absence of a level playing field may give rise to gaps in the AML/CFT framework which may be exploited for money laundering and terrorist financing purposes.

414. The concept of “beneficial owner” for the purposes of the CDD process under the AML Act is not well articulated with respect to legal entities and arrangements. The AML Act needs to be reviewed to include a definition of beneficial owner and the reporting entities should be expressly required to determine who are the natural persons who ultimately own or control a legal entity or arrangement.

415. The FIU should issue guidelines to ensure that reporting entities apply enhanced due diligence measures with respect to higher risk categories of customers.

416. The enactment of the AML Act 2006 repealed the AML Act 1996. There is however no transitional provision regarding the implementation of the AML/CFT measures with respect to existing customers. Additionally, due to a lack of awareness reporting entities may have difficulties in complying with the requirements of the AML Act 2006 in the immediate future. It is recommended that the FIU should in consultation with the reporting entities develop a compliance plan to ensure that reporting entities adopt and implement AML/CFT policies and procedures. The implementation of the compliance plan by reporting entities should be closely monitored by the FIU.

417. It would be preferable if the guidance provided was to be institution specific taking into consideration the character and structure of the various institutions. In 1998, the Central Bank issued Guidance Notes on AML Procedures for Seychelles Banks and other Financial Institutions to assist them to comply with their obligations under the AML Act 1996. While these Guidance Notes contain useful information, they do not take account of new the requirements under the AML Act. Moreover, these Guidance Notes are not enforceable as the CBS does not express powers under the law to issue Guidance Notes to financial institutions on AML/CFT. Under the AML Act, the FIU has been given express powers to issue guidelines to reporting entities in consultation with supervisory authorities. It is therefore recommended that the FIU should issue guidelines to the specific financial institutions in consultation with the relevant supervisory body which has better understanding and knowledge about the sector. These guidelines should provide clarity on the measures that need to be implemented and should provide guidance on the gaps identified in the AML Act. These guidelines will also promote a level playing field amongst operators in the sector.

418. In respect of the insurance entities and bureaus it is imperative that sensitisation on AML/CFT issues is enhanced especially in light of their obligations under the AML Act.

419. Seychelles should take immediate steps to properly implement Recommendations 5 to 8.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
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R.5	NC	<ul style="list-style-type: none"> • The concept of beneficial owner is not well articulated under the law and there is no express requirement under the AML Act to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source. • Criterion 5.5.1 is not met as the AML Act applies only to customers who are natural persons and where the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person. • There is no express requirement under the law to obtain information on the natural persons that ultimately own or control or who ultimately effectively control the legal person or arrangement • There is no specific requirement regarding the verification of identity to be undertaken where the client is a trust. • Criterion 5.7.1 is not fully met as the requirement under the AML Act, does not make reference to the risk profile or the customer or to source of funds. • Financial institutions are not required to ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records. • Even if section 4(1) of the AML Act permits a financial institution to complete the verification of identity within a reasonable time after entering into a business relationship it does not specify the conditions under which this may occur. • There is no requirement on financial institutions to adopt risk management procedures with respect to business relationships established prior to completion of the verification of identity of the customer. • There is no requirement on financial institutions to perform CDD measures on existing customers if they have anonymous accounts or accounts in fictitious names. • There is no requirement for reporting entities to apply enhanced due diligence measures with respect to higher risk categories of customers.
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		<ul style="list-style-type: none"> Financial institutions are not required to ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records. AML/CFT policies and procedures have not been adopted and implemented by insurance entities and the bureaux de change as at the date of the mutual evaluation. International banks operating in the Seychelles appear to be more focused on applying the group standards rather than adhering to the local requirements under the AML Act. There is no evidence that local banks are effectively implementing AML requirements under the AML Act. The FIU had undertaken only one on-site inspection. No comprehensive guidance had been provided to financial institutions by the FIU to meet the gaps in the AML Act.
R.6	PC	<ul style="list-style-type: none"> There is no requirement under the AML Act for financial institutions to obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP. There is no requirement to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs. There is a low level of implementation of the requirements of the AML Act with respect to PEPs amongst the banks. Insurance entities and bureaux de changes have not implemented the requirements of the AML Act regarding PEPs.
R.7	PC	<ul style="list-style-type: none"> The requirement under Section 4(5)(a) of the AML Act, to gather sufficient information about the nature of the business of the person has been couched in general terms and does not indicate that at the end of the information gathering exercise the financial institution should “fully understand” the nature of the respondent’s business. There is also no specific requirement on the financial institution to determine whether the respondent has been subject to a money laundering or terrorist financing

		<p>investigation or regulatory action.</p> <ul style="list-style-type: none"> • While under section 4(5)(a)(iv) of the AML Act, a financial institution is required to assess the respondent's anti-money laundering and terrorist financing controls, the financial institution is not required to ascertain that these measures are adequate and effective. • In practice there is no effective implementation of the requirements of the AML Act by the banks.
R.8	NC	<ul style="list-style-type: none"> • There are no requirements under the AML Act for financial institutions to have policies or take appropriate measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • Financial institutions are not required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Legal framework

AML Act, 2006

Reliance on Third Party for CDD Purposes (c. 9.1)

420. Financial institutions in the Seychelles are permitted to rely on intermediaries or other third parties to perform some elements of the CDD process or to introduce business to them. However, this does not appear to be a common practice amongst the reporting entities.

c. 9.1

421. Where a financial institution relies on a third party for CDD process, it must comply with the requirements set out under section 4(6) of the AML Act. Accordingly, financial institutions must immediately obtain the following CDD information from the intermediary-

- Verification of identity documentation as required under section 4(1) of the AML Act,
- Information on the purpose and nature of the business relationship

- Where a natural person conducts a transaction on behalf of a third party the information required under section 4(3) of the AML Act.

422. Criterion 9.1 is not met as the deficiencies identified with respect to criteria 5.3 to 5.6 above will also apply here. Please refer to paragraphs 300 to 326 above.

c. 9.2

423. Section 4(6)(b) of the AML Act requires the financial institution to ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1), (2) and (3) will be made available to it from the intermediary or the third party upon request without delay.

424. The requirement under the AML Act does not meet criterion 9.2. The wording used in section 4(6)(b) is restricted to CDD requirements prescribed under subsections (1), (2) and (3) of section 4 of the AML Act while criterion 9 refers to CDD requirements in general.

c.9.3 (applying R 23, 24 and 29)

425. Section 4(6)(c) of the AML Act provides that where a financial institution relies on a intermediary or third party, it must satisfy itself that the third party or intermediary is regulated and supervised and has measures in place to comply with the requirements set out in sections 5,6 and 7 of this Act. That is,

- the financial institution does not proceed with any transactions in the absence of satisfactory evidence of identity
- It maintains CDD records, including identity and transaction records
- It maintains accounts in the true names of the account holders.

426. These provisions fall short of the requirement under criterion 9.3. The AML Act does not expressly specify that the third party or intermediary must be regulated and supervised for AML/CFT purposes as required under Recommendations 23 and 24 nor does it indicate that the supervisors should have adequate regulatory and supervisory powers as required under Recommendation 29. Further, there is no requirement for the financial institution to satisfy itself that the intermediary or third party has measures in place to comply with the CDD requirements as set out in Recommendation 5. The CDD requirements under Recommendation 5 are essentially set out under section 4 of the AML Act.

c.9.4

427. There is no determination from competent authorities in the Seychelles on which countries the third parties that meet the conditions must be based.

c.9.5

428. The AML/CFT regime in the Seychelles does not provide that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party. In the absence of any express requirement under the AML Act it not clear whether financial institutions are aware that the ultimate responsibility of ensuring customer identification and verification remains with them.

3.3.2 Recommendations and comments

429. In practice, one of the commercial banks, belonging to an international group, which was interviewed by the Team, relied on Group introducers with respect to its international business. However, some of the introducers were from outside group offices. In these cases, the bank obtained all CDD documents from the introducers and did not carry on any independent checks. However, in case of doubt, the client is required to call at the Group office in the jurisdiction where the client is based. In the absence of specific guidance on countries that apply FATF standards the bank applied its own judgement on a case to case basis. The other commercial bank interviewed indicated that it did not rely on introducers.

430. At the time of the on-site mission the FIU had conducted only one on-site inspection and could not therefore indicate that financial institutions which relied on third parties/intermediaries were complying with the requirements of the AML Act in this respect.

431. The insurance company which was interviewed did not rely on introducers.

432. The use of introducers does not seem to be a prevailing practice amongst banks in the Seychelles. However, the AML regulation need to be enhanced to provide guidance on which countries the introducer may be based and to ensure that it is clear to reporting entities that the ultimate responsibility for customer identification and verification remains with the reporting entity relying on the introducer.

433. The wordings of section 4(6)(c) of the AML Act must be amended to accommodate the requirements under Recommendations 23, 24 and 29. It must also expressly provide that the financial institution must satisfy itself that the third party/intermediary has measures in place to comply with CDD requirements that meet Recommendation 5.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> • Criterion 9.1 is not met as the deficiencies identified with respect to criteria 5.3 to 5.6 above will also apply here. • The AML Act does not expressly specify that the third party or intermediary must be regulated and supervised for AML/CFT purposes as required under Recommendations 23 and 24 nor does it indicate that the supervisors should have adequate regulatory and supervisory powers as required under Recommendation 29.

		<ul style="list-style-type: none"> • There is no requirement for the financial institution to satisfy itself that the intermediary or third party has measures in place to comply with the CDD requirements as set out in Recommendation 5. • There is no determination from competent authorities in the Seychelles on which countries the third parties that meet the conditions must be based. • There is no express requirement under the AML Act to remind financial institutions that the ultimate responsibility of ensuring customer identification and verification remains with them. • There is no evidence to show that the requirements of the AML Act have been effectively implemented in practice.
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3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Legal framework

SIBA; CBS; FIA; CSP: IBC; Special License Company: CBS, 2004; FIA, 2004; PTA, 2004.

Inhibition of Implementation of FATF Recommendations (c. 4.1)

Powers of the FIU to exchange information

434. Under Section 20 of the AML Act, the FIU may with the approval of the AG, disclose any report or information to an institution or agency of a foreign state or to an international organisation or institution or agency established by the governments of foreign states that has powers and duties similar to those of the FIU.

435. Under Section 22(1) of the AML Act the FIU may with the approval of the President enter into an agreement in writing with waiver of confidentiality to the government of a foreign state or an international organisation or an institution or agency established by the governments of foreign states regarding the exchange of information between the FIU and any institution or agency.

Confidentiality provisions under the Financial Institutions Act 2004

436. The CBS and every officer or employee of the CBS are bound by a statutory duty of confidentiality under section 50 of the Financial Institution Act 2004 which requires them to deal with all documents, records of bank accounts, statements and other information in the possession or under the control of the CBS, its officers or employees and relating to the business of financial institutions conducted under this Act as confidential. Information can only be disclosed upon an order from the Supreme Court. Pursuant to the provision of section 50(3) of the FIA, the Supreme Court can only make an order for production or disclosure of information on the application of the Attorney General and on proof to the

satisfaction of the Court that the information is bona fide required for the purpose of any inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking, money laundering or terrorist financing.

437. However, under the provisions of section 51 of the FIA, the CBS may on reciprocal basis exchange information on supervisory matters, whether based on a Memorandum of Understanding (MOU) or not with supervisory authorities in other countries. The exchange of such information may include confidential information, provided that the CBS has satisfied itself that the information submitted shall remain confidential at the foreign supervisory authority. "Supervisory matters" includes matters relating to ML and TF under Section 51(1) of FIA 2004.

438. As at the date of the on-site visit the CBS had entered into only one MOU. The power to exchange information on a reciprocal basis on supervisory matters has not been used and its effectiveness cannot be gauged at this stage.

439. Section 11 of the AML Act requires a supervisory authority (including the CBS) to report to the FIU a transaction or attempted transaction where the supervisory authority has reasonable ground to suspect that information that it has concerning any transaction or attempted transaction may be-

- Related to the commission of the offence of ML or FT
- Of assistance in the enforcement of the AML Act;
- Relevant to an act preparatory to the offence of ML or FT.

440. There is some difficulty in reconciling the provisions of section 50 of the FIA and section 11 of the AML Act. In the absence of a judicial pronouncement it cannot be ascertained that section 11 of the AML Act will override the provision of section 50 of the FIA.

Confidentiality provisions under the offshore legislation

441. The following legislation pertaining to the offshore sector in the Seychelles contain confidentiality/secretcy provisions-

- The International Corporate Service Providers Act 2003 (ICSP Act)-Section 12
- The Companies (Special Licences) Act, 2003 (CSL Act)-Section 22
- The Seychelles International Business Authority Act 1994 (SIBA Act)-Section 13
- The International Trust Act (IT Act)-Section 8

442. Pursuant to section 12 of the ICSP Act, the SIBA, its employees and agents are bound by a statutory duty not to disclose any information or document acquired in the performance of their duties regarding any Trust or Corporate Service Provider (TCSP) licensed by the SIBA under the ICSP Act or any of the client thereof except as provided under the law. However, the duty of confidentiality does not apply to, *inter alia*, any

disclosure required the information is required by any Court in the Seychelles or under any law of the Seychelles.

443. In respect of the affairs of the TCSP or a client thereof information may be disclosed with the consent of the licensee or the client as the case may be.

444. Section 22 of the CSL Act provides that-

“(1) Every person shall preserve and aid in preserving secrecy with regard to all matters relating to the shareholding of a relevant company or a shareholder thereof which may come to the person’s knowledge in the performance of duties under this Act and except in the performance of the person’s duties under this Act, shall not disclose any such matter to any other person or suffer any unauthorised person to have access to any documents which come into his possession.

(2) Every person who is required to preserve and aid in preserving secrecy under subsection (1) shall take and subscribe an oath of secrecy in the prescribed form before assuming duties.

(3) Any person who is required to preserve and aid in preserving secrecy under subsection (1) shall not be required to produce in any court any document or record containing any matter relating to the shareholding of a relevant company or shareholder thereof or to divulge or communicate to any court any such matter coming to his notice in the performance of his duties under this Act, except as may be necessary for proceedings instituted under or for the purpose of carrying into effect the provisions of the Penal Code, the Anti-Money Laundering Act or the Business Tax Act.”

445. Section 13 of the SIBA Act further provides that “the obligation imposed by a written law administered by the Authority with respect to confidentiality of any information lodged or divulged to the Authority, member and Secretary of the Board and any employee of the Authority under the written law shall apply to the Authority, member and Secretary of the Board and any employee of the Authority”.

446. Section 11 of the AML Act requires a supervisory authority (including the SIBA which regulates the offshore sector) to report to the FIU a transaction or attempted transaction where the supervisory authority has reasonable ground to suspect that information that it has concerning any transaction or attempted transaction may be-

- Related to the commission of the offence of ML or FT
- Of assistance in the enforcement of the AML Act;
- Relevant to an act preparatory to the offence of ML or FT.

447. The confidentiality and secrecy provisions that apply to the SIBA are ambiguous and difficult to administer in practice. There seems to be a contradiction between section 12 of the ICSP Act and section 22 of the CSL Act. Section 12 of the ICSP Act permits the disclosure of information where required by any Court of the Seychelles or under any laws

of the Seychelles where as section 22 of the CSL Act imposes a duty of secrecy that allows disclosure of information to any court only as may be necessary for proceedings instituted under or for the purpose of carrying into effect the provisions of the Penal Code, the Anti-Money Laundering Act or the Business Tax Act.

448. Further, there is some difficulty in reconciling these provisions with the requirement to make a report to the FIU under section 11 of the AML Act. In the absence of a judicial pronouncement it cannot be ascertained that section 11 of the AML Act will override these confidentiality and/or secrecy provisions.

449. The team also notes that the SIBA does not have any express legal authority which will enable it to enter into exchange information agreements with competent authorities whether domestically or internationally. During the interview with the Chief Executive of the SIBA he indicated that there might be a problem under the current legislation for exchanging information with other regulators.

450. Under Section 8(1) of the International Trust Act a trustee or any other person is not permitted to disclose to any person not legally entitled to it or be required to produce or divulge to any court, tribunal, committee of inquiry or other authority in the Seychelles or elsewhere any information or document which inter alia, discloses the name of the settlor or any beneficiary or relates to or forms part of the accounts of the international trusts. This provision is subject to a number of exceptions, including, the Court may make an order for disclosure or production of an information or document relating to an international trust for the purpose of an inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney General on proof to the satisfaction of the court that the information or document is bona fide so required.

451. In view of section 58 of the AML Act which provides that a reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise, there is no legal impediment which will prevent the trustee of an international trust to comply with its reporting obligations under section 10 of the AML Act.

Confidentiality provisions applicable to financial institutions

452. Section 49(1) of the FIA imposes a statutory duty on the officers and employees of a financial institution where by no information regarding the identity, assets, liabilities, transactions or other information in respect of a customer may be disclosed to any person or governmental authority except under the circumstances provided under the law. Section 49(1) of the FIA permits the disclosure of information in a number of circumstances, including pursuant to the provisions of the Anti-Money Laundering Act and to the Central Bank.

453. Further, section 58 of the AML Act provides that a reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise.

454. On the basis of the above provisions it may be concluded that there is no legal provision which prevent the sharing of information between financial institutions and the FIU. There is further no legal provision which prevents the sharing of information between financial institutions where required by Recommendations 7 and 9 and by Special Recommendation VII.

3.4.2 Recommendations and comments

455. There is need to harmonise the provisions of the AML Act with the provisions of other existing legislation that restricts the disclosure of information. The ambiguity arises in that there was no reference to the existing provisions in the other Acts in the AML Act. In the circumstances, it would be difficult to establish which provision will prevail. Such a situation may prevent the exchange of information between competent authorities in the Seychelles.

456. It is recommended that the provisions of section 58 of the AML Act should not only apply to reporting entities but should be extended to supervisory bodies.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"> • There is some difficulty to reconcile the statutory duty of confidentiality of the CBS under the FIA with its duty to report suspicious transactions to the FIU under section 11 of the AML Act. • There is some difficulty to reconcile the statutory duties of confidentiality and secrecy of the SIBA with its duty to report suspicious transactions to the FIU under the AML Act. • The current legal framework does not allow for any gateway for the exchange of information by the SIBA with competent authorities domestically or internationally.
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3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Legal framework

Section 6 of the AML Act sets out the requirement for reporting entities to maintain transaction records and records of CDD documentation

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1)

457. Pursuant to section 6(1)(b) of the AML Act, a reporting entity must maintain records of all transactions carried out by it and correspondence relating to the transactions as is necessary to enable any transaction to be readily reconstructed at any time by the FIU or the Attorney General and the records shall contain particulars sufficient to identify inter alia-

- The nature and date of the transaction
- The type and amount of currency involved
- The type and identifying the number of any account with the reporting entity involved in the transaction.

458. Under Section 6 (2) of the AML Act, reporting entities are required to maintain the transaction records for a minimum period of 7 years from the date of any transaction or correspondence or on which the business relationship ceases. Under Section 6 (3) of the AML Act, the records established and maintained shall be sufficient to enable the transaction to be readily reconstructed at any time by the FIU or the AG to provide if necessary, evidence for the prosecution of any offence.

459. There is however, no provision in the AML Act which would enable a competent authority to require the financial institution to maintain the records for a longer period of time in specific cases.

460. There is also no requirement for the transaction records to include the customer's and beneficiary's name and address.

Record-Keeping for Identification Data (c. 10.2)

461. Pursuant to the provisions of section 6(1) and (2) of the AML Act, a reporting entity must maintain identity records, transaction records and correspondence relating to the transactions for a minimum period of 7 years from the date on which evidence of a person's identity is obtained, of any transaction or correspondence or on which the business relationship ceases.

462. These provisions do not specifically require that all account files and business correspondence be retained. Further, the retention period does not meet the requirements of criterion 10.2 which requires financial institutions to maintain records of identification data, account files and business correspondence for least five years following the termination of an account or business relationship. The wordings of the section 6(2) of the AML Act are ambiguous to reconcile in practice as they provide for different retention periods depending on the nature of the records. This may give rise to a situation where identification data and transaction records may not be available simultaneously in as much as identification documentation are normally obtained at the beginning of the business relationship while transactions take place on an ongoing basis thereafter. There is further no provision which will enable a competent authority to require these records to be kept for a longer period in specific cases.

Availability of Records to Competent Authorities (c. 10.3)

463. Under the provisions of section 6(3)(b) of the AML Act, transaction records must be maintained in a manner and form that will enable the reporting entity to comply immediately with requests for information from the law enforcement agencies or the FIU.

464. Further, pursuant to section 6(5) of the AML Act, identity and transaction records must be made available upon request to the FIU or the Attorney General for purposes of ensuring compliance with this Act and an investigation and prosecution of an offence.

465. In addition under the provision of section 6(4) of the AML Act, where any record is required to be kept under the AML Act, a copy of it with the appropriate back-up and recovery procedures must be kept in a machine-readable form, if a paper copy can be readily produced from it, or in an electronic form, if a paper copy can be readily produced from it in a manner that enables appropriate authentication.

466. At the time of the onsite visit these requirements had not been tested and there is therefore no evidence to conclude that there is effective implementation of the requirements under section 6 of the AML Act.

Special recommendation VII

Originator Information for Wire Transfers (c.VII.1)

467. On 11 February 2002, the Central Bank of Seychelles issued a circular letter to all banks requesting them to ensure that when they are dealing with transactions involving wire transfers, they strictly observe the following:

- include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related messages that are sent, and the information should remain with the transfer or related message through the payment chain.
- Conduct enhanced scrutiny of and monitor for suspicious activity funds transfers, which do not contain information (name, address and account).

468. The Central Bank further called upon all banks to ensure that these measures are implemented in their internal control procedures.

469. There is however no specific requirement for ordering financial institutions to verify the identity of the originator in accordance with recommendation 5.

c.VII.2 and VII.3

470. Under Section 8(1) of the AML Act, a person licensed to do business in Seychelles as a financial institution or a money transmission service provider is required to include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

471. The provisions of the AML Act do not define the terms “accurate originator information and other related messages on electronic funds transfers” and there is no Guidance provided thereon. It is therefore difficult to conclude that the requirement under section 8(1) of the AML Act requires full originator information as required under criteria VII.2 and VII.3. However, the authorities have indicated that banks are also required to comply with the CBS circular letter dated 11 February 2002.

472. Two local commercial banks are agents for international money transfer service providers. They however only receive inward funds and do not make outward transfers of funds.

473. Pursuant to the CBS circular letter where an international funds transfer instruction is sent, reporting entities are required to report the name and address of the originating customer.

c. VII.4

474. The authorities have indicated that the circular letter also applies to each intermediary and beneficiary financial institution in the payment chain and accordingly they should ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

c.VII.4.1

475. There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer.

c.VII.5

476. Pursuant to the CBS circular letter banks are required to conduct enhanced scrutiny of and monitor for suspicious activity funds transfers, which do not contain information (name, address and account). In addition, the banks indicated that in practice, any lack of originator information would result in the rejection of the payment order.

Monitoring of Implementation of SR VII (c. VII.8)

477. The rules and regulations in Seychelles regarding wire transfer do not meet all the requirements of SR VII. Further as some of these rules are found in the AML Act while others are required by virtue of the CBS circular letter it was not clear to the assessors whether in practice the CBS or the FIU will be responsible for monitoring compliance with these rules.

Sanctions (c. VII.7 applying criteria 17.1-17.4)

478. It is not clear whether the Circular Letter is enforceable and whether criteria 17.1-17.4 will apply in relation to the obligations regarding financial institutions. Please also refer to paragraphs 589 to 596 below.

Additional criteria (c. VII.8 and 9)

479. The CBS circular letter applies to all wire transfers including all cross border wire transfers.

3.5.2 Recommendations and comments

480. The AML Act should be amended to ensure that record keeping procedures meet the requirements of Recommendation 10. There is need for guidance to be provided by the FIU as to the nature and detail of the information that must be kept and further to impress on the sector the need to maintain such records.

481. Seychelles should enact appropriate legislation and issue guidance to meet the gap in the AML Act to ensure compliance with the requirements of SRVII, including appropriate sanctions for non-compliance.

482. The issue of whether the CBS or the FIU will monitor compliance of financial institutions with the wire transfers requirements must be clarified.

483. While the authorities have indicated that AML training was provided to insurance entities in September 2006 to make them aware of their obligations under the AML Act, insurance entities had not implemented the requirements of the AML Act as at the onsite visit. Insurance entities must implement AML/CFT preventive measures as soon as possible.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • There is no requirement for the transaction records to be maintained to also include the customers and beneficiary's name and address. • There is no requirement under the AML Act to keep records of account files and business correspondence. • There is no effective compliance with the requirements of the AML Act by Insurance entities and bureau de change • There is no provision which will enable a competent authority to require records to be kept for a longer period in specific cases.

		<ul style="list-style-type: none"> • The wordings of the section 6(2) of the AML Act are ambiguous to reconcile in practice as they provide for different retention periods depending on the nature of the records. • At the time of the onsite visit the record retention requirements under the AML Act had not been tested and there is therefore no evidence to conclude that there is effective implementation of these requirements.
SR.VII	PC	<ul style="list-style-type: none"> • There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross- border wire transfer from being transmitted with a related domestic wire transfer. • It is not clear who is responsible for monitoring compliance of financial institutions with the wire transfers requirements. • It is not clear whether the Circular Letter is enforceable and therefore whether criteria 17.1-17.4 will apply in relation to the obligations regarding financial institutions.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

Description and Analysis

Legal framework

AML Act 2006

Recommendation 11

Complex, Unusual Large Transactions (c. 11.1)

484. Under Section 9(1) of the AML Act, a reporting entity is required to pay special attention to any complex, unusual or large transaction or any unusual pattern of transactions with no apparent economic or lawful purpose.

Examinations of Complex & Unusual Transactions (c. 11.2)

485. Under Section 9 (3) (a) of the AML Act, a reporting entity must examine as far as possible the background and purpose of the transactions mentioned above and record its findings in writing.

Record-Keeping of Findings (c. 11.3)

486. Reporting entities must pursuant to the provisions of section 9(3)(b) of the AML Act make available, upon request, there findings under c.11.2 to the FIU and the Attorney

General to assist them in any investigation of an offence of money laundering or of financing of terrorism. There is however, no specific retention period with respect to records of findings of reporting entities on the examination of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

Recommendation 21

Special Attention to Countries Not Applying Recommendations (c. 21.1)

487. Under Section 9(2) (a) of the AML Act, a reporting entity is required to pay special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism.

c.21.1.1

488. There are no measures in place to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries.

c.21.2

489. Pursuant to the provisions of section 9(3)(a) of the AML Act, financial institutions must examine as far as possible the background and purpose of transactions or business relations persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism and record their findings in writing. These records must be made available to the FIU or to the Attorney General upon request to assist them in any investigation of an offence of money laundering or of financing of terrorism.

Application of Counter Measures (c. 21.3)

490. There is no obligation under the AML Act to apply counter-measures where other country continues not to apply or insufficiently apply the FATF recommendations.

3.6.2 Recommendations and comments

491. The requirements under the AML Act have not been implemented by insurance entities. There is therefore no effective compliance with the requirements of Recommendation 11 and 21 by insurance entities.

492. Banks and other financial institutions have also not yet fully implemented the requirements under the AML Act.

493. Insurance entities do not have AML/CFT awareness and should be accordingly trained further to enable them to comply with the requirements under section 9 of the AML Act.

494. To meet international standards the AML Act should be enhanced to provide for a statutory retention period with respect to records of findings of reporting entities on the examination of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

495. There is also no requirement to make records available to auditors. The AML Act should be accordingly amended.

496. Appropriate measures should be put into place to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries. The onus has been left to financial institutions to make their own determination. This has resulted in various degrees of compliance and lack of understanding of what the requirement entails.

497. AML framework should make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none">• There is no specific retention period for which the required records must be kept by financial institutions.• Not all financial institutions have put into place measures to comply with this requirement• Insurers and insurance intermediaries are not aware of their obligations under the AML Act.• There is no requirement to make these records available to auditors.
R.21	NC	<ul style="list-style-type: none">• There is no effective implementation by all financial institutions of the requirements of the AML Act.• There are no measures to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries.• There is no requirement to make these records available to auditors.

		<ul style="list-style-type: none"> AML/CFT framework does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
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3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Legal framework

AML Act, 2006; PTA, 2004

Reporting to FIU (c. 13.1)

498. Under Section 10(1) of the AML Act, where a reporting entity has reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of an offence of money laundering, it is required to submit a report to the FIU not later than two days after having formed that suspicion or receiving the information.

499. The offence of money laundering is defined under section 3 of the AML Act. There is no explicit obligation under the terms of section 10(1) of the AML Act to report a suspicious transaction on suspicion that funds are the proceeds of criminal activity.

STR Related to Terrorism and its Financing (c. 13.2 and SR IV.1)

500. Section 10(1) of the AML Act also applies to a transaction or attempted transaction related to for the commission of an offence of financing of terrorism. For the purposes of section 2 of the AML Act “financing of terrorism” means any offences referred to in sections 5,6,7,8,9,10,12,15,16 or 19 of the Prevention of Terrorism Act 2004.

Reference of PTA	Offence
S 5	Provision or collection of funds to commit terrorist acts
S 6	Collection of property or provision of property and services for commission of terrorists acts
S 7	Use of property for commission of terrorists act
S. 8	Arrangements for retention or control of terrorist property
S. 9	Dealing in property owned or controlled by terrorist groups
S. 10	Soliciting and giving support to terrorists groups or for the commission of terrorists acts
S. 12	Provision of weapons to terrorist groups
S. 15	Promotion or facilitation of terrorism in foreign states

- | | |
|-------|---|
| S. 16 | Promotion of offences under section 15 |
| S. 19 | Arrangements of meetings in support of terrorist groups |

Reporting Threshold (c. 13.3 and IV.2)

501. The requirement to report under Section 10(1) of the AML Act, also applies to an attempted transaction related to the commission of an offence of money laundering or terrorist financing. No threshold applies.

Reporting of Tax Matters (c. 13.4)

502. Under the existing AML/CFT framework there is no explicit requirement to report suspicious transactions with respect to tax matters. However, the authorities have indicated that in practice reporting entities do submit STRs related to such matters. These are then disseminated to the Seychelles Revenue Commissioner for further action.

Additional Elements - Reporting of All Criminal Acts (c. 13.5)

503. There is no requirement for financial institutions to file a report with the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence of money laundering domestically. The duty to report arises upon suspicion that a transaction or attempted transaction is related to the commission of an offence of money laundering or terrorist financing.

Recommendation 14

Protection for Reporting ST (c. 14.1)

504. Section 14 of the AML Act sets out the safe harbour provisions for reporting entities and extends to an officer, employee or agent of a reporting entity.

505. Section 14(1) of the AML Act, provides that no civil, criminal or disciplinary proceedings shall be taken against

- (a) a reporting entity, an auditor or supervisory authority of a reporting entity; or
- (b) an officer, employee or agent of a reporting entity acting in the course of that person's employment or agency,

in relation to any action by the reporting entity, the auditor or the supervisory authority or their officer, employee or agent taken under Sections 9, 10 or 11 in good faith or in compliance with directions given by the FIU pursuant to Section 24 of this Act.

Prohibition against Tipping-Off (c. 14.2)

506. Financial institutions, their officers, employees and agents are prohibited under section 12(1) of the AML Act from disclosing the fact that a suspicious transaction report or related information is being reporting or provided to the FIU.

507. Section 12(1) provides that a reporting entity, its officers, employees or agents shall not disclose to any other person –

- (a) that a report to FIU under section 10 or section 11 has been or may be made, or that further information has been given under section 10;
- (b) that the reporting entity has formed a suspicion in relation to a transaction for the purposes of section 10; or
- (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

508. Pursuant to the provision of section 51 of the AML Act, any person who discloses information in breach of section 12(1) is guilty of an offence.

Additional Elements – Confidentiality of Reporting Staff (c. 14.3)

509. Section 18(1) and (2) of the AML Act imposes a duty of confidentiality on the Director, an officer, an employee or an agent of the FIU.

510. Section 18(3) of the AML Act further provides that “A person to whom this section applies shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the FIU, or a person or an entity about whom a report or information was provided under this Act.”

The requirements under Recommendation 14 are fully met.

Recommendation 19

511. The authorities in the Seychelles have not considered the feasibility and utility of implementing recommendation 19.

Recommendation 25

Guidelines & feedback for Financial Institutions (c. 25.1 & 25.2)

512. The FIU was established a few months before the on-site visit. No Guidelines had been issued to financial institutions at as that date. The FIU has indicated that it was in the process of updating the “Guidance Notes on Anti-Money Laundering for Financial Institutions in Seychelles” which was issued by the Central Bank of Seychelles in March

1998. The Guidance Notes will be updated to incorporate the obligations of the Reporting Entities under the AML Act.

513. As at the date the newly established FIU had provided feedback on STR's received from the financial institutions which includes acknowledgement of receipt of the report. Any feedback on the status of the outcome of cases prosecuted by the AG will be forwarded to the respective financial institutions. The FIU has not provided reporting entities with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

514. During assessment discussions the private sector generally indicated a lack of awareness of AML/CFT issues and their obligations under the AML Act. In the circumstances, it is imperative that the FIU enhances its training programme and develops appropriate subsidiary legislation or guidelines that will assist the reporting entities comply with their legislative obligations.

515. Sanitised examples of actual ML cases were given to the staff of all the banks, the Seychelles Credit Union and the Corporate Service Providers during training sessions conducted by officers from the Central Bank in 2004. The FIU proposes to provide additional appropriate feedback on ML in the future.

3.7.2 Recommendations and comments

516. There is a very low level of AML/CFT awareness among financial institutions which makes it difficult for them to identify suspicious activities that must be reported. As at the date of the onsite visit the FIU had received 3 STRs which were made by the Banks.

517. There is no standard reporting format for financial institutions other than banks. A standard reporting format was recently issued to the banks in the Seychelles. The standard reporting format should be made available to the other financial institutions to ensure that all relevant information is submitted by the reporting financial institution.

518. Insurance entities have not implemented the requirements of the AML Act. The FIU should ensure that Insurance Entities adopt and implement AML/CFT policies and procedures.

519. Staff of financial institutions should be provided with adequate AML/CFT training.

520. Section 10 of the AML Act must be amended to ensure that the obligation to report also arises where there is a suspicion that funds are proceeds of a criminal activity. Further, the duty to report should also extend to suspicious transactions involving tax matters.

521. The authorities in the Seychelles must consider compliance with Recommendation 19.

522. The FIU is the competent authority responsible under the AML Act for ensuring that reporting entities comply with the requirements of the AML Act. It is empowered under the Act to, in consultation with the supervisory authorities, issue guidelines to reporting entities in relation to their obligations under the Act. No guidelines have been issued thus far. The FIU must having regard to industry specific ML/TF risk issue guidelines to reporting entities to assist them to implement and comply with their respective AML/CFT requirements.

523. The FIU must provide feedback- including statistics on the number of disclosures, with appropriate breakdowns and on the results of the disclosures, information on current techniques, methods and trends and sanitised examples of actual money laundering- to reporting entities.

524. The recently established FIU comprised of 3 members of staff including the Director. The staff member, excluding the Director, had very little exposure to AML/CFT issues. Having regard to the overall obligations of the FIU under the AML Act, namely, to ensure that reporting entities comply with the requirements of the AML Act and to issue guidelines to reporting entities it is recommended that the capacity of the FIU must be enhanced and staff members must be trained to enable them to carry out their functions effectively.

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

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none"> • There is no obligation to make a report upon suspicion that funds are the proceeds of a criminal activity • There is no requirement to report suspicious transactions that involve tax matters • There is a low level of AML/CFT awareness amongst financial institution that makes it difficult for them to identify suspicious transactions to enable them to make a report to the FIU. • Insurance entities have not implemented AML/CFT procedures which will enable them to make a suspicious transaction report to the FIU.
R.14	C	This recommendation is fully met
R.19	NC	The authorities in the Seychelles have not considered the feasibility and utility of implementing recommendation 19.
R.25	NC	<ul style="list-style-type: none"> • There are no guidelines that have been issued to Financial Institutions to assist them to implement and comply with their respective AML/CFT requirements. • The FIU does not provide adequate and appropriate feedback to reporting entities as set out under the FATF Best Practice Guidelines on providing feedback to Reporting Financial Institutions and other Persons.

SR.IV	PC	<ul style="list-style-type: none"> Insurance entities have not implemented AML/CFT procedures that will enable them to make a suspicious transaction report to the FIU. There is a low level of AML/CFT awareness amongst financial institution that makes it difficult for them to identify suspicious transactions to be able to report them to the FIU.
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Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Legal Framework:

AML Act, 2006; FIA, 2004

Establishing Internal Controls (c. 15.1)

525. Section 15(1)(c) of the AML Act requires a financial institution to establish and maintain procedures and systems to make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism. These systems and procedures under section 15(1)(c) must cover implementation of customer identification requirements under section 4 of the AML Act, record keeping and retention requirements under sections 6 and 7 of the Act and reporting requirements under section 10 of the Act.

c.15.1.1

526. Under section 15(1)(a) of the AML Act, financial institutions must appoint a Compliance and Reporting Officer, a senior officer with the necessary qualifications and experience, to ensure that the reporting entity complies with the provisions of the AML Act.

c.15.1.2

527. There is no requirement to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information.

Audit Function (c. 15.2)

528. Under Section 15(1)(c)(e) of the AML Act, a reporting entity must establish an audit function to test its AML and CFT procedures and systems.

529. During onsite inspections of the financial institutions, the FIU verifies whether the bank has conducted sample testing of its AML CFT procedures, policies and controls. However, as at the date of the mutual evaluation only one onsite examination had been carried out with regard to a bank which held both a domestic and an offshore banking licence. One of the banks which met the evaluation team indicated that it did not conduct an audit to test its AML/CFT systems and procedures.

Ongoing Employee Training in AML/CFT (c. 15.3)

530. Pursuant to the provision of section 15(1)(d) of the AML Act, a reporting entity is required to train its officers, employees and agents to recognise suspicious transactions, trends in ML and FT activities and ML and FT risks within the reporting entity's products, services and operations.

531. While there is an express statutory obligation on the reporting entity to train its employees, officers and agents in practice, there has been great reliance on the Central Bank, to provide such training.

532. Further, most of the international banks, rely on the parent companies to conduct AML/CFT training. In these instances, the assessing team found that the training neither focused on nor incorporated Seychelles' AML/CFT requirements.

533. The FIU has however indicated that in the course of the onsite inspection that it had conducted in August 2006, it found that the bank already had an in-house training programme and staff members were sent to the regional offices of the Group. Further, the front office staff members of the bank who deal with customers have to undergo a yearly exam on AML and have to score at least 90% to be able to continue handling customer accounts.

Screening Procedures (c. 15.4)

534. Under Section 15 (1)(c) (vi) of the AML Act, the reporting entity must establish and maintain procedures and systems to screen persons before recruiting them as employees. One of the banks interviewed by the team indicated that it did have screening procedures in place. Potential employees must provide the certificate of employment from the previous employer and in some cases they may query with the previous employer.

Additional Elements – Independence of Compliance Officer (c. 15.5)

535. During on-site inspection of financial institutions, staff from the FIU verify the Compliance Officer's reporting structure and whether he/she is acting independently. Where necessary, they make recommendations to improve the reporting structure.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2)

536. There is no obligation for the financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements. However, this does not appear to be of much concern to the authorities as for the time being none of the financial institutions have branches or subsidiaries overseas.

3.8.2 Recommendations and comments

537. Insurance entities have not implemented internal AML/CFT procedures, policies and controls.

538. The FIU must ensure that all financial institutions establish and maintain AML/CFT policies and procedures. The FIU must enhance its onsite compliance regime. The compliance manual currently used by the FIU pertains to banking activities and cannot be used for other financial institutions. The FIU must develop industry specific onsite compliance manual which address sector specific AML/CFT risks. For instance, with respect to insurance entities they may have regard to the Guidance Paper on Anti-Money Laundering issued by the International Association of Insurance Supervisors (IAIS).

539. In respect of the banks, most of them have relied on the parent companies to conduct the training. In these instances, the assessing team found that the training neither focused nor incorporated Seychelles' AML/CFT requirements. Consequently, the internal policies and procedures established by the banks were not in compliance with the provisions of the Act.

540. There is currently, is no requirement under the AML Act to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information. The law must be reviewed this criterion is met.

541. The financial institutions do not have an in house AML/CFT training programme to ensure that their employees are trained on an ongoing basis. They rely on the occasional AML/CFT training provided by the authorities in the Seychelles. These trainings are not available to all relevant members of staff of the financial institution. Financial institutions must provide ongoing AML/CFT training to all relevant employees.

542. Although for the time being none of the financial institutions in the Seychelles have branches or subsidiaries overseas the requirement to ensure that financial institutions ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local (host country) laws and regulations permit must be introduced under the law, regulations or other enforceable means.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	• Insurance entities have not implemented AML/CFT systems and

		<p>procedures</p> <ul style="list-style-type: none"> • There is no effective compliance by international banks with the requirements of the AML Act. International Banks applied their respective Group standards. • There is no requirement to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information. • There is no effective implementation for the requirement of the audit function to test their AML/CFT systems and procedures. • The financial institutions do not have an in house AML/CFT training programme to ensure that all their relevant employees are trained on an ongoing basis.
R.22	NA	<ul style="list-style-type: none"> • Financial institutions in the Seychelles do not for the time being have branches or subsidiaries conducting business overseas.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Legal Framework

Anti – Money Laundering Act 2006

Financial Institutions Act 2004

Shell Banks (c. 18.1)

543. There are no shell banks operating in the Seychelles. Financial institutions conducting Domestic or Non-Domestic Banking Business must be licensed by the Central Bank under the Financial Institutions Act 2004. The Central Bank has licensed only one bank to conduct Non-Domestic Banking Business (offshore banking business). The bank is a subsidiary of an international bank and is also licensed to conduct domestic banking business. The mutual evaluation team had visited the premises of the bank and was satisfied that the bank has a physical presence, was adequately staffed and applied AML/CFT measures in place with respect to its Non-domestic banking business.

Correspondent Banking with Shell Banks (c. 18.2)

544. There is no express provision prohibiting financial institutions to enter into, or continue correspondent banking relationships with shell banks. With respect to financial institutions falling under the supervision of the CBS, the authorities have indicated that the

latter may use its powers under the FIA request that banks discontinue such corresponding relationships. Further, the provisions of section 4(5)(a) of the AML Act a reporting entity must in relation to its cross-border correspondent banking relationship-

- Adequately identify and verify the identity of the person with whom it conducts such a business relationship
- Gather sufficient information about the nature of the business of the person
- Determine from publicly available information the reputation of the person and the quality of supervision to which the person is subject
- Assess the person's AML/CFT controls
- Obtain approval from senior management before establishing a new correspondent relationship
- Document the responsibilities of the reporting entity and the person

Use of Accounts by Shell Banks (c. 18.3)

545. There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and comments

546. The FIU should issue guidelines to financial institutions to provide comprehensive guidance on correspondent banking relationships with shell banks. Financial institutions should not be permitted to enter into, or continue correspondent banking relationships with shell banks.

547. These guidelines must also set out the requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> • While there are some provisions regarding correspondent banking relationships, there is no express provision prohibiting financial institutions to enter into, or continue correspondent banking relationships with shell banks. • There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Legal Framework

AML Act; FIA; CBS;

Regulation and Supervision of Financial Institutions (c. 23.1)

548. The AML Act is the primary legislation which imposes AML/CFT obligations on financial institutions, including, banks, money transmission services, insurance entities and bureau de change. The AML Act 2006 came into operation on 08 May 2006 and replaces the Anti-Money Laundering Act 1996.

Designation of competent Authority (c.23.2)

549. The FIU is the designated competent authority tasked with the responsibility, under the AML Act, to ensure that financial institutions effectively implement the requirements of the Act. Under the AML Act, the FIU has the power to conduct onsite examination of the records of a financial institution to ensure compliance with the requirements of the AML Act 2006. The FIU is also empowered to direct a defaulting financial institution to comply with its obligations under the Act. Where a financial institution fails to comply with a direction issued by the FIU, the FIU may make an application for an order from the Supreme Court to enforce compliance with the obligations within such period as may be specified by the Court. The Order may also specify the payment of a financial penalty where the financial institution fails to comply with the Order of the Court within the specified time frame.

550. As at the date of the Mutual Evaluation the FIU had conducted only one onsite examination.

Fit and proper criteria and prevention of criminals from controlling institutions (c.23.3 & 23.3.1)

Banks

551. The Central Bank of Seychelles is the licensing authority for registering of banks in the Seychelles. Section 5 of the FIA provides for the procedures to be followed when applying for a banking licence. In order to ensure that criminals do not manage or control a financial institution in the Seychelles, the CBS requires that senior officers (directors, managing directors, and managers in connection with companies applying for a licence under the FIA) and shareholders of the financial institutions are subjected to a fitness and propriety test before they can be appointed or elected to hold any position in a financial institution.

552. In the licensing process applicants for a banking licence must submit to the CBS personal details of the proposed administrators (person who is a director, managing director or manager of such institution) together with a statement detailing the qualifications and professional experience and at least three references (It is to be noted that pursuant to section 5(1)(c) of the FIA 2004 and regulation 3(1)(e) of the Financial Institutions (Non-Domestic) Regulations 1996 at least one reference must be provided from an internationally reputable bank other than the applicant.) as stipulated under Section 5(1)(a) of the FIA 2004. The CBS have a prescribed format which the banks and senior management are expected to complete for purposes of the test. The applying bank is expected to attest as to the character of the prospective individual. In the absence of the attestation a police clearance shall be required from the prospective individual.

553. The CBS assesses the fitness and propriety of administrators when there is a proposal to appoint an administrator. Since the enactment of the AML Act the CBS has assessed one individual for a senior management position.

554. To date no criminals are known to hold or control significant investment in a financial institution, or hold any qualified management functions within any licensed financial institutions.

Insurers and insurance intermediaries

555. Under the Insurance Act 1994, a person cannot acquire the control of or substantial shareholding (that is at least 5 per cent) in an insurance company without prior notification of his intention to acquire the control of or substantial shareholding in an insurance company and the approval of the Insurance Authority. Any person who fails to comply with these requirements may be criminally liable. However, the Insurance Act is silent on the grounds upon which the Insurance Authority may refuse to grant its approval.

556. The approval of the Insurance Authority is required for the appointment of a director or principal officer of an insurance company. The law requires the Insurance Company to satisfy the Insurance Authority that the person to be appointed is fit and proper. The requirement of the fit and proper test is not laid down in the law and there are no guidelines issued by the Insurance Authority on the issue.

557. One of the insurance broker who was interviewed by the evaluation team was also authorised to act as an insurance agent. The culmination of both functions under one entity is a potential source of conflict of interest. The insurance broker was acting as agent for life insurance provided by company providing composite insurance. However, this conflict of interest issue was not being addressed by the Insurance Authority and there was no conduct of business rules which applied in such situation.

Application of Prudential Regulations to AML/CFT (c. 23.4)

558. During the licensing process for banks, proper identification of the administrators, substantial shareholders and ultimate beneficial owners including their names, nationality,

qualifications and business profession is carried out. They are required to produce three references of which one must be from an internationally reputable bank other than the applicant, an affidavit duly signed by the individual stating conviction of crimes, past or present involvement in managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings and a list of companies in which the applicant holds shares. Such requirements are similar to the CDD requirements under the AML Act.

559. In the case of an application by a financial institution incorporated outside Seychelles, provision of a statement that the foreign supervisory authority responsible for supervision of the applicant in the country of incorporation is aware of the application under the FI Act.

560. Seychelles is not a member of the IAIS and has not adopted the IAIS Core Principles. Insurers and insurance intermediaries are consequently not subject to the IAIS Core Principles.

Licensing or Registration & Monitoring of Value Transfer Service (c. 23.5 & 23.6)

561. There is no requirement for money or value transfer operators to be licensed or registered under the laws in Seychelles. The definition of financial institution under the FI Act does not extend to money or value transfer services operators. The two international money transmission operators in the Seychelles provide their services through two of the commercial banks which act as their agents. The definition the banking activities under section 4 of the FI Act include money transmission. The money transmission operators only provide inward remittance services and do not offer any outward remittance services.

562. While the FIU is empowered under the AML Act to conduct onsite inspections to ensure compliance with the requirements of the AML Act, no onsite inspections were conducted with respect to money transmission services as at the date of the evaluation. However, the FIU has indicated that immediately after the onsite inspection it undertook an onsite inspection with respect to one money transmission service.

563. Money Changing Service providers must be licensed by CBS under the FI Act. Under Section 2 of the AML Act, they are considered as reporting entities and as such, are required to comply with all the requirements of the AML Act and the PTA.

564. So far, only two money exchange service providers have been licensed by CBS which has conducted yearly inspections on one of them. The other exchange service provider was recently licensed. The inspection conducted by the CBS included monitoring compliance with the requirements of the now repealed AML Act.

565. Under the new AML Act, the FIU is empowered to conduct onsite inspections to ensure compliance with the requirements of the AML Act, no onsite inspections were conducted with respect to the exchange bureau as at the date of the onsite visit. However,

the FIU has indicated that immediately after the onsite visit it conducted an onsite inspection with respect to one of the exchange bureaus.

Licensing of Financial Institutions (c. 23.7)

566. Until 2004, the Ministry of Finance was responsible for the licensing and supervision of Co-operatives and the Seychelles Credit Union (SCU). In April 2004, certain powers and performance of duties previously vested into the Ministry of Finance was delegated to the CBS. In March 2005 and May 2006, examiners from the Bank Supervision Division conducted on-site examination of SCU and covered the institutions compliance to the then AML Act.

567. However, it is to be noted that under the new AML Act, the FIU is empowered to conduct onsite inspections to ensure that reporting entities comply with the requirements of the AML Act. As at the date of the mutual evaluation, no onsite inspections had been conducted by the FIU with respect to the SCU

Recommendation 30

Adequacy of resources for Competent Authorities (c.30.1)

568. The FIU is established as a unit within the CBS. It is intended that it will have its own organisational and management structure, with its own staff and resources.

569. Its budget forms part of the CBS budget. It is housed in the CBS building (which is secure) separated from the main central banking activities. The FIU anticipates having operational independence in order to ensure that the decision making process is free from undue influence and interference.

570. The newly established FIU has one Director and two other members of staff who were transferred from another division of the CBS. As a unit within the Central Bank it will only submit a business plan and proposed budget to the Board in December 2007. A budget will be allocated in January 2008.

571. As the FIU is newly established and the legislation recently passed the small number of staff may be able to manage the small number of reports being received. However, the FIU is also responsible for ensuring that all reporting entities comply with the AML/CFT requirements under the AML Act. As the business plan has not been drafted it is not possible to speculate of staffing plans for the future. During discussions with the Director, he revealed plans to split the two staff members between the operational (collect, analyse and disseminate) and compliance (inspections, guidance and training) functions. The latter will have an effect on the number and quality of reports received and the number of staff may not be sustainable for the workload.

Integrity of staff of competent authorities (c.30.2)

572. All staff members of the FIU have signed a confidentiality clause and are required to maintain high professional and ethical standards during the performance of their duties. This is a document that all Government employees are required to sign in relation to a code of conduct when entering government service. These are not updated or renewed or streamlined for the nature of work performed in the FIU. The clauses signed by the FIU staff were done so when they were still officially employed by the CBS.

573. Section 16 of the AML Act provides that the Central Bank Board appoint a fit and proper person as the Director of the FIU.

574. Whilst the two new staff members have no previous experience on AML/CFT, the Director who has received extensive training on AML/CFT overseas as well as having participated in two Mutual Evaluations conducted by ESAAMLG, has provided them with in house training in the subjects. One of the new staff members recently participated in an AML workshop which was conducted by the World Bank in Tunisia and the second one is due to participate in a seminar to be held in Kenya at the end of November 2006.

Training for staff of competent authorities (c.30.3)

575. During the period September 28 to October 6, 2006, a team of experts from the IMF provided technical assistance to the staff of the FIU. The training covered the basics on money laundering and the financing of terrorism. A member of staff of the FIU also attended an AML/CFT workshop organised by the US Treasury in Botswana in May 2006.

576. A request has been made to the Mauritius FIU to provide assistance to the FIU staff by means of attachments, and training. The Governor and the Director are due to visit Mauritius in January 2007 to finalize the necessary arrangements. A similar request will be made to the South African FIC. Whilst the FIU members have been exposed to external training abroad they will benefit from exposure to other FIUs and FIU analysts. As the FIU matures more experience will be gained and relationships and advice from other FIUs will become critical.

577. At this stage the Director is managing all cases reported to the FIU and there appears to very little skills transfer in this regard. This is not sustainable and simple, less complex cases should be given to the analysts to work on.

578. The Department of the US Treasury has also entered into discussions with the CBS on the provision of technical assistance to the staff of the FIU starting in February 2007. This assistance will undoubtedly go towards helping the authorities in the fight against ML/TF.

Recommendation 29

Monitoring of AML/CFT by Supervisors (c. 29.1 and 29.2)

579. The powers of the FIU to monitor and ensure compliance by reporting entities with the requirements of the AML Act are laid down under sections 19(e) and 23 of the Act.

Section 19(e) provides that the FIU shall carry out examinations of reporting entities as set out in section 23. Section 23(1)(a) of the AML Act provides that “ The Director or any person authorised the director may examine records, and during business hours, enter any premises in which the Director or the person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of this Act.”

580. The FIU has in July 2006 issued an Anti-Money Laundering Examination Procedures Manual which is designed to assist staff of the FIU in the course of the onsite examination of banks and bureaux de change. The manual covers the examination of the internal AML/CFT policies and procedures, books and records of the financial institution, including sample testing for examination of CDD documentation and records of transactions.

581. It should however be noted that no corresponding manual exists for the other types of financial institutions that operate in Seychelles.

Power to Compel Record by Supervisors (c. 29.3 & 29.3.1)

582. Under Section 23 of the AML Act-

The Director or any person authorised the director may examine records, and-

- (a) during business hours, enter any premises in which the Director or the person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of this Act;
- (b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (c) reproduce an record, or cause it to be reproduced from date in the form of a print out or other intelligible output and remove the printout or other output for examination or copying; and
- (d) use or cause to be used any copying equipment in the premises to make copies of any record.

Section 23(2) of the AML Act further provides that-

“The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the Director or any authorised person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to administration of the provisions of this Act or regulations made thereunder.

583. Pursuant to the provisions of section 54 of the AML Act , any person who wilfully obstructs, hinders or threatens an officer or representative of the FIU in the performance of his or her duties or the exercise of his or her powers under this Act is guilty of an offence.

584. The exercise of its powers by the FIU under section 23 of the AML Act is not predicated on the need to require a court order.

Enforcement Powers and powers to sanction (c.29.4)

585. Under the provisions of section 24(2) of the AML Act, the FIU may direct any reporting entity that has without reasonable excuse failed to comply in whole or in part with any of its obligations to implement an action plan to ensure compliance with such obligations.

586. Where a reporting entity fails to comply with a direction of the FIU, the FIU may under section 24(3) of the AML Act, make an application to the Supreme Court supported by an affidavit stating that the reporting entity has failed without reasonable excuse to comply in whole or in part with any of its obligations under this Act and the Court shall, after such inquiry as it thinks fit, issue an order to any or all the officers or employees of that reporting entity in such terms as the Court deems necessary to enforce compliance with such obligations. In granting such an order, the Court may order that should the reporting entity or any officer or employee of that entity fail without reasonable excuse to comply with all or any of the requirements of that order within such period of time as may be specified in the order such reporting entity, officer or employee shall pay a financial penalty in a sum not exceeding R100,000 as the Court may determine.

587. In addition under section 53 of the AML Act, a reporting entity which fails to formulate and implement internal rules in accordance with section 15(1)(c) of the AML Act is guilty of an offence. Section 15(1)(c) of the AML Act provides that a reporting entity shall establish and maintain procedures and systems to-

- Implement the customer identification requirements under section 4;
- Implement record keeping and retention requirements under sections 6 and 7;
- Implement the reporting requirements under section 10;
- Make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism;
- Screen persons before recruiting them as employees.

Recommendation 17

Effective, Proportionate, & Dissuasive Sanctions (c. 17.1 & 17.4):

588. The AML Act, provide for broad range of criminal sanctions that can be applied to both the financial institutions as well as to the director and senior management operating and managing the financial institution.

589. In the first instance, under the provisions of section 24(2) of the AML Act, the FIU may direct any reporting entity that has without reasonable excuse failed to comply in whole or in part with any of its obligations to implement an action plan to ensure compliance with such obligations.

590. Where a reporting entity fails to comply with a direction of the FIU, the FIU may under section 24(3) of the AML Act, make an application to the Supreme Court supported by an affidavit stating that the reporting entity has failed without reasonable excuse to comply in whole or in part with any of its obligations under this Act and the Court shall, after such inquiry as it thinks fit, issue an order to any or all the officers or employees of that reporting entity in such terms as the Court deems necessary to enforce compliance with such obligations. In granting such an order, the Court may order that should the reporting entity or any officer or employee of that entity fail without reasonable excuse to comply with all or any of the requirements of that order within such period of time as may be specified in the order such reporting entity, officer or employee shall pay a financial penalty in a sum not exceeding R100,000 as the Court may determine.

591. Further failure to comply with the AML Act may also constitute a criminal offence in the following instances:

AML Act	Offence	Sanction
Section 46	Failure to establish identity	
Section 47	Failure to maintain records	
Section 48	Failure to maintain account in true name	A person convicted of any one of these offences is liable on conviction in the case of –
Section 49	Failure to report suspicious transactions	
Section 50	Making false or misleading statements	
Section 51	Unauthorised disclosure of reports and other information	• an individual to imprisonment for 5 years or to a fine of R250,000 and
Section 52	Failure to implement internal rules	
Section 53	Failure to appoint compliance officer or provide training	• of a body corporate to a fine of R500,000.
Section 54	Obstructing of officer	
Section 56	Opening account in fictitious, false or incorrect name	

592. There is however no power granted to the prudential supervisory authorities to impose administrative sanctions including the power to revoke the licence of the financial institution or to take any other regulatory action against the directors, officer or employees

of the financial institution for failure to comply with AML/CFT requirements under the AML Act.

Designation of Authority to Impose Sanctions (c. 17.2)

593. The FIU which is the designated authority for supervising and monitoring compliance with the requirements of the AML Act does not have formal sanctioning powers. It may however, direct a financial institution to implement an action plan to ensure compliance with its obligations under the Act.

594. It is difficult at this stage to gauge the effectiveness of the power of the FIU to issue directions. As at the date of the mutual evaluation the FIU had not exercised such powers.

Sanctioning Directors & Senior Management (c. 17.3)

595. Section 61 of the AML Act provides that where any body corporate is convicted of an offence under this Act, every person being a director, controller or officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent.

Recommendation 32(d)

596. As at the date of the onsite visit no sanction had been imposed for failure to comply with AML/CFT requirements.

597. There has been no formal request for assistance made or received by supervisors relating to or including AML/CFT.

Recommendation 25.1

598. The FIU was established a few months before the on-site visit and had not yet issued Guidelines to financial institutions. The FIU has indicated that it was in the process of updating the "Guidance Notes on Anti-Money Laundering for Financial Institutions in Seychelles" which was issued by the Central Bank of Seychelles in March 1998. The Guidance Notes will be updated to incorporate the obligations of the Reporting Entities under the AML Act.

3.10.2 Recommendations and comments

599. The compliance monitoring process would be much more efficient if the Supervisory Authorities could be granted with adequate powers of enforcement and an appropriate range of sanctions against financial institutions and their directors and senior management for failure to comply with or properly implement the AML/CFT requirements including the power to impose fines as well as to revoke the licence. It is therefore recommended that the supervisory authorities be granted with powers to impose regulatory sanctions for failure of the financial institution to comply with the AML/CFT requirements under the AML Act.

600. Clear guidelines must be issued by the Insurance Authority to describe the criteria that must be satisfied by insurers and insurance intermediaries to meet the fit and proper test

601. The FIU must strengthen its on-site inspection regime and must develop sector specific onsite compliance procedures manual for all reporting entities in order to help structure the inspections and to comprehensively implement the framework it administers.

602. The FIU should develop an onsite inspection program that covers all reporting entities other than banks.

603. The FIU must having regard to industry specific ML/TF risk issue guidelines to reporting entities to assist them to implement and comply with their respective AML/CFT requirements.

604. The FIU must closely monitor all financial institutions to ensure that they implement AML/CFT measures in accordance with the requirements of the AML Act and any sector specific guidelines that it issues.

3.10.3 Compliance with Recommendations 23, 29, 17, & 25

	Rating	Summary of factors underlying overall rating
R.17	PC	<ul style="list-style-type: none"> While there are criminal sanctions that apply the supervisory authorities are not empowered to take effective, proportionate and dissuasive regulatory action against financial institutions and their officers or employees that fail to comply with AML/CFT requirements. It is difficult to gauge the effectiveness of the sanctioning powers under the AML Act as these powers have not been used and tested.
R.23	PC	<ul style="list-style-type: none"> While there is a designated competent authority with responsibility to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing it has just started its operations and much work has to be undertaken by the FIU to meet its statutory duties and obligations. Insurers and Insurance Intermediaries are not subject to the IAIS Core principles. The criteria to be satisfied for the fit and proper test for insurers and insurance intermediaries are not defined. There is no requirement for money or value transfer operators to be licensed or registered under the laws in Seychelles. There is no effective monitoring of money or value transfer operators to ensure compliance with AML/CFT requirements. Not all financial institutions have implemented the requirements of

		the AML Act.
R.25	NC	<ul style="list-style-type: none"> • No guidelines have been issued to Financial Institutions to assist them to implement and comply with their respective AML/CFT requirements. • Not all financial institutions have implemented the requirements of the AML Act.
R.29	PC	<ul style="list-style-type: none"> • The powers of the FIU have not been sufficiently tested as these powers have not been used extensively. The FIU had conducted only one on-site inspection at the time of the mutual evaluation. • The FIU is under staffed to sustain its statutory duties and functions. • The staff members (other than the Director) have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function. • Not all Financial Institutions have implemented the requirements of the AML Act.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

605. There is no requirement for money or value transfer operators to be licensed or registered under the laws in Seychelles. The definition of financial institution under the FI Act does not extend to money or value transfer services operators. The two international money transmission operators in the Seychelles provide their services through two of the commercial banks which act as their agents. The definition the banking activities under section 4 of the FI Act include money transmission. The money transmission operators only provide inward remittance services and do not offer any outward remittance services.

606. For the purposes of the AML Act, MT service operators are reporting entities and must comply with all the AML/CFT requirements under the AML Act. However, not all of the applicable FATF Recommendations are wholly satisfied under the AML Act.

607. The sanctions available under the AML Act also apply to MT service operators as reporting entities.

608. While the FIU is empowered under the AML Act to conduct onsite inspections to ensure compliance with the requirements of the AML Act, no onsite inspections were conducted with respect to money transmission operators as at the date of the onsite visit. The FIU has however indicated that it has, immediately after the onsite visit, undertaken one onsite inspection of a money transmission service provider.

609. There is no requirement for licensed or registered MVT service operators in the Seychelles to maintain a current list of their agents which must be made available to designated competent authority.

3.11.2 Recommendations and comments

610. The legal regime applicable to MVT operators must be introduced to set out the requirement for these operators to be licensed or registered and to designate one or more competent authorities to register and/or licence natural or legal persons that perform money or value transfer services. The requirement to maintain a current list of their agents which must be made available to designated competent authority must also be introduced.

611. The FIU must develop proper inspection procedures that address the specific risk of this type of financial institution and should undertake onsite inspection to ensure that they comply with the FATF recommendations.

612. In general Seychelles, should take immediate steps to properly implement Recommendations 5-7, SR VII and other relevant FATF Recommendations and to apply them also to MVT.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> • There are no requirements for MVT operators to be licensed or registered in Seychelles. • The other relevant FATF Recommendations which are applicable are not wholly satisfied under the requirements of the AML Act. • There is no requirement to maintain a current list of agents which must be made available to designated competent authority. • The FIU does not have proper procedures in place to adequately monitor compliance by MVT operators with FATF requirements

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

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

4.1.1 Description and Analysis

Customer due diligence and record-keeping (R.12)

(applying R.5, 6, 8 to 11)

613. The following categories of DNFBP are subject to the requirements of the AML Act:

- Casinos
- Real estate agents
- Dealers in precious metals and dealers in precious stones when they engage in any cash transaction with a customer equal to or above the prescribed value. As at the date of the mutual evaluation no value had been prescribed.
- Attorney at laws, notaries and accountants when they prepare or carry out transactions for their clients concerning the following activities-
 - Buying or selling of real estate
 - Management of client money, securities or other assets
 - Management of bank, savings or securities accounts
 - Organisation of contributions for the creation, operation or management of companies
 - Creation, operation or management of legal persons or arrangements and buying or selling of business entities;
- Trust and company service providers which as a business, provides any of the following services-
 - Acting as formation agent of legal persons;
 - Acting as (or arranging for another person to act as) a director or secretary of a company ,a partner of a partnership or a similar position in relation to other legal persons;
 - Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - Acting as (or arranging for another person to act as) a trustee of an express trust
 - Acting as (or arranging for another person to act as) a nominee shareholder for another person

614. The main deficiencies in the AML/CFT preventive measures applicable to financial institutions as described with respect to Recommendations 5, 6 and 8-11 in section 3 above apply also to DNFBPs, since the core obligations for both DNFBPs and financial institutions are based on the same general AML/CFT regime.

Applying recommendation 5 (c.12.1)

615. The same deficiencies in the implementation of R5 under the AML Law apply to all reporting entities including DNFBPs. In general none of the DNFBPs (other than TCSPs) which the evaluation team met were applying the requirements of the AML Act, and few were aware of their AML/CFT obligations. However, some of the DNFBPs were applying some of the elements of CDD measures for commercial and other operational reasons.

616. ***Real Estate Agents:*** The Seychelles currently has four (4) real estate businesses licensed by the Seychelles Licensing Authority under the Licences Act. The role of real estate agents in the Seychelles is to act as intermediary between a vendor and purchaser of a property whilst the transaction is conducted by a notary. In practice, real estate agents do not carry identity checks.

617. ***Casinos:*** The licensing and supervision of casinos is conducted by the Seychelles Licensing Authority. There are currently three (3) registered casinos, four (4) amusement arcades and one (1) lottery registered in the Seychelles. The Seychelles has also enacted the Interactive Gambling Act in 2003 which allows for internet gambling activities. As at the date of the mutual evaluation no licence has been issued under the Interactive Gambling Act 2003.

618. The casino which met the evaluation team did not undertake identity checks except where the client was using a credit card or with respect to regular customers who operated a credit facility with the casino. In accordance with the internal regulations of the casino all payments above USD10,000 are effected by cheques which required the signature of the internal controller of the casino.

Dealers in precious metal and precious stones:

619. There is currently one (1) precious stones dealer which is registered as an international trade zone (ITZ) company that has been operating in Seychelles for the last three (3) years. Their main area of business is retail diamonds and is the only diamond trading company in the country. The Company follows the Kimberley process in its operations. 99% of its business is transacted through credit cards and debit cards, with 1% being transacted in cash, usually under the sum of \$1,000. the supervision of the company is conducted by SIBA which receives submissions of all the import and export sales reports on a monthly basis.

Attorney at laws, notaries and other independent legal professionals

620. In the Seychelles, the legal profession is split between attorneys, barristers and notaries and is governed by the Legal Practitioners Act. Members of the legal profession are trained mostly from the UK and Mauritius. All practicing lawyers must be licensed by the Seychelles Licensing Authority and must renew their licence on an annual basis. Under the Law Practitioners Act, the Chief Justice may on receipt of a complaint against a law practitioner exercise disciplinary powers. There are currently forty-five (45)

barristers, with eighteen of these being members of the Bar Association. Membership to the Bar Association is not compulsory. There is presently no code of ethics through which the Bar Association may govern the behaviour of the barristers in the country. Under these circumstances, complaints and disciplinary matters are either channelled to the Chief Justice or to the Society. These matters are usually resolved by way of mediation.

621. Notaries are public functionaries, working in the private sector, who are involved in preparing documents for the sale of land and the formation of companies. Transfers of real property and incorporation of companies are among the documents that they draft. Attorneys and barristers may also draft documents for the incorporation of companies. Attorneys and notaries are subject to the AML Act but have not implemented its requirements whereas barristers are not captured under the definition of reporting entities for the purposes of the AML Act.

622. **Accountants:** At present there is no professional accounting body in the Seychelles however accountants must be licensed by the Seychelles Licensing Authority. Most of the accountants operating in the country are qualified from India or the United Kingdom and are members of the professional accounting bodies in India or the UK. As such, they must adhere to and apply the respective rules and codes of practice of these accounting bodies in their respective areas of operation. Some of the accountants are also licensed as TCSPs.

623. The accounting firm which met with the evaluation team also held an International TCSP licence issued by SIBA and had not implemented AML/CFT measures with respect to its domestic practice. Having regard to the strict rules that governed foreign exchange it was of the view that it was very difficult for a domestic company to be involved with ML.

624. **Trust and Corporate Service Providers (TCSPs)** are licensed by the SIBA under the International Corporate Service Providers Act 2003 (ICSP Act) to carry on the business of providing international corporate services to International Business Companies and Companies with Special Licences.

625. Prior to the enactment of the ICSP Act, Registered Agents which provided international corporate services to the Seychelles IBCs were licensed by the Licensing Authority under the Licences Act. Under the new regime, all existing Registered Agents were given a ninety days period to comply with the provisions of the ICSP Act 2003.

626. A trust service provider is also licensed by the SIBA under the ICSP Act to provide international trustee services, including services connected with the formation or administration of international trusts and serving as resident trustee of an international trust.

627. Before granting a licence under the ICSP Act, the SIBA must ascertain that the applicant and each director and manager of the applicant is a fit and proper person. In determining whether a person is fit and proper the SIBA has regard to the person's probity, competence, experience and soundness of judgement for fulfilling the relevant responsibility.

628. As at 22 November 2006 there were 35 licensed CSP and 18 licensed TSP operating in the Seychelles and providing services to 32, 472 international business companies, 70 Companies holding special licences, and 160 international trusts.

629. The core business of Corporate Service Providers is to incorporate International Business Companies (IBCs). The client relationships are established on the basis of referrals from intermediaries, including lawyers, accountants or corporate service providers outside the Seychelles, and from group offices. It is common practice amongst a few TCSPs to sell IBCs in bulk to intermediaries. Some of the TCSPs also advertise and sell their services including, the sale of shelf companies, on-line.

630. TCSPs are reporting entities for the purposes of the AML Act and are subject to verification of identity requirements under the AML Act 2006. In addition, pursuant to section 8(3) of the ICSP Act, TCSPs are bound by a Code of Practice set out under Schedule 3 to the ICSP Act. Paragraph 1 of the Code of Practice requires every TCSP to know and be able to identify its client and to be able to identify the beneficial owners of its client companies.

631. In practice the level of CDD measures applied by TCSPs was related to the range of services they offered to client. While under section 4(2)(b) a reporting entity is required to obtain information on the client's name, address and occupation and the source of wealth and property of the person, the KYC procedure set out in the Office Manual of one of the TCSPs interviewed by the Team required details of the occupation of the client only where the TCSP provided directorship or nominee shareholding services. The Office Manual did not contain any requirement to obtain information on the source of wealth or property of the client.

632. Further, the team was informed that it was very difficult in practice to identify the beneficial owners.

Applying recommendation 6 and 8-11 (c12.2)

Applying recommendation 6

633. The same deficiencies in the implementation of Recommendation 6 under the AML Act apply to reporting financial institutions and reporting DNFBPs. Although the DNFBP sector) is subject to general AML/CFT requirements under the AML Act, there is no formal adoption and implementation of these measures in practice.

Applying recommendation 8

634. The same deficiencies in the implementation of Recommendation 8 under the AML Act apply to reporting financial institutions and reporting DNFBPs. In practice there appears to be little current scope for the use of new technologies in relation to the DNFBP sector other than the TCSPs and internet casinos.

635. The websites of two of the TCSPs (not interviewed by the team) advertised the sale of ready made IBCs on-line. They consider the person who fills in the on-line application form and claims /or vouches as their client and beneficial owner of the IBC. No independent checks are carried out.

Applying recommendation 9

636. The same deficiencies in the implementation of Recommendation 8 under the AML Act apply to reporting financial institutions and reporting DNFBPs. In practice there appears to be little current scope for the use of new technologies in relation to the DNFBP sector other than the TCSPs.

637. The core business of Corporate Service Providers is to incorporate International Business Companies (IBCs). The client relationships are established on the basis of referrals from intermediaries, including lawyers, accountants or corporate service providers outside the Seychelles, and from group offices. It is common practice amongst a few TCSPs to sell IBCs in bulk to intermediaries.

638. The intermediaries relied upon by the TCSPs were not always regulated for AML/CFT purposes in their home jurisdiction. One of the TCSPs interviewed by the team indicated that it only obtained CDD documentation on the client from the intermediary where the TCSP provided directorship services. Another TCSP interviewed by the team indicated that it did not require upfront disclosure of the beneficial owner from the intermediary except where it provided directorship services.

Applying recommendation 10

639. The same deficiencies in the implementation of Recommendation 11 under the AML Act apply to reporting financial institutions and reporting DNFBPs. Although the DNFBP sector (other than TCSPs) is subject to general AML/CFT requirements under the AML Act, there is no formal adoption and implementation of these measures in practice.

640. The CDD measures undertaken by the TCSP do not meet the requirements of the AML Act. No transaction records are being kept and maintained with respect to IBCs which are sold in bulk to intermediaries which in practice are not always regulated and supervised for AML/CFT purposes.

Applying recommendation 11

641. The same deficiencies in the implementation of Recommendation 11 under the AML Act apply to reporting financial institutions and reporting DNFBPs. Although the DNFBP sector is subject to general AML/CFT requirements under the AML Act, there is no formal adoption and implementation of this requirement in practice.

Applying recommendation 17

642. The same deficiencies in the implementation of Recommendation 17 under the AML Act apply to reporting financial institutions and reporting DNFBPs.

4.1.2 Recommendations and comments

643. Same deficiencies apply for DNFBPs as for financial institutions with respect to Recommendations 5, 6, 8-11. In general, Seychelles should take immediate steps to properly implement Recommendations 5, 6, 8-11 and apply them to DNFBPs.

644. The application of AML/CFT requirements to DNFBPs (other than TCSPs) is relatively recent and there is an urgent need to build up an effective AML culture in this area through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines.

645. It is further recommended that the FIU should work in close collaboration with the DNFBPs to elaborate an action plan for the adoption and implementation of the AML/CFT requirements under the AML Act. The implementation of the action plan must be closely monitored by the FIU through regular on-site inspections.

646. An important vulnerability exists in the offshore sector which relates to AML/CFT and hence to reputation risks. The insufficient implementation in practice of Recommendations 5, 6, 8-11 in line with international standards raises serious concerns.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none">• The same deficiencies apply for DNFBPs as for financial institutions with respect to Recommendations 5, 6, 8-11 and 17.• DNFBPs (other than TCSPs) have not adopted and implemented the requirements of the AML Act.• DNFBPs (other than TCSPs) are generally not aware of their obligations under the AML Act.• While the TCSPs were relatively more aware of their obligations under the AML Act the level of compliance by TCSPs with the requirements of the AML Act was minimal as they found the obligations too onerous.

4.2 Suspicious transaction reporting (R.16)

(R.16 applying R.13,14, 15, 17 & 21)

4.2.1 Description and Analysis

Legal Framework: AML Act

Applying recommendation 13 (c.16.1)

647. DNFBPs are subject to the same reporting requirements under section 10 of the AML Act as apply to financial institutions. These are detailed in section 3.7 above. All DNFBPs are required to report STRs to the FIU. In practice, none of the DNFBPs spoken to during the evaluation had taken steps to comply with the provisions of the requirement to report suspicious transactions.

648. The representative of the ICSP Association indicated that nobody could file an STR as there was no mechanism in place to file STRs and that no meeting had been held with the FIU to that effect. Another ICSP indicated that it had some concerns about the ability of the FIU to preserve confidentiality and was of the view that more reports would have been filed with the FIU if the STRs were to be made verbally.

649. The representative of the casino which met with the evaluation team indicated that in the event of something suspicious they would call the CBS.

c.16.2

650. Not applicable. Under the AML Act all STRs must be filed with the FIU.

Applying recommendation 14, 15 and 21 (c.16.3)

Recommendation 14 Protection for Reporting ST and Prohibition of Tipping Off (c. 14.1-2)

651. As all DNFBPs fall within the definition of reporting entity under the AML Act the provisions against tipping off (section 12 of the AML Act) and the safe harbour provisions (section 14 of the AML Act) apply equally to DNFBPs, their officers, employees and agents. Given the lack of awareness of the requirement to submit STRs in the DNFBP sector, the practical impact of these provisions is extremely limited.

Recommendation 15 Internal Controls, Compliance and Audit (c 15.1-4)

652. The same deficiencies in the implementation of Recommendation 15 under the AML Act apply to reporting financial institutions and reporting DNFBPs. Although the DNFBP sector is subject to the requirements under section 15(1) of the AML Act there is no formal adoption and implementation of this requirement in practice.

653. It must also be noted that pursuant to the provisions of section 15(2) of the AML Act the requirements under section 15(1) do not apply to an individual who, in the course of carrying on his or her business, does not employ or act in association with any other person. Some of the categories of DNFBPs, including lawyers and real estate agents, may operate as individuals. There is however no requirement for a reporting entity who is an

individual and who in the course of carrying on his or her business, does not employ or act in association with any other person to implement internal controls.

Recommendation 21 Special Attention to Relationships involving countries that inadequately apply AML/CFT measures and Countermeasures (c. 21.1 - 3)

654. The same deficiencies in the implementation of Recommendation 21 under the AML Act apply to reporting financial institutions and reporting DNFBPs. Although the DNFBP sector is subject to the requirements of the AML Act there is no formal adoption and implementation of this requirement in practice.

4.2.2 Recommendations and comments

655. Same deficiencies apply for DNFBPs as for financial institutions with respect to Recommendations 13, 14, 15 and 21. In general, Seychelles should take immediate steps to properly implement Recommendations 13, 14, 15 and 21 and apply them to DNFBPs.

656. The application of AML/CFT requirements to DNFBPs (other than TCSPs) is relatively recent and there is an urgent need to build up an effective AML culture in this area through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines.

657. The FIU must issue a standard reporting format to all reporting entities to ensure that all relevant information is submitted by the reporting entity.

658. Staff of DNFBPs should be provided with adequate AML/CFT training to enable them to identify suspicious transactions and report such transactions.

659. There are no requirements concerning the implementation of internal controls by reporting entity who is an individual and who in the course of carrying on his or her business, does not employ or act in association with any other person. The FIU should issue appropriate guidelines to such businesses to enable them to implement internal controls to manage the AML/CFT the risks of their operations.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> • Similar technical deficiencies in the AML Act relating to Rec. 13, 15 and 21 that apply to financial institutions also apply to DNFBPs. • Although DNFBPs are covered by the scope of the AML Act, in practice little has been done to implement the provisions within the DNFBP sector (other than TCSPs) and thus practical application is extremely limited. • There are no requirements concerning the implementation of

		internal controls by reporting entity who is an individual and who in the course of carrying on his or her business, does not employ or act in association with any other person.
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4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and Analysis

Legal Framework

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

660. Casinos (including internet casinos) are subject to the requirements of the AML Act and the FIU is the designated authority tasked with the responsibility to ensure that casinos are effectively implementing the AML/CFT measures required under the FATF recommendations.

661. In practice, nothing has been done by casinos to implement the provisions of the AML Act and thus practical application is non-existent.

662. There are currently three Casinos and three Gaming Houses. There are no Internet Casinos. The Seychelles Licensing Authority (SLA) is the designated authority to licence Casinos. A proposal to set up a Casino is first submitted to the Seychelles Investment Bureau who vets the proposal before forwarding it to SLA.

663. Currently, the SLA which supervises Casinos only ensures compliance with the licensing requirements.

664. During the interview process, the investor is asked to confirm in writing whether he/she has any criminal records but no documentation like a police character certificate or an affidavit certifying that he has not been convicted of a criminal offence is submitted.

665. SLA as the licensing agency does not ask any questions that would help in preventing criminals from being operators of Casinos.

Monitoring and Compliance of other DNFBPs (c. 24.2 & 24.2.1):

666. **Real Estate Agents:** The Seychelles currently has four (4) real estate businesses licensed by the Seychelles Licensing Authority under the Licences Act.

667. **Casinos:** The licensing and supervision of casinos is conducted by the Seychelles Licensing Authority. There are currently three (3) registered casinos, four (4) amusement arcades and one (1) lottery registered in the Seychelles. The Seychelles has also enacted the Interactive Gambling Act in 2003 which allows for internet gambling activities. As at

the date of the mutual evaluation no licence has been issued under the Interactive Gambling Act 2003.

668. ***Dealers in precious metal and precious stones:*** There is currently one (1) precious stones dealer which is registered as an international trade zone (ITZ) company that has been operating in Seychelles for the last three (3) years. Their main area of business is retail diamonds and is the only diamond trading company in the country. The Company follows the Kimberley process in its operations. 99% of its business is transacted through credit cards and debit cards, with 1% being transacted in cash, usually under the sum of \$1,000. the supervision of the company is conducted by SIBA which receives submissions of all the import and export sales reports on a monthly basis.

669. ***Attorney at laws, notaries and other independent legal professionals:*** In the Seychelles, the legal profession is split between attorneys, barristers and notaries and is governed by the Law Practitioners Act. Members of the legal profession are trained mostly from the UK and Mauritius. All practicing lawyers must be licensed by the Seychelles Licensing Authority and must renew their licence on an annual basis. Under the Law Practitioners Act, the Chief Justice may on receipt of a complaint against a law practitioner exercise disciplinary powers.

670. ***Accountants:*** At present there is no professional accounting body in the Seychelles however accountants must be licensed by the Seychelles Licensing Authority. Most of the accountants operating in the country are qualified from India or the United Kingdom and are members of the professional accounting bodies in India or the UK. As such, they must adhere to and apply the respective rules and codes of practice of these accounting bodies in their respective areas of operation.

671. **Trust and Corporate Service Providers (TCSPs)** are licensed by the SIBA under the International Corporate Service Providers Act 2003 (ICSP Act) to carry on the business of providing international corporate services to International Business Companies and Companies with Special Licences.

672. Prior to the enactment to the ICSP Act, Registered Agents which provided international corporate services to the Seychelles IBCs were licensed by the Licensing Authority under the Licences Act. Under the new regime, all existing Registered Agents were given a ninety days period to comply with the provisions of the ICSP Act 2003.

673. A trust service provider is also licensed by the SIBA under the ICSP Act to provide international trustee services, including services connected with the formation or administration of international trusts and serving as resident trustee of an international trust.

674. Before granting a licence under the ICSP Act, the SIBA must ascertain that the applicant and each director and manager of the applicant is a fit and proper person. In determining whether a person is fit and proper the SIBA has regard to the person's

probity, competence, experience and soundness of judgement for fulfilling the relevant responsibility.

675. Under the AML Act, the FIU is tasked with the responsibility for monitoring and ensuring that the other DNFBPs comply with AML/CFT requirements. However, as at the date of the evaluation, the FIU had not undertaken any onsite inspection visit with respect to the DNFBP sector.

676. Given that the FIU has overall responsibility for ensuring that all reporting entities, that is, financial institutions and DNFBPs comply with AML/CFT requirements, similar technical deficiencies in the powers of the FIU under AML Act relating to Rec. 17, 29 and 30 that apply to financial institutions also apply to DNFBPs.

Guidelines and Feedback for DNFBPs (c. 25.1 - 2):

677. No guidelines have been issued by the FIU to assist DNFBPs to implement and comply with their respective AML/CFT requirements.

4.3.2 Recommendations and comments

678. Although Seychelles has extended the scope of the AML Act to include the DNFBP sector within its scope, and has designated the FIU as the competent authority to supervise the DNFBP for AML/CFT purposes it should ensure that the FIU commence effective supervision as a matter of urgency.

679. The FIU must be sufficiently resourced to undertake its role under the AML Act fully.

680. All DNFBPs must be made aware of their responsibilities under the AML Act.

681. The FIU must having regard to the sector specific ML/TF risk issue guidelines to DNFBPs to assist them to implement and comply with their respective AML/CFT requirements.

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

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none">• There is no effective implementation of this recommendation in the DNFBP sector.• There is no actual supervision of the DNFBP sector in practice.• Same deficiencies relating to Rec. 17, 29 and 30 with respect to the FIU that apply to financial institutions also apply to DNFBPs.
R.25	NC	<ul style="list-style-type: none">• No guidelines have been issued by the FIU to assist DNFBPs to implement and comply with their respective AML/CFT

		requirements.
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4.4 Other non-financial businesses and professions | modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Legal Framework: **Other Vulnerable DNFBPs (c. 20.1)**

682. The definition of reporting entity under section 2 of the AML Act includes a person who operates a gambling house or lottery including the conduct of such activity on the internet. Accordingly, these businesses are subject to customer identification, record keeping and retention and suspicious transaction reporting requirements.

Modernization of Conduct of Financial Transactions (c. 20.2)

683. There is a drive to place less reliance on cash and more on newer methods of payment. Of the six local banks, four have ATM cash dispensers some of which permit clients to transfer funds between accounts within the same bank but not to other banks. The use of local Debit cards is also on the rise as more and more businesses are establishing points of sale on their premises.

The use of cheque books is also widely utilised by a lot of clients.

684. However, cash is still predominant in everyday transactions in the Seychelles.

4.4.2 Recommendations and comments

685. Seychelles must also consider applying the relevant applicable FATF recommendations to non-financial businesses and professions (e.g. dealers in high value and luxury goods, pawnshops, and auction houses) that are at risk of being misused for ML or TF.

686. The authorities in the Seychelles could take further steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	<ul style="list-style-type: none"> Seychelles has not taken sufficient steps to encourage the development and use of modern and secure techniques for conduction financial transactions that are less vulnerable to ML.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

5.1.1 Description and Analysis

Legal Framework

The Companies Act, 1972

The International Companies Act, 1994

Companies (Special Licences) Act

Transparency Mechanisms (c. 33.1)

Domestic companies

687. Companies may be formed and registered in the Seychelles under the provisions of the Companies Act, 1972. A minimum of two persons may incorporate a company with limited liability. All applications for the incorporation of a company submitted to the Registrar of Companies must be accompanied by a signed declaration by a barrister, attorney or notary to certify that all of the requirements for the incorporation of the company under the Companies Act 1972 have been complied with. As a matter of practice, all applications for the incorporation of a company are submitted to the Registrar of Companies through a law practitioner who prepares the Memorandum and Articles of Association. As at the date of the on-site visit there were 3,500 companies registered under the Companies Act, 1972.

688. Every company must have at least two directors, a secretary and a registered office in the Seychelles. Corporate directors are not allowed under the Companies Act, 1972. All companies must maintain a register of its directors, shareholders and secretary. All appointment of and any changes in the directors and secretary of a company must be notified to the Registrar of Companies. Companies must file with the Registrar of Companies an Annual Return which must disclose particulars prescribed under the Companies Act, 1972. These particulars include, details of the registered office, directors, shareholders and the secretary of the company.

689. The Companies Act also provides for the incorporation and registration of proprietary companies and overseas companies. Proprietary companies are subject to a number of restrictions and may not have more than 50 shareholders or issue shares to the public. Corporate members or directors are not allowed for proprietary companies. All directors of the proprietary companies are members of the company. Proprietary companies are subject to the requirements to keep a register of its members and directors and all changes thereto must be notified to the Registrar of Companies. A proprietary company cannot issue preference and bearer shares. The proprietary company is also subject to the requirement of filing the annual return with the Registrar of Companies.

690. There is no requirement for companies registered under the Companies Act to disclose beneficial ownership information to the Registrar of Companies.

691. All records kept by the Registrar of Companies are available for public inspection.

Offshore sector

692. The company law regime in the offshore sector provides for the possibility of setting up an International Business Company (IBC) under the International Business Companies Act 1994 and a company holding a special licence under the Companies (Special Licences) Act 2003.

693. IBCs are registered with the Registrar of International Companies (the functions are carried out by the SIBA) through Registered Agents-which are licensed corporate service providers under the ICSP Act.

694. One or more persons may by subscribing to a Memorandum incorporate a company under the IBC Act. A company incorporated under the laws of a jurisdiction outside Seychelles may where it satisfies the requirements of the IBC Act continue as a company incorporated under the IBC Act.

695. The business affairs of an IBC must be managed by a board of directors that consists of one or more persons who may be individuals or companies. In addition to issuing ordinary shares, an IBC may issue shares to bearer. Under the IBC Act a share issued to bearer is transferable by delivery of the share certificate.

696. IBCs must at all times have a registered office and a registered agent in the Seychelles.

697. An IBC must keep at its registered office or such other place as the directors determine, a share register, a register of its directors and officers and such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

698. There is no requirement for the share register to contain details of the beneficial owner of the shares. Only the name and address of the person who holds the registered share must be recorded in the share register. There is no requirement to file information on changes in the directors and shareholders of IBCs with the Registrar of International Companies.

699. There is no system of control to ensure that IBCs are complying with the requirements to keep the required registers under the IBC Act. While conducting on-site examinations the SIBA does not sample test the client files of the CSPs to ascertain whether statutory records are being kept and maintained. In addition, the statutory registers may not necessarily be available to the SIBA or the CSP as these may be kept outside of the Seychelles.

700. While the CSPs are required to undertake verification of identity with respect to their clients accurate information is not always available with the CSP as there are deficiencies in the implementation of Recommendation 5 in the Seychelles.

701. A company which proposes to apply for a special licence under the Company (Special Licences) Act 2003 ('CSL Act') must be registered by the Registrar of Companies under the Companies Act 1972 and must limit its objects in its memorandum to one of the activities set out in Schedule 1 to the CSL Act. These include investment management and advice, offshore banking, offshore insurance, and the business of an investment company, a holding company a marketing company. An IBC or a company incorporated under the laws of a jurisdiction outside the Seychelles may continue as a company incorporated in accordance with the provisions of the CSL Act.

702. A company which proposes to hold a special licence under the CSL Act must submit its application to the Registrar of Companies through the SIBA and can only be registered with the approval of the SIBA. For the purposes of an application, an applicant must provide the name and addresses of the directors and shareholders of the proposed company and where any shareholder is a nominee the name and addresses of the person on whose behalf the shares are held by the nominee must be provided.

703. There is no requirement under the Act to provide information to the SIBA where there is a change in the beneficial ownership of the company. However, pursuant to paragraph 2.7 of the Guidance Notes for Corporate Service Providers issued by the SIBA, during the period of validity of a licence, the holder must notify the Authority of any changes relating to the ownership of the shares of the Licensee, change of beneficial ownership or the appointment or departure of a director or member of managerial staff.

704. A company holding a special licence (CSL) may issue shares to nominee shareholders provided that the names and addresses of the beneficial owners are recorded in the register of shares. A CSL is prohibited from issuing bearer shares.

Access to Information (c. 33.2):

705. Information on the beneficial ownership of domestic companies may not always be available as there is no requirement for companies registered under the Companies Act to disclose beneficial ownership information to the Registrar of Companies or to any other competent authority.

706. It does not appear to the assessors, from the provisions of the International Business Companies Act or the AML Act that the FIU may have access to the registers that an IBC is required to keep under the IBC Act unless the IBC consents to it. However, the FIU has indicated that it may use its powers under section 23 of the AML Act to verify their records. However, it is doubtful whether the powers under section 23 may be used for purposes other than for ensuring compliance with the AML Act. In addition, the deficiencies in the application of CDD measures by CSPs in practice undermine the ability

of competent authorities to have access to accurate information on the beneficial ownership and control of an IBC.

707. Further the secrecy provision under section 22 of the CSL Act also undermines timely access to beneficial ownership and control information. Pursuant to section 22 of the CSL Act SIBA is bound by a duty of secrecy with regard to all matters relating to the shareholding of a CSL or a shareholder thereof and cannot disclose such information except in the performance of the its duties under the CSL Act or suffer any unauthorised person to have access to any documents which come into its possession.

708. Further under section 22(3) of the CSL Act any person who is required to preserve and aid in preserving secrecy under subsection (1) shall not be required to produce in any court any document or record containing any matter relating to the shareholding of a relevant company or shareholder thereof or to divulge or communicate to any court any such matter coming to his notice in the performance of his duties under this Act, except as may be necessary for proceedings instituted under or for the purpose of carrying into effect the provisions of the Penal Code, the Anti-Money Laundering Act or the Business Tax Act.”

Bearer Shares (c. 33.3):

709. In addition to issuing ordinary and preference shares, a company registered under the Companies Act may with the permission of the Financial Secretary (The authorities have indicated that for the purpose of this provision the Financial Secretary is the Minister of Finance) issue bearer share certificates or bearer debentures. Bearer shares and bearer debentures are negotiable instruments and title to those shares and debentures may be transferred by delivery. Where a company issues a bearer share or a bearer debenture it must provide for the payment of dividends or interests by the issue of coupons to bearer. Such coupons are also negotiable instruments. Once the bearer shares are issued there are no controls that would enable the competent authorities to have access to the identity of the bearer shareholder.

710. Bearer Shares can also be issued by IBCs. Once the bearer shares are issued there are no controls that would enable the competent authorities to have access to the identity of the bearer shareholder. However, the evaluation team noted that some of the CSPs in the Seychelles were sensitive to the risk posed by bearer shares and have a self imposed practice not to register IBCs that issue bearer shares.

Additional element (33.4)

711. There are no measures in place to facilitate access by financial institutions to beneficial ownership and control information so as to allow them to more easily verify the customer identification data.

5.1.2 Recommendations and comments

712. Access to beneficial ownership and control information for all companies should be made available in a timely fashion for all companies not only those who are required to have publicly available information at the office of the Registrar of Companies.

713. The secrecy provision with respect to the shareholders of CSL must be reviewed to enable competent authorities to have timely access to beneficial ownership and control information without the need for a court order which may delay access to information.

714. The authorities in the Seychelles should put in place appropriate measures to ensure that bearer shares are not misused for ML purposes and that the identity of bearer shareholders is available.

715. Seychelles should take immediate steps to fully implement Recommendation 5 to ensure that beneficial ownership and control information on IBCs are obtained and kept up to date by CSPs.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> • There is no access in a timely fashion to adequate, accurate and current beneficial ownership and control information for all companies. • There is no central registry system that keeps records of ownership and control details for IBCs. • Due to deficiencies in the implementation of Recommendation 5 information on beneficial ownership and control information is not always available. • The secrecy provision relating to the shareholder information under the CSL Act undermines timely access to beneficial ownership and control information with respect to CSL as a court order is required. • There are no controls in place to ensure that bearer shares are not misused for ML purposes and that information on the identity of bearer shareholders is available.

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

5.2.1 Description and Analysis

Legal Framework

International Trust Act 1994

Domestic Trusts

716. There is no legal framework for domestic trusts in the Seychelles.

International Trusts

717. An international trust may be established under the International Trust Act 1994 (ITA). An international trust is defined under the ITA as a trust or constructive trust in respect of which-

- the settlor is not any time during the duration of the trust a resident of the Seychelles;
- at all times at least one of the trustee is a resident of Seychelles, an IBC (authorised by the SIBA) or a financial institution.

718. Generally, any property other than property situated in the Seychelles may be held on trust. However, with the approval of the SIBA, the trustee of an international trust may own immovable property a may be required for office accommodation of the trustee and may invest in securities and hold other investments in the Seychelles.

719. As at the date of the mutual evaluation there were 160 trusts on the Register of International Trusts.

Transparency Mechanism (c. 34.1)

720. Pursuant to the provisions of the ICSP Act only a person holding an international trustee services licence under the ICSP Act may provide international trustee services. These services include services connected with the formation, registration or administration of an international trust and serving as resident trustee of an international trust.

721. A resident trustee must file a declaration of trust with the SIBA-which in turn is required to file the declaration in a Register of International Trusts and give the declaration a reference number. The reference number of a declaration of trust is the reference by which the international trust is identified and can be used officially to refer to the international trust. In accordance with the provision of the ITA, the declaration of trust must not contain the name of the settlor or beneficiary unless the beneficiary is a Seychellois or a body corporate resident in Seychelles.

722. A trust service provider (TSP) is a reporting entity for the purposes of the AML Act and is required to undertake CDD measures in accordance with the provisions of the AML Act. There is however, no specific guidance in the AML Act or issued by the FIU on CDD measures that must be applied with respect to trusts. There is no express requirement to keep details of the settlor, trustees, or any protector. However, one of the TSP interviewed by the team indicated that it did undertake CDD measures with respect to the settlor, beneficiary and protectors with respect to an international trust.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2)

723. The FIU has the power under the AML Act to request information from a TSP which is a reporting entity for the purposes of the AML Act. However, in practice, given the lack of guidance regarding CDD measures to be undertaken with respect to trusts adequate and accurate information on the settlors, protectors and beneficiaries of trusts may not be available with the TSP. Information on the settlors and beneficiaries are also not available with the SIBA.

724. Under Section 8(1) of the International Trust Act a trustee or any other person is not permitted to disclose to any person not legally entitled to it or be required to produce or divulge to any court, tribunal, committee of inquiry or other authority in the Seychelles or elsewhere any information or document which inter alia, discloses the name of the settlor or any beneficiary or relates to or forms part of the accounts of the international trusts. This provision is subject to a number of exceptions, including, the Court may make an order for disclosure or production of an information or document relating to an international trust for the purpose of an inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney General on proof to the satisfaction of the court that the information or document is bona fide so required.

725. In view of section 58 of the AML Act which provides that a reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise, there is no legal impediment which will prevent the trustee of an international trust to provide information to the FIU.

726. However, if the information is required by any other competent authorities, it will have to comply with the requirements of the Section 8(1) of the IT Act and have recourse to a court order-which may be time consuming.

Additional element (c.34.3)

727. There is no readily identifiable mechanism to facilitate access by financial institutions to beneficial ownership and control information

5.2.2 Recommendations and comments

728. Appropriate guidance must be issued by the FIU on CDD measures that must be undertaken with respect to trusts to ensure that accurate and current information are obtained and maintained on trusts.

729. The confidentiality provisions under the ITA must be reviewed to ensure that competent authorities (other than the FIU) are able to obtain or have access to information on the beneficial ownership and control of trusts in a timely fashion.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none">• There is no adequate mechanism to ensure that there is adequate transparency concerning beneficial ownership and control information on trusts.• Only a declaration of trust, which does not disclose information on the settlor and beneficiary of an international trust, must be filed with the SIBA.• Deficiencies in the implementation of Recommendation 5 undermine the availability of adequate, accurate and current information on international trusts from TSPs.• Competent authorities (other than the FIU) are not able to obtain or have access to adequate, accurate and current information on the beneficial ownership and control of trusts.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Legal Framework

Prevention of Terrorism Act 2004; Anti Money Laundering Act 2006, Registration of Associations Act

Reviews of the domestic NPO sector (c. VIII.1)

730. NPOs must register with the Registration of Associations Act (RA Act). An association may be formed for a number of purposes provided that it is not contrary to law, morality and public policy. As at the date of the mutual evaluation there were 214 associations registered with the Registrar.

731. There has been no risk assessment of the sector for AML/CFT purposes. While the Registration of Associations Act enacted in 1959 and has been amended from time to time Seychelles has not conducted a review of the adequacy of the laws and regulations that related to NPOs. There has been no systematic gathering of information regarding the risk of misuse of NPOs for terrorist financing.

Protecting the NPO sector from TF through outreach and effective oversight (c. VIII.2, VIII.3)

(c. VIII.2)

732. Seychelles has not conducted outreach for the NPO sector with a view to protecting the sector from terrorist financing abuse, nor is there any outreach for raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse and promoting transparency, accountability, integrity and public confidence in the administration and management of NPOs.

(c. VIII.3.1)

733. NPOs which account for a significant portion of the financial resources under control of the sector and a substantial share of the sector's international activities have not been identified.

734. An application for the registration of an association must furnish information, certified true under the hand of the secretary, on the objects of the association. Under section 15(5)(a) of the RA Act any person who for the purposes of obtaining the registration of an association wilfully makes any statement or furnishes any information to the Registrar which is false in any material particular is guilty of an offence.

735. Under section 12 of the RA Act the secretary of every registered association must before the 31st day of January in each year, or when and as often as so requested by the Registrar of Association furnish to the Registrar a return of the names and addresses of the officers of the association, and an audited account of the yearly revenue and expenditure and of the assets and liabilities of the association in such form as the Registrar may require.

736. Any change occurring among officers of a registered association must be notified to the Registrar of Association within fourteen days of such change.

737. Failure to comply with the above requirements is an offence and the secretary of the registered association concerned is liable upon conviction to a fine not exceeding 25 rupees for every day during which the default continues.

738. Information kept with the Registrar of Association is publicly available subject to payment of a nominal fee.

(c. VIII.3.2)

739. In the event of the Registrar being satisfied as a result of any investigation into the affairs or conduct of a registered association, that the association should be struck off the register, the Registrar may, in accordance with the powers under section 17(1) of the RA Act and with the approval of the Minister, cause a notice to be served upon the secretary of the association informing him that he intends to strike the association off the register for reasons to be set out in the notice.

740. The association may, within a period of two months after the receipt by its secretary of such notice from the Registrar appeal to the Supreme Court against the decision to order

the striking of the association off the register and show cause why the name of the association should not be struck off and on any such appeal the Supreme Court may make such order as it shall think fit.

741. No sanctions have been applied by the Registrar.

(c. VIII.3.3)

742. Associations are registered with the Registrar of Association under the RA Act and are given a certificate of registration. This information is available to the public and to other competent authorities.

(c. VIII.3.4)

743. There is no requirement for NPOs to maintain, for a period of at least five years, and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation (c. VIII.4):

(c. VIII.4.1)

744. There are no gateways for the sharing of non-public information with other authorities.

(c. VIII.4.2)

745. Under the provisions of section 16(1) of the RA Act, the Registrar may, when and as often as he may deem necessary, call upon the secretary, or treasurer or other office bearer of any association, to produce to him at such time and place as he may determine any book or document in the custody of such secretary, treasurer or other office bearer, as the case may be.

746. Failure to comply with the above requirement is an offence under section 16(2) of the RA Act.

(c. VIII.4.3)

747. Preventive and investigative actions are not being taken yet regarding the prevention of terrorist financing.

Responding to international requests for information about an NPO of concern (c. VIII.5)

748. The AGO is the contact point for international requests. In some cases the Ministry of Foreign Affairs does receive some requests which are forwarded to the AGO for execution.

5.3.2 Recommendations and comments

749. The authorities in Seychelles must undertake a review of the adequacy of the laws and regulations pertaining to the NPO sector to ensure that NPOs are not being misused for TF.

750. The authorities in Seychelles must conduct outreach to the NPOs in order to educate NPOs about the risk of TF.

751. There must be effective supervision of NPOs undertaken by the Registrar of Associations and sanctions should be applied systematically for failure to comply with the provisions of the RA Act.

752. The RA Act must be amended to provide for record retention requirements.

753. The RA Act must be amended to provide for legal gateways for exchange of information both domestically and internationally.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	NC	<ul style="list-style-type: none"> • No review of adequacy of laws and regulations to ensure that NPOs are not being misused for TF by virtue of their activities • No outreach conducted to NPO sector regarding threat of TF • No effective supervision or monitoring of NPOs • No sanctions applied to NPO for failure to comply with the provisions of the RA Act • No record keeping requirement applicable to NPOs • No gateways for sharing non public information with domestic authorities

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1)

754. A National Task Force to co-ordinate all issues related to AML/CFT was established one week before the Mutual Evaluation Team on site visit. The Task Force comprises of

representatives from the FIU, CBS, Police, Ministry of Finance, Customs, Immigration, Tax, Internal Affairs. The task force is to discuss on issues of co-operation and sharing of intelligence information, latest trends and typologies in ML and FT, terrorist freeze lists, international co-operation and methods of improving the fight against ML/FT. The Task Force held its first meeting in December 2006.

755. Meetings will be organised between the FIU, the law enforcement agencies and the Supervisory agencies to discuss ways to improve co-operation and the regulatory regime.

756. Under Section 19(p) of the AML Act, the FIU may enter into any agreements or arrangements with any local institution or agency regarding exchange of information. As at the date of the mutual evaluation the FIU had not entered into any agreements or arrangements for exchange of information.

Additional elements (c. 31.2)

757. There is no formal mechanism in place for consultation between competent authorities, the financial sector and other sectors (including DNFBP) that are subject to AML/CFT laws, regulations, guidelines or other measures.

758. However, in practice the FIU consulted with the banks and the TCSPs when the AML Act was being enacted. This was confirmed by the banks and TCSPs.

6.1.2 Recommendations and comments

759. Task force recently created and therefore cannot make an assessment on its effectiveness.

760. The FIU should engage in more bilateral and outreach meetings with the other local agencies involved in the fight against ML and TF.

761. The FIU should consider implementing a standing forum for supervisory, professional oversight and law enforcement authorities to focus on operation issues that would fall outside the work of the National Task Force.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	NC	<ul style="list-style-type: none"> • The Task Force had just been set up and there was no evidence as at the date of the mutual evaluation that it is effective. • The FIU had not entered into any agreement or arrangement with domestic authorities for exchange of information.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Legal Framework: PTA; AML Act

Ratification of AML/CFT Related Conventions (c. 35.1 & c. I.1)

762. The Republic of Seychelles has acceded to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on February 27, 1992.

763. The Republic of Seychelles has also signed the International Convention for the Suppression of The Financing of Terrorism (ICSFT) in November 2001 and the United Nations Convention against Transnational Organized Crime (December 2000). Both conventions were ratified by Seychelles in 2004 and 2003 respectively.

764. However, the UNSCR 1267 is not implemented in a satisfactory manner. UNSCR 1373 has also not been implemented. The assessment team found a number of shortcomings in the forfeiture mechanism under the PTA as indicated under the discussion on SRIII. The evaluation team considered that the overall implementation of the measures provided for under the PTA for the freezing of assets was ineffective.

Additional Elements (Other relevant international conventions, c. 35.2)

765. Seychelles has acceded to or ratified a number of relevant international conventions including:

- The Convention on the Marking of Plastic Explosives for the Purpose of Detection;
- The Convention for the Suppression of Unlawful Seizure of Aircraft;
- The Convention on Offences and Certain other Acts Committed on Board Aircraft;
- The Convention on the Physical Protection of nuclear Material; and
- The Convention for the Suppression of the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Protocol on the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation.

6.2.2 Recommendations and comments

766. Further work is needed in order to implement the three conventions fully into the laws of Seychelles.

767. The authorities are recommended to implement fully the Vienna and Palermo Conventions in line with Recommendations 1 and 3, the ICSFT, and UNSCR 1267 and 1373 in line with the recommendations made under Special Recommendations II and III.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	The relevant provisions of the Vienna and Palermo Conventions have not been fully implemented.
SR.I	PC	The ICSFT has not been fully implemented The procedures in place for UNSCR 1267 and 1373 are not in line with the standard and UNSCR 1267 is not implemented in a satisfactory manner.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Legal Framework: Anti Money Laundering Act 2006; Prevention of Terrorism Act 2004
Mutual Assistance in Criminal Matters Act (MACM Act)

Widest Possible Range of Mutual Assistance (c. 36.1 & c. 36.1.1)

768. Seychelles has not received any request for mutual legal assistance relating to AML/CFT investigations, prosecutions and related proceedings. Section 10 of the MACM Act enables the authorities in the Seychelles to provide assistance to requesting states for evidence to be taken in the Seychelles or document or other things in Seychelles to be produced. A magistrate or a judge may take the evidence on oath of each witness appearing before the judge or magistrate. In the case of the production of documents or other things, a magistrate or judge, may require the production of the document or other thing. Mutual assistance to a foreign state also includes obtaining an order from a judicial officer for a warrant for the search of a person or premises or seizure of the thing that is the object of the request for mutual assistance (section 12 of the MACM Act). The other forms of mutual assistance that Seychelles may provide include-

- arrangements for enforcement of (i) a forfeiture order, (ii) a foreign pecuniary penalty order, (iii) a foreign restraining order (section 27 of the MACM Act)
- issue of a search warrant relating to the tracing, seizure, confiscation or forfeiture of the proceeds of crime in relation to illegal property located in Seychelles (section 28 of the MACM Act)
- issue of a restraining order relating to tracing, seizure, confiscation or forfeiture of the proceeds of crime against property located in Seychelles (section 29 of the MACM Act)
- issue of a production order or search warrant relating to the tracing, seizure, confiscation or forfeiture of the proceed of crime in respect of a property tracing document (section 30(1) of the MACM Act)
- issue of an order under the Misuse of Drugs Act directing a financial institution in Seychelles to give information to the police about transactions through an account with the financial institution (section 30(3) MACM Act)
- arrange for the service of process (section 31(1) of the MACM Act)

Provision of assistance in timely, constructive and effective manner (c.36.1.1)

769. Section 6(3) of the MACM Act provides that “Subject to this Act, Seychelles shall endeavour to grant the mutual assistance requested as expeditiously as practicable”.

770. Seychelles has not received any request for mutual legal assistance relating to AML/CFT investigations, prosecutions and related proceedings. However, in other criminal matters the authorities have indicated that the average time for finalizing a request for mutual legal assistance may take around 3 months. Depending on the initial information provided this time could be longer.

771. The assessment team was also informed that all requests related to ML matters received by the AG’s office are dealt with in a timely manner and statistics of such requests are maintained by both the courts and the police. The AG’s office normally responds to all requests emanating from Commonwealth countries. Several such requests not related to ML have been received from non-Commonwealth countries, mainly from Eastern Europe and these were denied as they were criminal in nature and emanated from the AG’s office in that country. However, all requests for Mutual Assistance related to ML including from non-Commonwealth countries are acted upon promptly.

772. The assessment team however, was not in a position to make an assessment of the timeliness and efficiency of processing requests given that no statistics of such requests were made available.

Restrictions on Mutual Assistance (c. 36.2)

773. Section 7 of the MACM Act sets out the grounds on which a request for mutual assistance may be refused. These include:

- The request relates to the prosecution or punishment of a person for an offence that is, or by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- There are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character
- There are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, sex, religion, nationality, national origin or political opinion;
- The granting of the request would prejudice the sovereignty, security or national interest of Seychelles
- The request relates to the prosecution of a person in a case where the person has been acquitted or pardoned by a competent tribunal or authority in a foreign country, or has undergone punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence, or

- The provision of the assistance would be contrary to or cannot be effected under the Constitution and other laws of Seychelles
- The limitations, conditions, exemptions or qualifications imposed under section 4 in relation to the foreign country prevent the request from being granted
- The provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Seychelles
- The provision of the assistance would, or would be likely to, prejudice the safety of any person;
- The provision of the assistance would impose an undue burden on the resources of Seychelles and no financial or other arrangement exists between the foreign country and Seychelles with regard to meeting this burden.

774. These grounds for refusal of legal assistance do not appear to be unduly prohibitive and overall, the assistance that Seychelles may render is not subject to unreasonable, disproportionate or unduly restrictive conditions.

Efficiency of Processes (c. 36.3)

775. Section 6(3) of the MACM Act provides that “Subject to this Act, Seychelles shall endeavour to grant the mutual assistance requested as expeditiously as practicable”. Requests related to Mutual Assistance matters are received through the Ministry of Foreign Affairs which then transmits such requests to AG’s office, the Central Authority under the MACM Act. Where the Central Authority considers that there are circumstances which are likely to cause a significant delay in complying with the request it must, in accordance with the provisions of section 6(3)(d) of the MACM Act, promptly inform the foreign country accordingly, giving reasons therefor.

776. The assessment team was however, not in a position to make a determination on whether the processes for the execution of mutual legal assistance requests in relation to AML/CFT matters would be responded to in a timely way and without undue delays. At the time of the onsite visit Seychelles had not received any such request.

Fiscal Matters and Mutual Assistance (c. 36.4)

777. Fiscal matters are not excluded from matters for which assistance may be sought The MACM Act defines “criminal matter” to include a matter relating to revenue including taxation, customs duties and trade tax.

Secrecy and Confidentiality (c. 36.5)

778. The limitations on request for assistance do not specifically include issues of secrecy or confidentiality. However, section 7 (1) (f) of the MACM Act makes an exception to the provision of assistance where this would be contrary to or cannot be effected under the Constitution and other laws of Seychelles. As there no express provision under the MACM Act for overriding confidentiality and secrecy provisions , in granting a request for mutual legal assistance the Court will have to take account of the confidentiality and

secrecy provisions and the circumstances under which they allow for disclosure of information.

779. Usually the Attorney General will entertain all applications so far as the law permits. In the event that after the first application in court summoning SIBA-which is bound by a duty of confidentiality under the ICSP Act and the CSL Act, to produce certain documents for their subsequent transfer to the requesting State, the Central Authority is of the opinion that where the information produced before the court by SIBA is incomplete, then another application will have to be made to the court summoning the service provider to produce documents in their possession so that as much information as is requested is disclosed to the requesting State.

Powers of Competent Authorities (applying R.28, c. 36.6)

780. Under the MACM Act, law enforcement agencies may on obtaining an order from a judge or magistrate as the case may be, use the powers vested upon them to compel the production of, search persons or premises, forfeit and seize and obtain transaction records and other information held by financial institutions or else, for the purposes of rendering assistance to a foreign state.

Avoiding Conflicts of Jurisdiction (c. 36.7)

781. The MACM Act does not specifically make provision for avoiding conflicts of jurisdiction by being able to determine the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country. However, the Criminal Procedure Code makes provisions to try offences in national courts where elements of the offence are committed in more than one country.

Recommendation 37

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2)

782. Dual criminality is not an impediment to mutual assistance as the MACM Act does not require dual criminality. The grounds for refusal of a request for mutual legal assistance set out under section 7 of the MACM Act does not include absence of dual criminality.

783. Pursuant to the provisions of section 4(1) of the Extradition Act, an offence of which a person is accused or was convicted in a designated Commonwealth country or foreign state is an extraditable offence if-

- It is an offence against the law of the Commonwealth country or foreign state which, however described in the law, falls within any description set out in the First Schedule and is punishable under the law of the Commonwealth country or foreign state, as the case may be, with death or imprisonment for a term not less than twelve months; and

- The facts constituting the offence would constitute, in the Republic, an offence falling within any description set out in the First Schedule under a written law.

784. Further, under the provisions of section 4(2) of the Extradition Act, for the purposes of determining whether an offence against the law of a designated Commonwealth country or foreign state falls within any description set out in the First Schedule, any special intent or state of mind or special circumstances of aggravation in which may be necessary to constitute the offence under the law of the Commonwealth country or foreign state shall be disregarded.

785. Under the provisions of section 6 of the Extradition Act, a person shall not be extradited where, inter alia,-

- The offence of which the person is accused or was convicted is an offence of a political character
- The request for extradition, though purporting to be made on account of an extraditable offence, is in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinion; or
- That he might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinion.

786. The assessment team was however, not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.

Recommendation 38

Timeliness to requests for Provisional measures including confiscation (c. 38.1)

787. The MACM Act sets out the procedure for processing a foreign request for-

- the enforcement of a restraining order made in respect of a serious offence, against property that is believed to be located in Seychelles Section 27(2) refers.
- The issue of a search warrant relating to the tracing, seizure, confiscation or forfeiture of the proceeds of a crime in relation to illegal property (in relation to an offence) is located in Seychelles. Section 28 refers. Illegal property in relation to an offence is defined under section 2 of the MACM Act as property used in, or in connection with, the commission of the offence or proceeds of the offence.
- The issue of a restraining order relating to tracing, seizure, confiscation or forfeiture of the proceeds of a crime against property that may be made the subject of a foreign restraint order located in Seychelles.

Property of Corresponding Value (c. 38.2)

788. The provisions relating to restraining orders and forfeiture relate to property or illegal property. The term property is not defined under the MACM Act. The term illegal property however, is defined as follows

“illegal property” , in relation to an offence, means-

- (a) property used in, or in connection with, the commission of the offence; or
- (b) proceeds of the offence;

and when used without reference to a particular offence means illegal property in relation to a serious offence.

789. There is no express reference to property of corresponding value under the MACM Act. In the absence of any judicial pronouncement, it cannot be ascertained that a request relating to property of corresponding value will be possible.

Coordination of Seizure and Confiscation Actions (c. 38.3)

790. There are no arrangements for coordinating seizure and confiscation actions with other countries as at the date of the onsite visit.

Asset Forfeiture Fund (c. 38.4)

791. Seychelles has not established as asset forfeiture fund into which the confiscated property will be deposited.

Sharing of Confiscated Assets (c. 38.5)

792. There are no provisions in the law regarding the sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions.

Additional Elements (applying c. 3.7 in R.3, c. 38.6)

793. Yes, it is recognised and can be enforced under both the Foreign Judgements Reciprocal Enforcement Act (Cap 84) and the Reciprocal Enforcement of British Judgements Act 199 provided that it is as a result of a judgement which is final and conclusive.

Special Recommendation V

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1)

794. Counter terrorism conventions are used as a basis for mutual legal assistance relating to the financing of terrorism, terrorist acts and terrorist organizations. In this respect, section 32 of the Prevention of Terrorism Act provides that

(1) Where Seychelles becomes a party to a counter-terrorism convention and there is in force a treaty between the Government of Seychelles and another State which is a party to that counter –terrorism convention for mutual assistance in criminal matters, the treaty shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter-terrorism convention.

(2) Where Seychelles becomes a party to a counter-terrorism convention and there is no treaty between the Government of Seychelles and another State which is a party to that counter-terrorism convention, for mutual assistance in criminal matters, the Minister may, by Order published in the Gazette, treat the counter terrorism convention as a treaty within the meaning of the Mutual Assistance in Criminal Matters Act between the Government of Seychelles and that State providing for mutual assistance in criminal matters in respect of offences falling, within the scope of that counter-terrorism convention.

795. Subject to section 32 of the PTA, the provisions of the MACM Act apply in relation to offences relating to terrorist financing. The write up on criteria 36.1 to 36.6 therefore apply where the conditions set out under section 32 are met.

International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2)

796. Section 31 of the PTA provides-

“Where the Seychelles becomes a party to a counter-terrorism convention and there is no extradition arrangement between the Government of Seychelles and another State which is a party to that counter-terrorism convention, the Minister, may by Order published in the Gazette, treat the counter terrorism convention, for the purposes of the Extradition Act, as a treaty within the meaning of the Extradition Act between the Republic of Seychelles and that State providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.”

797. Section 33 of the PTA further provides that “Notwithstanding, anything in the Extradition Act, an offence which causes-

- Death or serious bodily harm to a person, or
- Serious damage to property

shall for the purposes of extradition under the Extradition Act, be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

798. Subject to the provisions of section 31 of the PTA, the provisions of the Extradition Act apply in relation to counter-terrorism offences. The write up on criteria 37.1 and 37.2 therefore apply to this criterion.

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3)

799. The Mutual Legal Assistance in Criminal Matters Act provides for clear procedures to be followed by foreign States in seeking assistance in the freezing, seizure and confiscation of proceeds of crime and property used in or connected with the commission of an offence. The Act does not impose any limitations on the obtaining of assistance other than those provided in the Act

800. Subject to the provisions of section 32 of the PT Act, the provisions of the MACM Act relating to the identification, freezing, seizure or confiscation of property used in connection of TF would apply.

801. There is no express provision regarding requests relating to property of corresponding value.

802. There are no arrangements in place in Seychelles for coordinating seizure and confiscation actions with other countries.

Statistics (applying R.32)

803. Below are statistics of mutual assistance requests received from Commonwealth countries and from Interpol not related to ML.

Mutual Assistance Requests from Commonwealth Countries

Year	2001	2002	2003	2004	2005	2006
Number of Cases	2	2	2	4	3	

Mutual Assistance Requests received from Interpol

Year	2001	2002	2003	2004	2005	2006
Number of Cases	1	7	5	8	2	

804. On the face of it, the process for requesting assistance in criminal matters is clear and there are not many impediments to assistance. The legislation is somewhat open ended to allow for all forms of mutual assistance. As the number of requests as reported by the officials is low and are not necessarily related to terrorism it is not possible to give a definitive analysis of effectiveness save for the extent to which the laws comply with the criteria.

6.3.2 Recommendations and comments

805. New provisions in the MACM Act must be enacted to override confidentiality and secrecy provisions under the offshore legislation.

806. The MACM Act must be reviewed to make provision to address conflicts of jurisdiction regarding the determination of the best venue for the prosecution of a defendant in the interests of justice..

807. The MACM Act should be amended to include express provisions regarding requests relating to property of corresponding value.

808. Seychelles should put into place arrangements for coordinating seizure and confiscation actions with other countries.

809. Seychelles must consider establishing an asset forfeiture fund into which confiscated property will be deposited.

810. Seychelles must also consider authorizing the sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions.

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<ul style="list-style-type: none"> • The assessment team was not in a position to make an assessment of the timeliness and efficiency of processing AML/CFT requests given that no statistics of such requests were made available. • Confidentiality provisions under the offshore legislation may hinder disclosure of information by SIBA. • The MACM Act does not specifically make provision for avoiding conflicts of jurisdiction when determining the best venue for the prosecution of a defendant in the interests of justice.. • Lack of effective implementation in AML matters
R.37	LC	<ul style="list-style-type: none"> • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.
R.38	PC	<ul style="list-style-type: none"> • There is no express reference under the MACM Act regarding requests relating to property of corresponding value • There are no arrangements for coordinating seizure and confiscation actions with other countries as at the date of the onsite visit. • Seychelles has not established an asset forfeiture fund into which the confiscated property will be deposited. • There are no provisions in the law regarding the sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions.

		<ul style="list-style-type: none"> • Lack of effective implementation
SR.V	PC	<ul style="list-style-type: none"> • The assessment team was not in a position to make an assessment of the timeliness and efficiency of processing CFT requests given that Seychelles had received no such request at the time of the onsite visit. • Confidentiality provisions under the offshore legislation may hinder disclosure of information by SIBA. • The MACM Act does not specifically make provision for avoiding conflicts of jurisdiction when determining the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country • There is no express provision regarding requests relating to property of corresponding value. • There are no arrangements in place in Seychelles for coordinating seizure and confiscation actions with other countries.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Legal Framework: AML Act; Extradition Act.

The authorities have indicated that although the Extradition makes provision for extradition, the provisions of the Constitution will prevail. Article 25(4) of the Constitution reads “ a law providing for the extradition of persons from Seychelles shall not authorise the extradition to a country in respect of an offence punishable by death in that country unless that country undertakes not to carry into effect a sentence of death in respect of the offence.”

Dual Criminality and Extradition (c. 37.1 - 2, & c. 39.1)

811. Under Section 62 of the AML Act, the offence of ML is an extraditable offence for the purposes of the Extradition Act. Section 4 of the Extradition Act provides that an offence is only extraditable if the facts constituting the offence would constitute an offence as per the offences listed in the First Schedule to the Act. This means that it is not enough that the offence for which a request for extradition is being made is described by the same name as an offence in the Seychelles, but the elements of the offence should also constitute an offence in the Seychelles. Again, the Extradition Act places a minimum threshold of 12 months imprisonment for an offence to be extraditable.

Extradition of Nationals (c. 39.2)

812. Section 3(1)(a) and (b) of the Extradition Act. See also Sections 31 and 33 of the PTA. In accordance with Article 25(3)(d) of the Constitution, it is possible to extradite a resident Seychelles national. Pursuant to Section 3(1) of the Extradition Act, extradition is possible to a Commonwealth country or based on treaty, to other countries. Seychelles currently has multilateral agreements on extradition in place with the Commonwealth, OAU and Southern African countries. At the time of the onsite visit bilateral agreements on extradition were being discussed with Kenya and South Africa.

813. Laws allowing for the extradition of suspected offenders involved in ML or FT are in place. This includes resident Seychelles nationals.

Prosecution of Nationals (applying c. 39.2(b), c. 39.3)

814. Criterion 39.2 (b) is not applicable. The Extradition Act allows for the extradition of nationals.

Efficiency of Extradition Process and Statistics (c. 39.4 & R.32)

815. On the face of it, the Extradition Act provides clear procedures for extradition requests. Except for providing for time limits for review or appeal of extradition orders, the Act does not provide time limits for any of the different stages in the process. For the extradition process to be efficient it would be necessary for example, that instead of providing that a person arrested in pursuance of a warrant of arrest in relation to extradition proceedings should be brought before a magistrate as soon as is practicable, that an upper time limit would also be set.

816. 762 No statistics have been provided by the authorities on the number of extradition requests received and on the time frame required for finalising these requests. It was therefore not possible for the evaluation team to assess whether the measures or procedures in Seychelles allow extradition requests and proceedings to be handled without undue delay.

International Cooperation under SR V (applying c. 39.1-39.4 in R. 39, c. V.4)

817. The First Schedule under the Extradition Act does not expressly provide for TF as an extraditable offence. However, Section 31 of the PTA provides-

“Where the Seychelles becomes a party to a counter-terrorism convention and there is no extradition arrangement between the Government of Seychelles and another State which is a party to that counter-terrorism convention, the Minister, may by Order published in the Gazette, treat the counter terrorism convention, for the purposes of the Extradition Act, as a treaty within the meaning of the Extradition Act between the Republic of Seychelles and that State providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.”

818. Further, in view of the provision under section 6(1) of the Extradition Act which does not allow the extradition of a person where the offence is an offence of a political character or an offence connected with a political offence, section 33 of the PTA provides that “Notwithstanding anything in the Extradition Act, an offence which causes death or serious bodily harm to a person or serious damage to property shall, for the purposes of extradition under that Act, be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

819. There is no evidence to support that the measures and procedures adopted in Seychelles allow extradition requests and proceedings relating to TF to be handled without undue delay.

820. The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.

6.4.2 Recommendations and comments

821. It is recommended that the Seychelles considers putting in reasonable time limits in the law to ensure speedy response to extradition requests.

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none"> • There is no evidence to support that the measures and procedures adopted allow extradition requests and proceedings relating to ML to be handled without undue delay. • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.
R.37	LC	<ul style="list-style-type: none"> • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.
SR.V	PC	<ul style="list-style-type: none"> • There is no evidence to support that the measures and procedures adopted allow extradition requests and proceedings relating to TF to be handled without undue delay. • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Legal Framework

Widest Range of International Cooperation and Exchange of Information (c. 40.1, 40.1.1, 40.2 & 40.3)

FIU

822. Under Section 22(1) of the AML Act, the FIU may with the approval of the President, enter into an agreement or arrangement in writing with an institution or agency of a foreign state or an international organisation established by the government of foreign states that has powers and duties similar to those of the FIU.

823. Under section 22(2) of the AML Act, the FIU may, with the approval of the Attorney General, enter into an agreement or arrangement in writing, with an institution or agency of a foreign State or an international organisation established by the governments of foreign states that has powers and duties similar to those of the FIU and a foreign law enforcement or supervisory authority regarding the exchange of information.

824. As the date of the evaluation the FIU had not entered into any agreement or arrangement for the exchange of information.

Attorney General's Office

825. The AG's office normally responds to all requests emanating from Commonwealth countries. Several such requests not related to ML have been received from non-Commonwealth countries, mainly from Eastern Europe and these were denied as they were criminal in nature and emanated from the AG's office in that country. However, all requests for Mutual Assistance related to ML including from non-Commonwealth countries are acted upon promptly. So far, no requests for FT have been received.

Cooperation by Supervisory Authorities

826. Pursuant to its powers under section 51 of the Financial Institutions Act the CBS may on a reciprocal basis, exchange information on supervisory matters (including matters relating to money laundering and terrorist financing), whether based on a Memorandum of Understanding or not, with supervisory authorities in other countries.

827. As at the date of the evaluation the CBS had entered into one MOU with the Bank of Mauritius.

828. The CBS has not made nor received any request for assistance.

829. The SIBA has no gateway for exchange of information with other authorities in Seychelles or elsewhere.

Cooperation by Law Enforcement Agencies

Police

830. At a Regional level Seychelles Police share information with member states from the East Africa Police Chiefs Cooperation Organization (EARPCCO) while at the international level information is shared through INTERPOL via the Nairobi Sub Regional Bureau.

831. The Police have arrangements on information exchange on suspected drug traffickers with their counterparts in Mauritius, India, Kenya and Tanzania. Whenever a local resident or a foreigner suspected of being a drug trafficker leaves the country, the local Police tip off their counterparts in Mauritius, Kenya, Tanzania and India. Similarly, their foreign counterparts alert them whenever suspected traffickers are bound for Seychelles. This has resulted in some local residents suspected of being involved in drug trafficking being arrested in India and some controlled illegal substances have also been seized. The Police are now considering extending the exchange of information with their counterparts in Madagascar and may need to establish a database to record requests for the exchange of information. The Police do not keep statistics of such information exchanges.

832. Extensive work is being done on the regional level with the neighbouring jurisdictions through EARPCCO and the cooperative investigations have led to the arrest of the suspects and the seizure of controlled illegal substances.

Tax and Customs Department

833. The Tax and Customs Department liaise with the World Customs Organization.

Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts (c. 40.4, 40.4.1, & 4.5)

834. There is no express provision under the AML Act which authorizes the FIU to conduct inquiries on behalf of foreign counterparts. However, under section 19(o) of the AML Act, the FIU may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign State or of an international organization in accordance with section 20 and 22 of the Act. Further, under its powers under section 19(c) of the AML Act, the FIU has the authority to request information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of this Act.

835. On the basis of these legal provisions it would seem that the FIU may, for the purposes of inquiries on behalf of its foreign counterparts, search its own databases, including with respect to information related to suspicious transaction reports; (b) obtaining information from reporting entities, any supervisory agency and any law enforcement agency for the purposes of this Act.

836. As at the date of the onsite visit these powers had not been used or tested. The evaluation team was therefore unable to assess the effectiveness of those powers.

837. The CBS and the SIBA are not permitted under domestic law to conduct investigations on behalf of foreign counterparts.

No Undue Restrictions on Exchange of Information (c. 40.6)

838. Pursuant to the provisions of section 20 and 22 of the AML Act, the FIU may exchange information on the following terms and conditions-

- Restriction on the use of the report or information for purposes relevant to investigating and prosecuting an unlawful activity, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such an offence; and
- The stipulation that the report or information be treated in a confidential manner and not be further disclosed without the written consent of the FIU.

Request for information involving fiscal matters (c. 40.7)

839. The AML Act does not contain any provision which expressly excludes requests considered to involve fiscal matters. The authorities have indicated that requests for co-operation in accordance with the legislation will be acted upon.

Secrecy or Confidentiality and Cooperation (c. 40.8)

840. The AML Act contains an overriding confidentiality provision with respect to reporting entities. Section 58 provides that a reporting entity shall comply with the requirements of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise.

Safeguards in Use of Exchanged Information (c. 40.9)

841. There are no controls or safeguards in place to ensure that information received by all competent authorities is used only in an authorized manner. There are no privacy or data protection laws in force in the Seychelles. The authorities have indicated that the FIU is housed in a secure location within the Central Bank. Information received is stored electronically in secure databases or in hardcopies in steel cabinets that are locked. Only staff of the FIU has access to such information and they have all signed a confidentiality clause not to disclose any information.

SR V (applying c. 40.1-40.9 in R. 40, c. V.5)

842. The FIU is able to disclose information related to TF. However, as no request for information relating to TF has been received by the FIU the evaluation team has not been able to make an assessment of the powers of the FIU to provide information in respect of TF.

843. Pursuant to its powers under the FI Act, the CBS may exchange information in respect of TF.

Statistics (applying R.32)

844. The authorities in Seychelles have indicated that all requests related to ML matters received by the AG's office are dealt with in a timely manner and statistics of such requests are maintained by both the courts and the Police. No statistics have however been provided by the authorities to show that requests are dealt with in a timely manner.

6.5.2 Recommendations and comments

845. The ICSP Act should be amended to provide SIBA with express gateways for exchange of information with other authorities in Seychelles or elsewhere.

846. The FIU must be expressly authorized under the AML Act to conduct inquiries on behalf of foreign counterparts.

847. The CBS and the SIBA should be permitted under domestic law to conduct investigations on behalf of foreign counterparts.

848. Seychelles should establish controls and safeguards to ensure that information received by competent authorities is used only in an authorized manner.

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	PC	<ul style="list-style-type: none">• SIBA has no gateways for exchange of information with foreign counterparts.• The FIU has no express powers to conduct inquiries on behalf of foreign counterparts• The CBS and SIBA are not permitted under domestic law to conduct investigations on behalf of foreign counterparts.• There are no controls or safeguards in place to ensure that information received by all competent authorities is used only in an authorized manner.• Lack of effective implementation• No statistics have been provided to show that requests may be dealt with promptly.
SR.V	PC	<ul style="list-style-type: none">• SIBA has no gateways for exchange of information with

		<p>foreign counterparts.</p> <ul style="list-style-type: none"> • The FIU has no express powers to conduct inquiries on behalf of foreign counterparts • The CBS and SIBA are not permitted under domestic law to conduct investigations on behalf of foreign counterparts. • There are no controls or safeguards in place to ensure that information received by all competent authorities is used only in an authorized manner. • Lack of effective implementation • There is no evidence to show that requests may be dealt with promptly
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7. OTHER ISSUES

7.1 Resources and statistics

Adequacy of Resources and Training for Law Enforcement and Prosecution agencies (c. 30.1 & 30.3):

849. The AG's office has experienced state counsels who are able to carry out prosecution of ML and TF offenders. Though experienced the prosecutors however do not have access to case laws on ML and FT offences from other jurisdictions and have yet to prosecute ML or TF offence. The state prosecutors propose to have access to ML and FT case laws from other jurisdictions to assist them in successfully prosecuting any cases involving ML.

850. Police officers do not have adequate experience to conduct in-depth investigations in cases of ML and FT. Although the police officers concerned have participated in a few workshops on AML issues they lack training in advanced investigative approaches. Police officers intend to seek assistance in obtaining training courses in advanced investigative techniques on ML and FT.

851. The FIU is established as a unit within the CBS with its own organization and management structure, and its own staff and resources although its budget forms part of the CBS budget. It is housed in a secure part of the CBS building separated from the main central banking activities.

852. The FIU reports to the Board of the CBS. The Director is required under section 17(1) of the Act to report to the Board on the exercise and performance of his powers and duties under the Act. As a unit within the CBS the FIU will only submit a business plan and proposed budget to the Board in December 2007. A budget will be allocated in January 2008.

853. At this stage the Director and staff are still considered by stakeholders to be synonymous with the CBS. This is also aggravated by the fact that they are housed in the same building, use the CBS network system and junior staff wears the CBS uniform.

854. As the FIU is still reasonably new and is reliant of the CBS for establishment, Board decisions and budget, it is too soon to tell whether they will be in a position to operate freely without any undue interference or influence.

855. The FIU is under staffed to sustain its statutory duties and functions. The staff members (other than the Director) have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function.

Additional Elements (c.30.4):

856. So far, neither the judges nor the courts have been provided with training on ML and FT a proposition will be made to the US Treasury to make such training available to the judiciary.

857. There is no systematic mechanism for the collection of detailed statistics across the AML framework. The collection of such data would enable the authorities to be able to effectively review the framework to identify weaknesses.

858. The FIU maintains a database of STRs received. These are all from the banking sector. A total of 58 STRs have been received between 1998 and October 2006. 55 of these STRs were received by the CBS and 3 have been received by the FIU since its establishment in July 2006. The statistics in relation to the reports received and disseminated can be seen in the tables below:

Total STRs Received

Total Number of STR Received (1998 – Oct 2006)	Total Received by CBS (1998 – June 2006)	Total Received by FIU (July – Oct 2006)
58	55	3

Total STRs Received by CBS (1998 – June 2006)

Year	Banks	Bureau de Change	Other Reporting Entities
1999	1	Nil	Nil
2000	1	Nil	Nil
2001	5	Nil	Nil
2002	1	Nil	Nil
2003	6	Nil	Nil
2004	25	Nil	Nil
2005	9	Nil	Nil
2006	7	Nil	Nil
Total	55	Nil	Nil

Total STRS Received by FIU (July – Oct 2006)

Year	Banks	Bureau de Change	Other Reporting Entities
2006	3	Nil	Nil
Total	3	Nil	Nil

Number of STRs Disseminated

Year	Number of Cases referred to Police by CBS (1998 – June ‘2006)	Number of Cases referred to Police by FIU (July – Oct ‘ 2006)	Number of Cases referred to Exchange Controller by CBS
1998	1	Nil	Nil
2000	1	Nil	Nil
2001	5	Nil	Nil
2002	1	Nil	Nil
2003	4	Nil	1
2004	15	Nil	Nil
2005	8	Nil	Nil
2006	5	3	1
Total	40	3	1

Total Number of STRs received by CBS & FIU = **58**

Total Number of STRs disseminated to Police by CBS = **40**

Total Number of STRs disseminated to Police by FIU = **3**

Total Number of STR disseminated to Exchange Controller by CBS = **1**

859. Feedback is received from the Police and of the STRs disseminated to them only two cases have been referred to the AG’s office for prosecution. One was dismissed due to lack of evidence, and the other is pending in court. The remaining cases referred are still under investigation. So far, none of the STRs submitted have resulted in prosecutions.

860. So far, no STRs on TF have been received.

861. The statistics provided in the MER questionnaire were updated on at least two occasions during the on-site visit and finalised thereafter. One of the banks visited provided statistics of reports sent to the FIU that did not correlate with the figures provided by the FIU.

862. As the FIU establishes itself and implements its own registers, it should be able to achieve a greater degree of accuracy with regard to maintaining statistics.

863. The evaluation team was relatively impressed with the statistics that the FIU was able to provide and are encouraged by the numbers of cases referred to the police for

investigation and find the prosecution of a case at this at this early stage of implementation encouraging.

864. So far, no STRs on TF have been received.

Statistics (applying R.32)

865. The authorities in Seychelles do not review the effectiveness of their systems for combating ML and TF on a regular basis.

866. Below are statistics of mutual assistance requests received from Commonwealth countries and from Interpol not related to ML.

Mutual Assistance Requests from Commonwealth Countries

Year	2001	2002	2003	2004	2005	2006
Number of Cases	2	2	2	4	3	

Mutual Assistance Requests received from Interpol

Year	2001	2002	2003	2004	2005	2006
Number of Cases	1	7	5	8	2	

867. No statistics were available on reports filed on (i) domestic or foreign currency transactions above a certain threshold, (ii) cross border transportation of currency and bearer negotiable instruments or (iii) international wire transfers.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	NC	<ul style="list-style-type: none"> • There is limited capacity across all the agencies in Seychelles to address AML/CFT issues • The FIU is under staffed to sustain its statutory duties and functions. • The staff members (other than the Director) of the FIU have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function. • As the FIU is still reasonably new and is reliant of the CBS for establishment, Board decisions and budget, it is too soon to tell whether they will be in a position to operate freely without any undue interference or influence.
R.32	NC	<ul style="list-style-type: none"> • Authorities in Seychelles do not review the effectiveness of their systems for combating ML and TF on a regular basis. • Comprehensive statistics are not maintained by all competent authorities.

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7.2 Other relevant AML/CFT measures or issues

868. Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating²
Legal systems		
1. ML offence	PC	<ul style="list-style-type: none"> Although the offence of ML extends to all types of property regardless of value, in the absence of a judicial pronouncement it cannot be ascertained that when proving that property is the proceeds of crime it would not be necessary that a person be convicted of a predicate offence. There has been no money laundering conviction under the new law and therefore the effectiveness of the legislation cannot be assessed.
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> The legislation meets all the essential criteria, however, there has been no money laundering conviction under the new law and therefore the effectiveness of the legislation cannot be assessed.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> The AML Act and the PTA do not expressly provide powers to law enforcement agencies for the tracing or identification of property that may become subject to confiscation or is suspected of being proceeds of crime. The AML Act is silent on the issue of whether an application for seizure may be made ex parte. The application of the law has not been tested therefore the effectiveness of the regime cannot be assessed.

1. ² These factors are only required to be set out when the rating is less than Compliant.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • There is some difficulty to reconcile the statutory duty of confidentiality of the CBS under the FIA with its duty to report suspicious transactions to the FIU under section 11 of the AML Act. • There is some difficulty to reconcile the statutory duties of confidentiality and secrecy of the SIBA with its duty to report suspicious transactions to the FIU under the AML Act. • The current legal framework does not allow for any gateway for the exchange of information by the SIBA with competent authorities domestically or internationally.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • The concept of beneficial owner is not well articulated under the law and there is no express requirement under the AML Act to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source. • Criterion 5.5.1 is not met as the AML Act applies only to customers who are natural persons and where the reporting entity has reasonable grounds to believe that the person is undertaking the transaction on behalf of another person. • There is no express requirement under the law to obtain information on the natural persons that ultimately own or control or who ultimately effectively control the legal

		<p>person or arrangement</p> <ul style="list-style-type: none"> • There is no specific requirement regarding the verification of identity to be undertaken where the client is a trust. • Criterion 5.7.1 is not fully met as the requirement under the AML Act, does not make reference to the risk profile or the customer or to source of funds. • Financial institutions are not required to ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records. • Even if section 4(1) of the AML Act permits a financial institution to complete the verification of identity within a reasonable time after entering into a business relationship it does not specify the conditions under which this may occur. • There is no requirement on financial institutions to adopt risk management procedures with respect to business relationships established prior to completion of the verification of identity of the customer. • There is no requirement on financial institutions to perform CDD measures on existing customers if they have anonymous accounts or accounts in fictitious names.
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		<ul style="list-style-type: none"> • There is no requirement for reporting entities to apply enhanced due diligence measures with respect to higher risk categories of customers. • Financial institutions are not required to ensure that documents, data or information collected under the customer due diligence process are kept up-to-date and relevant by undertaking reviews of existing records. • AML/CFT policies and procedures have not been adopted and implemented by insurance entities and the bureaux de change as at the date of the mutual evaluation. • International banks operating in the Seychelles appear to be more focused on applying the group standards rather than adhering to the local requirements under the AML Act. • There is no evidence that local banks are effectively implementing AML requirements under the AML Act. The FIU had undertaken only one on-site inspection. • No comprehensive guidance had been provided to financial institutions by the FIU to meet the gaps in the AML Act.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • There is no requirement under the AML Act for financial institutions to obtain senior

		<p>management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.</p> <ul style="list-style-type: none"> • There is no requirement to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs. • There is a low level of implementation of the requirements of the AML Act with respect to PEPs amongst the banks. • Insurance entities and bureaux de changes have not implemented the requirements of the AML Act regarding PEPs.
7. Correspondent banking	PC	<ul style="list-style-type: none"> • The requirement under Section 4(5)(a) of the AML Act, to gather sufficient information about the nature of the business of the person has been couched in general terms and does not indicate that at the end of the information gathering exercise the financial institution should “fully understand” the nature of the respondent’s business. • There is also no specific requirement on the financial institution to determine whether the respondent has been subject to a money laundering or terrorist financing investigation or regulatory action.

		<ul style="list-style-type: none"> • While under section 4(5)(a)(iv) of the AML Act, a financial institution is required to assess the respondent's anti-money laundering and terrorist financing controls, the financial institution is not required to ascertain that these measures are adequate and effective. • In practice there is no effective implementation of the requirements of the AML Act by the banks.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no requirements under the AML Act for financial institutions to have policies or take appropriate measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • Financial institutions are not required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> • Criterion 9.1 is not met as the deficiencies identified with respect to criteria 5.3 to 5.6 above will also apply here. <ul style="list-style-type: none"> • The AML Act does not expressly specify that the third party or intermediary must be regulated and supervised for AML/CFT purposes as required under Recommendations 23 and 24 nor does it indicate that the

		<p>supervisors should have adequate regulatory and supervisory powers as required under Recommendation 29.</p> <ul style="list-style-type: none"> • There is no requirement for the financial institution to satisfy itself that the intermediary or third party has measures in place to comply with the CDD requirements as set out in Recommendation 5. • There is no determination from competent authorities in the Seychelles on which countries the third parties that meet the conditions must be based. • There is no express requirement under the AML Act to remind financial institutions that the ultimate responsibility of ensuring customer identification and verification remains with them. • There is no evidence to show that the requirements of the AML Act have been effectively implemented in practice.
10. Record keeping	PC	<ul style="list-style-type: none"> • There is no requirement for the transaction records to be maintained to also include the customer's and beneficiary's name and address. • There is no requirement under the AML Act to keep records of account files and business correspondence. • There is no effective compliance with the requirements of the AML Act by Insurance entities and bureau de change • There is no provision which will enable a competent authority to

		<p>require records to be kept for a longer period in specific cases.</p> <ul style="list-style-type: none"> • The wordings of the section 6(2) of the AML Act are ambiguous to reconcile in practice as they provide for different retention periods depending on the nature of the records. • At the time of the onsite visit the record retention requirements under the AML Act had not been tested and there is therefore no evidence to conclude that there is effective implementation of these requirements.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • There is no specific retention period for which the required records must be kept by financial institutions. • Not all financial institutions have put into place measures to comply with this requirement • Insurers and insurance intermediaries are not aware of their obligations under the AML Act. • There is no requirement to make these records available to auditors.
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • The same deficiencies apply for DNFBPs as for financial institutions with respect to Recommendations 5, 6, 8-11 and 17. • DNFBPs (other than TCSPs) have not adopted and implemented the requirements of the AML Act. • DNFBPs (other than TCSPs) are generally not aware of their obligations under the AML Act. • While the TCSPs were relatively more aware of their obligations under the AML Act the level of

		compliance by TCSPs with the requirements of the AML Act was minimal as they found the obligations too onerous.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • There is no obligation to make a report upon suspicion that funds are the proceeds of a criminal activity • There is no requirement to report suspicious transactions that involve tax matters • There is a low level of AML/CFT awareness amongst financial institution that makes it difficult for them to identify suspicious transactions to enable them to make a report to the FIU. • Insurance entities have not implemented AML/CFT procedures which will enable them to make a suspicious transaction report to the FIU.
14. Protection & no tipping-off	C	This recommendation is fully met
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> • Insurance entities have not implemented AML/CFT systems and procedures • There is no effective compliance by international banks with the requirements of the AML Act. International Banks applied their respective Group standards. • There is no requirement to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information. • There is no effective implementation for the requirement

		<p>of the audit function to test their AML/CFT systems and procedures.</p> <ul style="list-style-type: none"> • The financial institutions do not have an in house AML/CFT training programme to ensure that all their relevant employees are trained on an ongoing basis.
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> • Similar technical deficiencies in the AML Act relating to Rec. 13, 15 and 21 that apply to financial institutions also apply to DNFBPs. • Although DNFBPs are covered by the scope of the AML Act, in practice little has been done to implement the provisions within the DNFBP sector (other than TCSPs) and thus practical application is extremely limited. • There are no requirements concerning the implementation of internal controls by reporting entity who is an individual and who in the course of carrying on his or her business, does not employ or act in association with any other person.
17. Sanctions	PC	<ul style="list-style-type: none"> • While there are criminal sanctions that apply the supervisory authorities are not empowered to take effective, proportionate and dissuasive regulatory action against financial institutions and their officers or employees that fail to comply with AML/CFT requirements. • It is difficult to gauge the effectiveness of the sanctioning powers under the AML Act as these powers have not been used and tested.

18. Shell banks	PC	<ul style="list-style-type: none"> • While there are some provisions regarding correspondent banking relationships, there is no express provision prohibiting financial institutions to enter into, or continue correspondent banking relationships with shell banks. • There is no requirement for financial institutions 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	NC	<ul style="list-style-type: none"> • The authorities in the Seychelles have not considered the feasibility and utility of implementing recommendation 19.
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> • Seychelles has not taken sufficient steps to encourage the development and use of modern and secure techniques for conduction financial transactions that are less vulnerable to ML.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • There is no effective implementation by all financial institutions of the requirements of the AML Act. • There are no measures to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries. • There is no requirement to make these records available to auditors. • AML/CFT framework does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply

		or insufficiently applies the FATF Recommendations.
22. Foreign branches & subsidiaries	NA	<ul style="list-style-type: none"> Financial institutions in the Seychelles do not for the time being have branches or subsidiaries conducting business overseas.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> While there is a designated competent authority with responsibility to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing it has just started its operations and much work has to be undertaken by the FIU to meet its statutory duties and obligations. Insurers and Insurance Intermediaries are not subject to the IAIS Core principles. The criteria to be satisfied for the fit and proper test for insurers and insurance intermediaries are not defined. There is no requirement for money or value transfer operators to be licensed or registered under the laws in Seychelles. There is no effective monitoring of money or value transfer operators to ensure compliance with AML/CFT requirements. Not all financial institutions have implemented the requirements of the AML Act.
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> There is no effective implementation of this recommendation in the DNFBP sector. There is no actual supervision of the DNFBP sector in practice. Same deficiencies relating to Rec. 17, 29 and 30 with respect

		to the FIU that apply to financial institutions also apply to DNFBPs.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> No guidelines have been issued by the FIU to assist DNFBPs to implement and comply with their respective AML/CFT requirements.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> The FIU is a new institution with very little experience in implementation of AML/CFT requirements under the new law. No guidelines had yet been developed for reporting entities. Although the FIU has sufficient powers to access information effectiveness could not be measured as these powers had not been used and tested at the time of the mutual evaluation. The FIU had not acquired operation independence. At the time of the onsite visit it was still very reliant on CBS-sharing its computer system, budget, and office premises. Although the legal framework meets the criteria for Egmont Group membership the FIU was not an Egmont member. The application for membership was under consideration. While the legal gateway for exchange of information has been provided under the AML Act, the procedure is time consuming as other authorities must be consulted before information is shared.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> Although the Police are statutorily mandated to investigate ML and TF cases, the Financial Fraud Squad which was recently established has limited capacities,

		<p>skills and equipment to successfully investigate ML and TF offences.</p> <ul style="list-style-type: none"> • There are no measures in place to allow police officers to postpone or waive the seizure of money for the purpose of identifying persons involved in ML activities or for evidence gathering. • Given that the AML law was recently enacted there is no method of evaluating the effectiveness of the program at the present time.
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> • Police officers have powers to investigate and seize and obtain evidence. • Police officers have the power to take witness statements on for use in investigation and prosecution of ML, TF and other underlying predicate offences. • A low level of AML/CFT awareness amongst law enforcement agencies and lack of trained personnel and supporting equipment however undermine the quality of investigations.
29. Supervisors	PC	<ul style="list-style-type: none"> • The powers of the FIU have not been sufficiently tested as these powers have not been used extensively. The FIU had conducted only one on-site inspection at the time of the mutual evaluation. • The FIU is under staffed to sustain its statutory duties and functions. • The staff members (other than the Director) have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function.

		<ul style="list-style-type: none"> Not all Financial Institutions have implemented the requirements of the AML Act.
30. Resources, integrity and training	NC	<ul style="list-style-type: none"> There is limited capacity across all the agencies in Seychelles to address AML/CFT issues. The FIU is under staffed to sustain its statutory duties and functions. The staff members (other than the Director) of the FIU have no previous experience on AML/CFT and have to undergo extensive training to be able to effectively undertake onsite inspections and the compliance monitoring function. As the FIU is still reasonably new and is reliant of the CBS for establishment, Board decisions and budget, it is too soon to tell whether they will be in a position to operate freely without any undue interference or influence.
31. National co-operation	NC	<ul style="list-style-type: none"> The Task Force had just been set up and there was no evidence as at the date of the mutual evaluation that it is effective. The FIU had not entered into any agreement or arrangement with domestic authorities for exchange of information.
32. Statistics	NC	<ul style="list-style-type: none"> Authorities in Seychelles do not review the effectiveness of their systems for combating ML and TF on a regular basis. Comprehensive statistics are not maintained by all competent authorities.
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> There is no access in a timely fashion to adequate, accurate and

		<p>current beneficial ownership and control information for all companies.</p> <ul style="list-style-type: none"> • There is no central registry system that keeps records of ownership and control details for IBCs. • Due to deficiencies in the implementation of Recommendation 5 information on beneficial ownership and control information is not always available. • The secrecy provision relating to the shareholder information under the CSL Act undermines timely access to beneficial ownership and control information with respect to CSL as a court order is required. • There are no controls in place to ensure that bearer shares are not misused for ML purposes and that information on the identity of bearer shareholders is available.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • There is no adequate mechanism to ensure that there is adequate transparency concerning beneficial ownership and control information on trusts. • Only a declaration of trust, which does not disclose information on the settlor and beneficiary of an international trust, must be filed with the SIBA. • Deficiencies in the implementation of Recommendation 5 undermine the availability of adequate, accurate and current information on international trusts from TSPs. • Competent authorities (other than the FIU) are not able to obtain or have access to

		adequate, accurate and current information on the beneficial ownership and control of trusts.
International Co-operation		
35. Conventions	PC	The relevant provisions of the Vienna and Palermo Conventions have not been fully implemented.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • The assessment team was not in a position to make an assessment of the timeliness and efficiency of processing AML/CFT requests given that no statistics of such requests were made available. • Confidentiality provisions under the offshore legislation may hinder disclosure of information by SIBA. • The MACM Act does not specifically make provision for avoiding conflicts of jurisdiction when determining the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country. • Lack of effective implementation in AML matters
37. Dual criminality	LC	<ul style="list-style-type: none"> • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> • There is no express reference under the MACM Act regarding requests relating to property of corresponding value • There are no arrangements for coordinating seizure and confiscation actions with other countries as at the date of the onsite visit. • Seychelles has not established an

		<p>asset forfeiture fund into which the confiscated property will be deposited.</p> <ul style="list-style-type: none"> • There are no provisions in the law regarding the sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions. • Lack of effective implementation
39. Extradition	PC	<ul style="list-style-type: none"> • There is no evidence to support that the measures and procedures adopted allow extradition requests and proceedings relating to ML to be handled without undue delay. • The assessment team was not in a position to make a determination on the effectiveness of these measures in relation to AML/CFT matters in practice. At the time of the onsite visit Seychelles had not received any such request.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • SIBA has no gateways for exchange of information with foreign counterparts. • The FIU has no express powers to conduct inquiries on behalf of foreign counterparts • The CBS and SIBA are not permitted under domestic law to conduct investigations on behalf of foreign counterparts. • There are no controls or safeguards in place to ensure that information received by all competent authorities is used only in an authorized manner. • Lack of effective implementation • No statistics have been provided to show that requests may be dealt with promptly.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • The ICSFT has not been fully implemented. • The procedures in place for UNSCR 1267 and 1373 are not in line with the standard and UNSCR 1267 is not implemented in a satisfactory manner.
SR .II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> • There is no express reference made to terrorist acts, a terrorist organisation and an individual terrorist • The PTA does not provide for the definition of the term “fund” as set out in the TF Convention. The absence of such a definition may undermine the offence of TF under section 5 of the PTA. • The PTA does not expressly provide that the TF offence apply regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. • The PTA does not expressly provide that the intentional element of the offence of TF may be inferred from objective factual circumstances. • Effectiveness cannot be assessed.
SR. III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The procedures in place are not effective and would not enable the freezing without delay funds and other assets of persons designated under UNSCR 1267.

		<ul style="list-style-type: none"> • There are no effective procedures in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373. • There is no system in place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action. • No guidance has been provided to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • There are no effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations. • There are no effective and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
SR IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • Insurance entities have not implemented AML/CFT procedures that will enable them to make a suspicious transaction report to the FIU. • There is a low level of AML/CFT awareness amongst financial institution that makes it difficult for

		<p>them to identify suspicious transactions to be able to report them to the FIU.</p>
SR. V International co-operation	PC	<ul style="list-style-type: none"> • The assessment team was not in a position to make an assessment of the timeliness and efficiency of processing CFT requests given that Seychelles had received no such request at the time of the onsite visit. • Confidentiality provisions under the offshore legislation may hinder disclosure of information by SIBA. • The MACM Act does not specifically make provision for avoiding conflicts of jurisdiction when determining the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country • There is no express provision regarding requests relating to property of corresponding value. • There are no arrangements in place in Seychelles for coordinating seizure and confiscation actions with other countries.
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • There are no requirements for MVT operators to be licensed or registered in Seychelles. • The other relevant FATF Recommendations which are applicable are not wholly satisfied under the requirements of the AML Act. • There is no requirement to maintain a current list of agents which must be made available to designated competent authority.

		<ul style="list-style-type: none"> • The FIU does not have proper procedures in place to adequately monitor compliance by MVT operators with FATF requirements .
SR VII Wire transfer rules	PC	<ul style="list-style-type: none"> • There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross- border wire transfer from being transmitted with a related domestic wire transfer. • It is not clear who is responsible for monitoring compliance of financial institutions with the wire transfers requirements. • It is not clear whether the Circular Letter is enforceable and therefore whether criteria 17.1-17.4 will apply in relation to the obligations regarding financial institutions.

SR VIII Non-profit organisations	NC	<ul style="list-style-type: none"> • No review of adequacy of laws and regulations to ensure that NPOs are not being misused for TF by virtue of their activities • No outreach conducted to NPO sector regarding threat of TF • No effective supervision or monitoring of NPOs • No sanctions applied to NPO for failure to comply with the provisions of the RA Act • No record keeping requirement applicable to NPOs • No gateways for sharing non public information with domestic authorities
SR. IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • There is no disclosure or declaration requirement in place in the Seychelles. Even though this requirement can to some small degree be dealt with through exchange control thresholds, this will not be enough to meet this criterion. • A reporting system to the FIU on suspicious cross border transportation of cash or other negotiable instruments has not yet been put into place. • In the absence of a disclosure or declaration system to detect physical transportation of currency and negotiable instruments in Seychelles international cooperation will be difficult to implement. • There is no explicit requirement to report unusual cross border movement of gold or diamonds to competent authorities of other countries.

Table 2. Recommended Action Plan to improve the AML/CFT system

FATF Forty Recommendations	ME Recommendations
1. General	
2. Legal system and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • The authorities in Seychelles must ensure that all officers involved in the investigation and prosecution of money laundering cases are fully educated and trained on the specificities of the offence.
2.2 Criminalisation of Terrorist Financing (SR.I)	<ul style="list-style-type: none"> • Amend the PTA to ensure that the general definition of terrorism contain specific reference to the relevant Conventions when defining “terrorist act”. • Amend the PTA to insert a definition of the term “funds” to include the specific species of funds contained in the Terrorist Financing Convention. This would ensure that the term used in the PTA is sufficiently wide enough to be effective. • Sections 6 and 7 of the PTA should be based on an objective test for intent. • The PTA should be amended to cover incorporated entities.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • The AML Act and the PTA should be amended to ensure that law enforcement agencies have express powers to identify and trace property subject to confiscation or which is suspected of being proceeds of crime. • The AML Act should be amended to clarify that applications for seizure of property may be made <i>ex-parte</i>. • The authorities in Seychelles must ensure that all officers involved in the identification and tracing of property subject to confiscation are fully educated and trained.
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • The Seychelles authorities are recommended to reconsider the mechanisms set out to implement

	<p>UNSCR 1267 and 1373 to ensure that all persons and entities designated by UNSCR 1267 and 1373 are considered as terrorists and their funds and other assets are immediately frozen upon identification.</p> <ul style="list-style-type: none"> • Regulations should be enacted as provided in Section 42(2) of the PTA which provides that the Minister responsible for internal affairs may, by regulations make provisions as may appear to the Minister to be expedient or necessary to give effect to such decisions of the Security Council as the Security Council may call upon its member States to apply. This would be a direct mechanism for facilitating the requirements of the Special Resolutions without having to resort to interpreting the legislation to achieve this end without exposing the CFT measures to legal challenges. • A system must be put into place for communicating actions taken under the freezing mechanisms to the financial sector immediately upon taking such action. • Guidance must be issued to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • Effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations must be put into place. • Effective and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person must be put into place. • Procedures must be put into place for authorising access to funds or other assets that were frozen
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	<p>pursuant to S/RES/1267 (1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.</p>
<p>2.5 The Financial Intelligence Unit and its functions (R. 26)</p>	<ul style="list-style-type: none"> • AML legislation has been in place since 1996 and reporting has been mandatory for quite some time. There appears to be confusion as to what is reportable and what is not. Clear guidelines in this regard must be issued, taking into account what must be reported, when a report must be submitted, timeframes for reporting, details and additional information required to be submitted should be issued as a matter of urgency. • The FIU should develop procedures and registers to keep track of requests for additional information and protect the confidentiality thereof. • The FIU should conduct training for the recipients of their products in relation to the safeguarding and use of the information in investigations and prosecutions as a matter of urgency. • The FIU should take steps to exert its independence from the CBS by having its own website, letterheads, email addresses and possibly even dress code to impress upon stakeholders the emergence of a new and independent Unit. • The FIU should as a matter of urgency put into place the necessary policies and procedures to protect the confidentiality of information that it works with, whether this relates to a report received or any other information received. • Sections 20 and 22 of the AML Act must be aligned and streamlined to avoid confusion in relation to the application thereof and who has the ultimate authority to approve the sharing of information and signing of agreements. In line with the international trend the Director should be able to conclude sharing agreements with other FIUs.

2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • The Law enforcement and Prosecution services must implement an AML/CFT strategic plan. • Law enforcement institutions must be provided with equipment such as computers and surveillance equipment to enhance capacity. • The Law enforcement and prosecution officers must be trained in AML/CFT issues and provided with the appropriate tools. • Sharing of information at National, Regional and International level should be enhanced.
2.7 Cross Border Declaration and Disclosure	<ul style="list-style-type: none"> • Seychelles should take immediate steps to draft the necessary legislation and accompanying regulations to implement the requirements under SR.IX. • All relevant law enforcement and other agencies should be consulted in this process. • Seychelles should designate an appropriate authority that should be responsible for acting in terms of the requirements of SR IX.
Preventive measures-Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • Seychelles should take immediate steps to properly implement Recommendations 5 to 8. • Subsidiaries of international banks operating in Seychelles should take immediate steps to implement the requirements of the AML Act over and above the implementation of the Group AML/CFT standards. • The AML Act needs to be reviewed to include a definition of beneficial owner. • Amend AML Act to include an express requirement whereby reporting entities should be required to determine who are the natural persons who ultimately own or control a legal entity or arrangement.

	<ul style="list-style-type: none"> • The FIU should issue guidelines to ensure that reporting entities apply enhanced due diligence measures with respect to higher risk categories of customers. • Guidelines must be issued with respect to the implementation of the AML/CFT measures with respect to existing customers. • The FIU should in consultation with the reporting entities develop a compliance plan to ensure that reporting entities adopt and implement AML/CFT policies and procedures. The implementation of the compliance plan by reporting entities should be closely monitored by the FIU. • It would be preferable if the guidance provided was to be institution specific taking into consideration the character and structure of the various institutions. • It is therefore recommended that the FIU should issue guidelines to the specific financial institutions in consultation with the relevant supervisory body which has better understanding and knowledge about the sector. These guidelines should provide clarity on the measures that need to be implemented and should provide guidance on the gaps identified in the AML Act. • In respect of the insurance entities and bureaus it is imperative that sensitisation is conducted on AML/CFT issues especially in light of their obligations under the AML Act. • Insurance entities and bureaus de change must take immediate steps to implement the AML/CFT requirements under the AML Act
<p>3.3 Third parties and introduced business (R.9)</p>	<ul style="list-style-type: none"> • The AML regulation must be enhanced to provide guidance on which countries the introducer may be based and to ensure that it is clear to reporting entities that the ultimate responsibility for customer identification and verification remains with the reporting entity

	<p>relying on the introducer.</p> <ul style="list-style-type: none"> • The wordings of section 4(6)(c) of the AML Act must be amended to accommodate the requirements under Recommendations 23, 24 and 29. It must also expressly provide that the financial institution must satisfy itself that the third party/intermediary has measures in place to comply with CDD requirements that meet Recommendation 5.
3.4 Financial institution secrecy or confidentiality	<ul style="list-style-type: none"> • There is need to harmonise the provisions of the AML Act with the provisions of other existing legislation that restricts the disclosure of information, namely under the Financial Institutions Act, the ICSP Act and the CSL Act. • It is recommended that the provisions of section 58 of the AML Act should not only apply to reporting entities but should be extended to supervisory bodies.
3.5 Record keeping and wire transfer rules (R.10 & SR VII)	<ul style="list-style-type: none"> • The AML Act should be amended to ensure that record keeping procedures meet the requirements of Recommendation 10. • There is need for guidance to be provided by the FIU as to the nature and detail of the information that must be kept and further to impress on the sector the need to maintain such records. • Seychelles should enact appropriate legislation and issue guidance to meet the gap in the AML Act to ensure compliance with the requirements of SRVII, including appropriate sanctions for non-compliance. • The issue of whether the CBS or the FIU will monitor compliance of financial institutions with the wire transfers requirements must be clarified. • Insurance entities must be made aware of their obligations under the AML Act and must implement AML/CFT preventive measures as soon as possible.
3.6 Monitoring of transactions and relationships (R.11& 21)	<ul style="list-style-type: none"> • Banks and other financial institutions must take immediate steps to fully implement the requirements under the AML Act.

	<ul style="list-style-type: none"> • Insurance entities do not have AML/CFT awareness and should be accordingly trained to enable them to comply with the requirements under section 9 of the AML Act. • To meet international standards the AML Act should be enhanced to provide for a statutory retention period with respect to records of findings of reporting entities on the examination of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. • The AML Act should be amended to include the requirement to make records available to auditors. • Appropriate measures should be put into place by the FIU to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries. • The AML framework should make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
<p>3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR .IV)</p>	<ul style="list-style-type: none"> • The FIU must issue a standard reporting format to all reporting entities to ensure that all relevant information is submitted by the reporting entity. • The FIU should ensure that Insurance Entities adopt and implement AML/CFT policies and procedures. • Staff of financial institutions should be provided with adequate AML/CFT training to enable them to identify suspicious transactions and report such transactions. • Section 10 of the AML Act must be amended to ensure that the obligation to report also arises where there a suspicion that funds are proceeds of a criminal activity.

	<ul style="list-style-type: none"> • The AML Act must be amended to require that the duty to report should also extend to suspicious transactions involving tax matters. • The authorities in the Seychelles must consider compliance with Recommendation 19. • The FIU must having regard to industry specific ML/TF risk issue guidelines to reporting entities to assist them to implement and comply with their respective AML/CFT requirements. • The FIU must provide feedback- including statistics on the number of disclosures, with appropriate breakdowns and on the results of the disclosures, information on current techniques, methods and trends and sanitised examples of actual money laundering- to reporting entities. • Having regard to the overall obligations of the FIU under the AML Act, namely, to ensure that reporting entities comply with the requirements of the AML Act and to issue guidelines to reporting entities it is recommended that the capacity of the FIU must be enhanced and staff members must be trained to enable them to carry out their functions effectively.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • Insurance entities must take immediate steps to implement internal AML/CFT procedures, policies and controls. • The FIU must ensure that all financial institutions establish and maintain AML/CFT policies and procedures. • The FIU must enhance its onsite compliance regime. • The FIU must develop industry specific onsite compliance manual which address sector specific AML/CFT risks. For instance, with respect to insurance entities they may have regard to the Guidance Paper on Anti-Money Laundering issued by the International Association of Insurance Supervisors (IAIS).

	<ul style="list-style-type: none"> • There is currently, is no requirement under the AML Act to ensure that the Compliance and Reporting Officer and other staff have timely access to customer identification data and other CDD information, transaction records and other relevant information. The law must be reviewed this criterion is met. • The financial institutions must implement an in house AML/CFT training programme to ensure that all their relevant employees are trained on an ongoing basis. • Although for the time being none of the financial institutions in the Seychelles have branches or subsidiaries overseas the requirement to ensure that financial institutions ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local (host country) laws and regulations permit must be introduced under the law, regulations or other enforceable means.
3.9. Shell banks (R.18)	<ul style="list-style-type: none"> • The FIU should issue guidelines to financial institutions to provide comprehensive guidance on correspondent banking relationships with shell banks. • Financial institutions should not be permitted to enter into, or continue correspondent banking relationships with shell banks. • These guidelines must also set out the requirement for financial institutions 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. Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 25)	<ul style="list-style-type: none"> • It is recommended that the supervisory authorities be granted with powers to impose regulatory sanctions for failure of the financial institution to comply with the AML/CFT requirements under the AML Act. • Clear guidelines must be issued by the Insurance Authority to describe the criteria that must be

	<p>satisfied by insurers and insurance intermediaries to meet the fit and proper test</p> <ul style="list-style-type: none"> • The FIU should develop an onsite inspection program that covers all reporting entities. • The FIU must strengthen its on-site inspection regime. It must develop onsite compliance procedures manual for all reporting entities in order to help structure the inspections and to comprehensively implement the framework it administers. • The FIU must having regard to industry specific ML/TF risk issue guidelines to reporting entities to assist them to implement and comply with their respective AML/CFT requirements. • The FIU must closely monitor all financial institutions to ensure that they implement AML/CFT measures in accordance with the requirements of the AML Act and any sector specific guidelines that it issues.
<p>3.11 Money value transfer services (SR. VI)</p>	<ul style="list-style-type: none"> • The legal regime applicable to MVT operators must be introduced to set out the requirement for these operators to be licensed or registered and to designate one or more competent authorities to register and/or licence natural or legal persons that perform money or value transfer services. • The requirement to maintain a current list of their agents which must be made available to designated competent authority must also be introduced in the law, regulations or other enforceable means. • The FIU must develop proper inspection procedures that address the specific risk of this type of financial institution and should undertake onsite inspection to ensure that they comply with the FATF recommendations. • In general Seychelles, should take immediate steps to properly implement Recommendations 5-7, SR VII and other relevant FATF Recommendations and to apply them also to

	MVT.
4. Preventive Measures-Non Financial Businesses and Professions	
4.1 Customer due diligence and record keeping (R.12)	<ul style="list-style-type: none"> • Seychelles should take immediate steps to properly implement Recommendations 5, 6, 8-11 and apply them to DNFBPs. • There is an urgent need to build up an effective AML culture in the DNFBP sector through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines. • The FIU should work in close collaboration with the DNFBPs to elaborate an action plan for the adoption and implementation of the AML/CFT requirements under the AML Act. • The implementation of the action plan must be closely monitored by the FIU through regular on-site inspections.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Same deficiencies apply for DNFBPs as for financial institutions with respect to Recommendations 13, 14, 15 and 21. In general, Seychelles should take immediate steps to properly implement Recommendations 13, 14, 15 and 21 and apply them to DNFBPs. • The application of AML/CFT requirements to DNFBPs (other than TCSPs) is relatively recent and there is an urgent need to build up an effective AML culture in this area through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines. • The FIU must issue a standard reporting format to all reporting entities to ensure that all relevant information is submitted by the reporting entity. • Staff of DNFBPs should be provided with adequate AML/CFT training to enable them to identify suspicious transactions and report such transactions. • There are no requirements concerning the

	<p>implementation of internal controls by a reporting entity who is an individual and who in the course of carrying on his or her business, does not employ or act in association with any other person. The FIU should issue appropriate guidelines to such businesses to enable them to implement internal controls to manage the AML/CFT the risks of their operations.</p>
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> • The FIU should commence effective supervision of the DNFBP sector as a matter of urgency. • The FIU must be sufficiently resourced to undertake its role under the AML Act fully. • All DNFBPs must be made aware of their responsibilities under the AML Act. • The FIU must having regard to the sector specific ML/TF risk issue guidelines to DNFBPs to assist them to implement and comply with their respective AML/CFT requirements.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Seychelles must also consider applying the relevant applicable FATF recommendations to non-financial businesses and professions (e.g. dealers in high value and luxury goods, pawnshops, auction houses) that are at risk of being misused for ML or TF. • The authorities in the Seychelles should take further steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons –Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Access to beneficial ownership and control information for all companies should be made available in a timely fashion for all companies not only those who are required to have publicly available information at the office of the Registrar of Companies. • The secrecy provision with respect to the shareholders of CSL must be reviewed to enable

	<p>competent authorities to have timely access to beneficial ownership and control information without the need for a court order which may delay access to information.</p> <ul style="list-style-type: none"> • The authorities in the Seychelles should put in place appropriate measures to ensure that bearer shares are not misused for ML purposes and that the identity of bearer shareholders is available. • Seychelles should take immediate steps to fully implement Recommendation 5 to ensure that beneficial ownership and control information on IBCs are obtained and kept up to date by CSPs.
5.2 Legal Arrangements –Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Appropriate guidance must be issued by the FIU on CDD measures that must be undertaken with respect to trusts to ensure that accurate and current information are obtained and maintained on trusts. • The confidentiality provisions under the ITA must be reviewed to ensure that competent authorities (other than the FIU) are able to obtain or have access to information on the beneficial ownership and control of trusts in a timely fashion.
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • The authorities in Seychelles must undertake a review of the adequacy of the laws and regulations pertaining to the NPO sector to ensure that NPOs are not being misused for TF. • The authorities in Seychelles must conduct outreach to the NPOs in order to educate NPOs about the risk of TF. • There must be effective supervision of NPOs undertaken by the Registrar of Associations and sanctions should be applied systematically for failure to comply with the provisions of the RA Act. • The RA Act must be amended to provide for record retention requirements. • The RA Act must be amended to provide for legal gateways for exchange of information both

	domestically and internationally.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • The FIU should engage in more bilateral and outreach meetings with the other local agencies involved in the fight against ML and TF. • The FIU should consider implementing a standing forum for supervisory, professional oversight and law enforcement authorities to focus on operation issues that would fall outside the work of the National Task Force.
6.2 The Conventions and UN Special Resolutions (R.35 and SRI)	<ul style="list-style-type: none"> • Further work is needed in order to implement the three conventions fully into the laws of Seychelles. • The authorities are recommended to implement fully the Vienna and Palermo Conventions in line with Recommendations 1 and 3, the ICSFT, and UNSCR 1267 and 1373 in line with the recommendations made under Special Recommendations II and III.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> • New provisions in the MACM Act must be enacted to override confidentiality and secrecy provisions under the offshore legislation. • The MACM Act must be reviewed to make provision to address conflicts of jurisdiction regarding the determination of the best venue for the prosecution of a defendant in the interests of justice and in cases that are subject to prosecution in more than one country. • The MACM Act should be amended to include express provisions regarding requests relating to property of corresponding value. • Seychelles should put into place arrangements for coordinating seizure and confiscation actions with other countries. • Seychelles must consider establishing an asset forfeiture fund into which confiscated property will be deposited. • Seychelles must also consider authorizing the

	sharing of confiscated assets when confiscation is directly or indirectly a result of coordinated law enforcement actions.
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • It is recommended that the Seychelles considers putting in reasonable time limits in the law to ensure speedy response to extradition requests
6.5 Other forms of Co-operation (R.40 & SR. V)	<ul style="list-style-type: none"> • The ICSP Act should be amended to provide SIBA with express gateways for exchange of information with other authorities in Seychelles or elsewhere. • The FIU must be expressly authorised under the AML Act to conduct inquiries on behalf of foreign counterparts. • The CBS and the SIBA should be permitted under domestic law to conduct investigations on behalf of foreign counterparts. • Seychelles should establish controls and safeguards to ensure that information received by competent authorities is used only in an authorized manner.
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	
7.2 Other relevant AML/CFT measures or issues	
7.3 General Framework –structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant Sections and paragraphs	Country Comments
15	<p><i>AG's Office</i> Since the beginning of 2008, a legal expert undertook a review of the Criminal Justice System and a report of his findings was later submitted to the President of the Republic. A review of the current criminal justice system is to take place based on the recommendations contained in the report.</p>
17, 284	<p><i>Seychelles Police</i> Since 2007, a reorganization of the Seychelles Police has begun. This includes the creation of an Anti-Corruption Unit, an AML Unit, Anti-Terrorist & Intervention Unit and a Criminal Intelligence Unit. The Seychelles Police Force Act is in the process of being amended.</p> <p><i>National Drugs Enforcement Agency</i> A National Drugs Enforcement Agency was created in 2007 to lead and co-ordinate the national effort against drug-trafficking. It has been successful in the interception of local as well as foreign individuals involved in drug trafficking.</p>
18	<p><i>Seychelles Customs</i> The Customs Management Act is in being amended and expected to be presented to Parliament soon. In March 2008, the ASYCUDA System was implemented.</p>
75	<p>The Non-Bank Financial Services Authority has been replaced by the Financial Market and Securities Division which will be regulating the same financial services and institutions.</p>
26, 28, 241, 416, 481, 512, 522, 598, 603, & R. 25	<p><i>Lack of Guidance and banks apply group AML/CFT.</i> The Guidelines on AML/CFT for Reporting Entities in Seychelles was disseminated to all Reporting Entities in December 2007. During on-site examinations, examiners from the FIU verify whether the Reporting Entities have indeed received it, that the staff have read and understood its contents and are complying with its requirements. One of the recommendations made by the examiners is that the banks have to produce an AML/CFT Manual for internal use based on the requirements of the AML Act 2006. During on-site inspections, examiners from the FIU request for such a copy and review it to verify whether it conforms to the requirements of the Act. This includes the appointment of the Compliance & Reporting Officer and his/her duties and whether these are being carried out.</p> <p>During on-site inspection of reporting entities, examiners from the FIU verify that the requirement on verification of the identity of customers is</p>

	<p>being complied with. The records of the various Reporting Entities examined so far are physically verified.</p> <p>During on-site inspections of the 5 Domestic Banks and 1 Offshore Bank, examiners from the FIU have reviewed their AML/CFT Procedural manuals to see whether they contain the requirements of the AML Act 2006. In instances whereby some requirements are lacking, the bank is given a time limit of four weeks during which it has to amend the procedural manual and submit an amended copy to the FIU for its records.</p>
29, 32, 602, 678 & 680	<p><i>The FIU has undertaken the inspection of only one bank/ Compliance with the provisions of the AML Act is not effective</i></p> <p>In addition to the inspection of 1 Domestic and 1 Offshore Bank in August 2006, examiners from the FIU have to-date conducted and completed the inspection of 4 other Domestic banks, one Bureau de Change, 2 MVT's and 44 CSPs to verify compliance with the requirements of the AML Act 2006. Once the inspection program of the CSPs is over, the FIU will inspect the remaining reporting entities including DNFBPs.</p>
38	<p><i>Does not appear that the FIU may have access to registers of an IBC</i></p> <p>Under Sec. 23 (1) of the AML Act, the FIU is authorized to enter any premises and examine records of reporting entities to ensure compliance with the requirements of the Act. During on-site inspection of CSP's, examiners from the FIU have requested for and verified registers of IBC's to ensure compliance to the AML Act 2006.</p> <p>Under Sec. 19 (c), the FIU can request for information from Reporting Entities which has been done on several occasions and the CSP's have complied with the requests within forty eight hours.</p>
242 648 & 657	<p><i>The reporting form does not cater for multiple or complex transactions</i></p> <p>Since 2007, STRs have been submitted to the FIU on the designated reporting form which has been disseminated to all Reporting Entities. The reporting form has been refined and reporting Entities have been asked to submit additional material that will be of assistance to the FIU.</p> <p><i>a reporting form has not been provided to other Reporting Entities</i></p> <p>A new reporting form specifically for DNFBPs and Other Non-Financial Reporting Entities has been designed and was disseminated on August 7, 2008 to all such reporting entities.</p>
249	<p><i>FIU has powers to obtain additional information. What is of concern is lack of procedures to do so.</i></p> <p>The procedures are contained in the FIU'S Operational Manual which was completed in December 2007</p>
263 & 264	<p><i>Not prepared an annual report</i></p> <p>In March 2007 and 2008, the FIU submitted an Annual Report on its activities the previous year to the Board of CBS in accordance with the</p>

	<p>requirements of the AML Act. The Secretary of the Board then submitted a copy to the National Assembly as is required under the legislation.</p>
265	<p><i>Membership of Egmont Group</i></p> <p>Approaches to the Egmont Group have already been made by the main sponsors, the Mauritius FIU and the French FIU, TracFin. The Director of the FIU participated in the 16th Egmont Annual Plenary Meeting which was held from May 25th to 29th, 2008, in Seoul, Korea where our application for membership was being considered. The two sponsors will be making an on-site visit to the FIU in early December of this year following which a report will be submitted to the Egmont Outreach Working Group. It is expected that Seychelles will be admitted as a member at the next annual plenary in May 2009.</p>
276 & 279	<p><i>FIU should develop procedures and registers to keep track of requests for additional information & protect the confidentiality thereof</i></p> <p>Individual files on all requests received from financial institutions have been maintained by the Bank Supervision Division of CBS since 1998 and were all kept under security. A database of all STR s received was maintained and when the FIU was established in 2006, all requests received are maintained in individual files.</p> <p>The procedures are contained in the FIU Operations Manual. Individual files for requests received are maintained and are kept under security.</p>
303	<p><i>Staff need to be trained on AML/CFT issues</i></p> <p>One of the FIU's main aims is to ensure that staff from the different law enforcement and supervisory agencies receives the appropriate training to help them in the fight against ML/CFT. In April 2007, the FIU in collaboration with the US Treasury Office organized a local workshop on "Financial Investigative Techniques for Investigators". Staff from Customs has participated in a workshop on Cross Border a workshop in 2007, Officers from Customs participated in a workshop on Cross Border Transportation of Cash and Other Instruments. Police officers have also participated in AML training overseas as well as local sessions organized by the FIU. Furthermore, since 2007 the Seychelles Institute of Management started including conducting a workshop on AML for financial institutions and other interested parties in the private as well as public sector.</p> <p>In April 2007, SIBA organized a workshop on AML for all offshore practitioners and the FIU Director gave a presentation on AML and the statutory requirements of reporting entities. Staff from the FIU participated in the workshop.</p> <p>Staff of the FIU, Police, AG's office and SIBA has participated in AML/CFT workshops overseas organized by the World Bank, IMF, BIS and US Treasury Office. Furthermore, staff from the FIU has been on short term attachments to the Mauritius FIU.</p>

	<p>Since the beginning of 2007, an expert from the Office for Technical Assistance (OTA) in the US Treasury Department has been to Seychelles on several occasions to assist and train the staff of the FIU on all aspects of its operations. Additionally, all the staff of the FIU has participated in AML/CFT Workshops organized overseas during 2007 and 2008.</p>
309	<p>Act 2 of 2008 de-criminalizes possession of foreign exchange. Currently the offence which remains is the unauthorized dealing in foreign exchange.</p>
334 & 352, 413, 418 & 482	<p><i>Bureau de Change have not implemented internal AML/CFT procedures and level of awareness is limited</i></p> <p>The FIU conducted an on-site inspection of a Bureau de Change in December 2006 and apart from verifying compliance to the requirements of the AML Act 2006 and Prevention of Terrorism Act 2004, they also verified the existence of internal AML/CFT procedures.</p> <p>Staff of the Bureau has also participated in AML training provided by staff of CBS, the FIU and the IMF Mission between 2004 and 2006. The Director of the Bureau that was inspected previously employed in a senior position with an international bank and received training on AML.</p> <p>A copy of the Guidelines on AML/CFT issued by the FIU in December 2007 was disseminated to the Bureau.</p>
342, 352, 366, 418, 483, 491, 493,536	<p><i>Insurance entities have not implemented AML/CFT measures</i></p> <p>The Securities & Financial Markets Division (S & F M D) has set up procedures to ensure that the insurance entities comply with the requirements of the AML Act 2006 and Insurance Act of 2008. License application forms state that all insurance entities are required to have Compliance and Inspection Officer and the adequate procedures to ensure compliance to the provisions of the AML Act. Also, the compliance checklist enforces such regulatory requirements. The FIU will be conducting training on AML/CFT for the staff of the two insurance companies. This will be followed by onsite inspections by examiners from the FIU to verify compliance to the requirements of the Act.</p> <p>Representatives from the two Insurance companies participated in the AML/CFT training conducted by the IMF Mission in September 2006 whereby they were made aware of their statutory obligations under the AML Act</p>
353	<p><i>No specific provision in AM Act for verification of identity of a trust</i></p> <p>Section 11.3 of the Guidelines on AML/CFT disseminated to Reporting Entities in December 2007 contains procedures for verification of trusts including the ultimate beneficiaries.</p>

339, 478 & 604	<p><i>The FIU has conducted only one on-site inspection</i></p> <p>In August 2006, examiners from the FIU inspected a Domestic Bank and an Offshore bank to verify that the requirements of Sec. 6 of the AML Act are being complied with. As this is prior to the actual Mutual Evaluation It is definitely not a post onsite development</p> <p>Examiners from the FIU have also conducted the inspection of 4 other Domestic banks and 2 MVT operator operators to ensure compliance with the requirements on wire transfers.</p>
524	<p><i>FIU staff has little exposure to AML/CFT issues.</i></p> <p>In 2007 two more staff members were recruited bringing the total FIU staff complement to five. All the staff members have received continuous AML/CFT training overseas organized by international organizations like the IMF, World Bank, BIS, US Treasury, ESAAMLG and UNODC. Members of staff have also been on short term attachments at the Mauritius FIU. They have also participated in local training on AML organized by the US Treasury, SIBA as well as in-house training conducted by the Director.</p>
513, 523 &R.25	<p><i>No feedback provided to reporting entities</i></p> <p>Since January 2007, the FIU has been providing feedback to the reporting entities on all STRs submitted. The relevant law enforcement agency to which STRs have been disseminated provide feed back to the FIU on the status of all reports received by them, whether the case is pending in court, dismissed through lack of evidence, still under investigation, pending in court or closed due to the passing away of the suspect. The FIU in turn informs the reporting entity on the feedback received with regards to particular cases reported by them.</p>
531, 532, & 541	<p><i>While there is an express statutory obligation on the reporting entity to train its employees, there has been great reliance on the Central Bank to provide training.</i></p> <p>The one Domestic Bank and one Offshore bank inspected in August 2006 already has an in-house training program and staff members are sent for ongoing training on AML to their regional office overseas. Staff members dealing with customers have to undergo a yearly exam on AML and have to obtain a pass mark of above 90% to be able to handle opening of customer accounts.</p> <p>Following the inspection by the FIU, all the other banks have been organizing in-house training on AML and have sent their staff to AML/CFT workshops organized locally by SIBA and the Seychelles Institute of Management. The FIU disseminates invitations to overseas seminars on AML/CFT to the local banks and some banks have even sent their staff to participate in such seminars.</p>
538	<p><i>The FIU must ensure that all financial institutions establish and maintain AML/CFT policies and procedures.</i></p> <p>During on-site inspections of the banks, examiners from the FIU verify</p>

	<p>their internal AML/CFT procedures to see whether they comply with the requirements of the AML Act. In instances where it does not fully comply with the requirements, the bank is given a specified time limit of four weeks to incorporate the requirements and submit an amended copy to the FIU.</p>
608 & 611	<p><i>No on-site inspection of money transmission services were conducted</i></p> <p>Prior to the establishment of the FIU in 2006, examiners from the Bank Supervision Division of the CBS conducted inspections of the two money transmission services which covered compliance to the AML Act 1996.</p> <p>During 2007, examiners from the FIU conducted an inspection of the two money transmission service providers to verify compliance to the requirements of the AML Act 2006.</p>
R.29	<p><i>Staff have no previous experience in AML/CFT</i></p> <p>The FIU has a complement staff of five, all of whom have received training on AML/CFT overseas. STRs received are analyzed and disseminated to the appropriate law enforcement agencies and the inspection program is ongoing with 5 domestic banks, 1 offshore bank, 1 bureau, 2 MVT operators and 44 CSPs inspected so far. The FIU has also provided training on AML for staff of the reporting entities, law enforcement and supervisory agencies.</p>
644	<p><i>Build up effective AML culture in this area</i></p> <p>The DNFBPs participated in the AML/CFT training conducted by the IMF Mission in September 2006 wherein they were reminded of their statutory obligations under the AML Act 2006.</p> <p>DNFBPs have participated in AML training conducted by SIBA, the Seychelles Institute of Management and the FIU during 2007.</p> <p>The Guidelines on AML/CFT issued by the FIU in December 2007 was disseminated to all DNFBPs.</p>
646	<p><i>Important vulnerability exists in offshore sector which relates to AML/CFT</i></p> <p>Since October 2007, the FIU has commenced an inspection program of reporting entities involved in the offshore sector to ensure that they are complying with the requirements of the AML Act. They have so far completed the inspection of 44 CSPs. Since 2007, SIBA also commenced an on-site inspection of CSPs to ensure compliance to the various pieces of legislation regulating such entities.</p>
648	<p><i>Concerns about FIU to preserve confidentiality</i></p> <p>As regards confidentiality of information transmitted, in 2007 the FIU Director met with a delegation from CSP Association which included its Chairman and had discussions on this issue which have proved to be</p>

	fruitful to both parties and allayed their concerns.
679	<p><i>FIU to be sufficiently resourced</i></p> <p>In 2007, two new staff members were employed by the FIU making a total complement staff of five which is currently sufficient to allow the FIU to perform its duties of receiving, analyzing and disseminating STRs, and on-site inspection to ensure compliance to the requirements of the AML Act.</p> <p>With the enactment of the Anti Money Laundering (Amendment) Act 2008 on August 18, 2008 which made provisions for the creation of an Assets Recovery Unit, four new members of staff have been recruited.</p>
714	<p><i>The authorities in Seychelles must put in place appropriate measures to ensure that bearer shares are not misused for ML purposes and that the identity of the shareholders is available.</i></p> <p>Amendments have already been drafted to be presented to the relevant authorities to be made law.</p>
755	<p><i>Meetings will be organized between the FIU, the Law Enforcement agencies and the Supervisory agencies to discuss ways to improve co-operation and the regulatory regime.</i></p> <p>The Task Force first met in December 2006 and meetings are organized on a quarterly basis or when such a need arises. It comprises of representatives from the Police, Tax, Customs, Immigration, CBS, the Licensing Authority, SIBA, Attorney General's Office, Ministry of Foreign Affairs, National Drugs Enforcement Agency and the FIU. Issues related to AML/CFT are discussed and the sharing of information on these issues take place and this has led to successful interception of criminals by some agencies.</p>
759 6.1.3 R 31	<p><i>The Task Force has just been set up and no evidence that it is effective</i></p> <p>Since December 2006, the Task Force has been meeting on a quarterly basis to discuss issues of co-operation and sharing of intelligence information, latest trends and typologies in AML/CFT, terrorist freeze lists, international co-operation and methods of improving the fight against ML/FT.</p> <p>The Task Force has proved to be effective because information shared has proved to be vital to some of the participating agencies where criminals involved in drug trafficking have been intercepted at the international airport.</p>
835	<p><i>For the purposes of inquiries on behalf of its foreign counterparts, the FIU has not yet searched its databases, obtained information from reporting entities</i></p> <p>The FIU has requested for information from reporting entities and disseminated same to its foreign counterparts. Since 2007, the FIU has</p>

	requested information from one jurisdiction and disseminated intelligence information to seven foreign jurisdictions.
861	<p><i>One of the banks visited provided statistics of reports sent to the FIU that did not correlate with the figures provided by the FIU.</i></p> <p>The particular bank in question was engaging in defensive reporting by simply submitting STRs without even making any further enquiries. The bank was informed of this on three occasions by the Bank Supervision Division of CBS and advised to conduct further enquiries prior to submitting STRs. Further enquiries by the bank revealed the transactions not to be suspicious but those previously submitted were still considered in the bank's statistics, hence the discrepancy with the FIU's statistics in its database.</p>
R 30	<p><i>There is limited capacity across agencies in Seychelles to address AML/CFT</i></p> <p>Since 2007, a number of agencies have been exposed to training on AML. In March 2007, the US Treasury in collaboration with the FIU organized a one week Workshop on Financial Investigative techniques for officers from Law Enforcement agencies that included the Police, Customs, Tax and the FIU.</p> <p>In April, two senior officers from the Customs Division participated in a Workshop on Cross Border Transportation of Cash and Financial Instruments held in Zambia.</p> <p>Staff from the AG's Office, SIBA, the Police and the FIU has participated in AML/CFT Workshops on AML/CFT organized by international organizations in countries such as Tunisia, Zambia, Botswana, Namibia, Kenya, Tanzania, Egypt, Ireland and Switzerland Locally, the FIU has been conducting training on AML for the Police at its Academy.</p>
256 & 854	<p><i>The FIU is reliant on CBS for its establishment, Board decisions and budget</i></p> <p>Since its establishment in June 2006, the FIU has been operating freely without any interference from the CBS or its Board of Directors. The FIU Director makes his own decision whether to disseminate any STRs received without any undue influence. The only contact the FIU has with the Board of Directors is the submission of a Report on its Activities during the previous year which is a statutory requirement.</p> <p>With the enactment of the AML (Amendment) Act 2008 on August 18, 2008, the FIU is now an independent entity with its own budget and is no longer responsible to CBS.</p>
	<p><i>The authorities do not review the effectiveness of their systems to combat AML/CFT</i></p> <p>The various authorities are reviewing the effectiveness of their systems. Since the establishment of the National AML/CFT Task Force in December 2006, all the relevant agencies involved in the fight against</p>

<p>R 32</p>	<p>money laundering and terrorism financing have been meeting regularly every quarter to share intelligence, latest trends and typologies on these issues. There is now more interaction amongst the different agencies which has led to the interception of foreign and local individuals involved in drug trafficking both at the airport and sea port area.</p> <p>The FIU has commenced an inspection program of the CSPs to ensure that they comply with the requirements of the AML Act. So far, 44 CSPs have been inspected. Once this is completed, it will then conduct inspections of the other reporting entities such as insurance companies, etc.</p> <p>SIBA has also since 2007, commenced an inspection program of the CSPs to ensure that they are complying with the conditions of their licence, the IBC Act and other pieces of legislation pertaining to the offshore sector.</p> <p>SIBA has recently embarked on a comprehensive review of the laws and corresponding guidelines it administers in relation to the business conducted by the ICSPs and ITSPs. SIBA is reviewing the practices of the service providers in relation to their client due diligence and verification processes after which under Section 13 of the ICSP Act will issue guidelines to the service providers to improve existing standards.</p> <p><i>Comprehensive statistics are not maintained by all competent authorities</i></p> <p>The FIU has made improvements on its databases for all information received from reporting entities. With the creation of the new Assets Recovery Unit, further improvements to the databases are envisaged.</p> <p>The Police, Immigration and the AG's office are also in the process of making improvements to their databases.</p>
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Amendments to the AML Act 2006

The AML Act has been amended by the AML (Amendment) Act which came into force on 18 August 2008. The amendments make provision for Civil Assets Forfeiture. A Financial Intelligence and Assets Recovery Unit to be known as the FIU was also established. The FIU is now a stand alone independent body corporate with its own budget.

This new legislation has significantly enhanced the investigative powers and duties of the FIU. The increase in powers and responsibilities ensures that officers of the FIU have the legal authority and power to undertake in depth investigations. The primary focus is to deny criminals the benefits of all financial proceeds derived through criminal activities.

The main points of the legislative changes are as follows:

- Creation of new positions within the FIU (Director, Deputy Director, Legal Officer and Assets Agent) to be appointed directly by the President of Seychelles;
- Duties, as outlined in Section 16, comprehensively increase the scope of the investigative and monitoring powers available to the FIU when targeting suspected criminal assets ;

- The creation of Interim, Interlocutory and Disposal Orders as part of the seizure process coupled with new powers pertaining to Production Orders, Search Orders and Restraining Orders;
- A civil standard of proof now applies;
- The FIU is no longer part of the CBS but rather an independent Corporate Body which reports directly to the President;
- The FIU has new powers to gain access to information (including computer databases) held by the government and can access all information retained by reporting and non-reporting entities;

Officers seconded from other departments such as the Police or Revenue Commission retain the powers they held in their previous appointments while working with the FIU.

Annexes

Annex 1: Details of all bodies met on the on-site mission

Schedule of Meetings

Institution	Post Title/ Name of Individual
Central Bank of Seychelles	Deputy Governor Bank Supervision Division Exchange Controller
Financial Intelligence Unit	Director
Attorney General's Chambers	Attorney General Principal State Prosecutor
Trades Tax (Customs)	The Director General
Tax	Commissioner of Tax
Registrar of Companies	Registrar General
Law Society of Seychelles	The Chairperson
Accountants	Pool & Patel A. J Shah & Associates
Non-Bank Financial Supervisory Authority	The Chief Executive Officer
Ministry of Foreign Affairs	Principal Secretary
Precious Metal & Stone Dealer	Diamond SA
Seychelles International Business Authority	Supervisory Authority of IBC's
Association of Corporate Service Providers	The Chairman
Commercial Banks	- Barclays Bank - Habib Bank - Seychelles International Mercantile Banking Corporation
Bureau de Change	Say More Bureau de Change
Immigration	Principal Secretary
Seychelles Licensing Authority	The Chief Executive Officer
Ministry of Land Use & Habitat	The Principal Secretary
Real Estate Brokers	Reliance Real Estate
Insurance Companies	H. Savy Insurance & Co
Casino	Berjaya Beau Vallon Bay Resort Casino
Seychelles Investment Bureau	The Chief Executive Officer
Seychelles Police	Deputy Commissioner of Police
Trust and corporate service provider	Mayfair Trust
NPO	Nature Seychelles

Annex 2: List of all laws, regulations and other material received

1. Registration of Associations Act
2. Extradition Act
3. Extradition Regulations
4. Prevention of Terrorism Act 2004
5. Penal Code
6. International Trade Zone Act 1995
7. Criminal Procedure Code
8. Central Bank of Seychelles Act
9. Securities Industry Act 1995
10. Mutual Assistance in Criminal Matters Act, 1995
11. The Mutual Fund and Hedge Fund Act 2006
12. Misuse of Drugs Act
13. Anti-Money Laundering Bill , 2005
14. Licences Act
15. Civil Code of Seychelles Act
16. Financial Institutions (Domestic Banking Business) Regulations 1996
17. Financial Institutions (Non-Domestic Banking Business) Regulations 1996
18. Financial Institutions (Bureau de Change) Regulations 1997
19. Insurance Act, 1994
20. Insurance (Amendment) Act, 1995
21. FIU AML Examination Procedures Manual
22. Seychelles Credit Union AML/CFT Guidance Manual

23. Guidance notes on AML Procedures for Seychelles Banks and other Financial Institutions
24. Application Form Mutual Fund Licence
25. La Rosiere (Registered Agents and Trustees) Limited-Office Manual
26. SIBA GuFIU AML Examination Procedures Manual
27. Seychelles Credit Union AML/CFT Guidance Manual
28. Guidance notes on AML Procedures for Seychelles Banks and other Financial Institutions
- 20 Application Form Mutual Fund Licence
- 21 La Rosiere (Registered Agents and Trustees) Limited-Office Manual
- 22 SIBA Guidance Notes for CSP
- 23 SIBA Brochure
- 24 CBS Letter of 8 May 2002 to Saymore Bureau de Change
- 25 CBS Circular letter dated 11 February 2002
- 26 Public Service Code of Ethics and Conduct
- 27 Corporate Strategy Seychelles Police
- 28 International Business Registration Agents (PTY) LTD
Agreement for Company Management Services
IBC Information Questionnaire
- 29 Customs Management Decree
- 30 Immigration Decree
29. Co-operatives Actidance Notes for CSP
30. SIBA Brochure
31. CBS Letter of 8 May 2002 to Saymore Bureau de Change
32. Public Service Code of Ethics and Conduct
33. Corporate Strategy Seychelles Police
34. International Business Registration Agents (PTY) LTD

- Agreement for Company Management Services
35. International Business Registration Agents (PTY) LTD
- IBC Information Questionnaire
36. Customs Management Decree
37. Immigration Decree
38. Co-operatives Act
39. Proposed Securities Act 2007-Synopsis
40. List of offshore banks with revoked licences
41. List of Licensable Activities and Licence Fees Payable
42. Seychelles Credit Union Account Opening Documents
43. List of Foreign Terrorist Organisations
44. List of Suspected Foreign Terrorists
45. List of new licences
46. Proposed Organigram Non-Bank Financial Services Authority
47. Pool and Patel comments on AML Bill
48. ESAAMLG Meetings with the various stakeholders
49. Seychelles Paper on Measures to Combat Money Laundering
50. FIU's list o Documentation and Information required for On-site examination-
Barclays Bank
51. Mutual Evaluation of Seychelles 2006: Additional Information
52. Financial Institution in Seychelles
53. Email of 28 Nov.2006 Seychelles Fishing Authority
54. Statistics
55. Barclays Non Personal Account Application Documents

56. Barclays BusinessAccount Application Documents
57. Barclays Eden Island Brochures
58. FIU STR Form
59. On site schedule of meetings
60. Geography and history
61. The Economist Intelligence Unit Country Report Sept 2006
62. International Business Companies Act Regulations, 2005
63. Trades Tax Regulations 1997