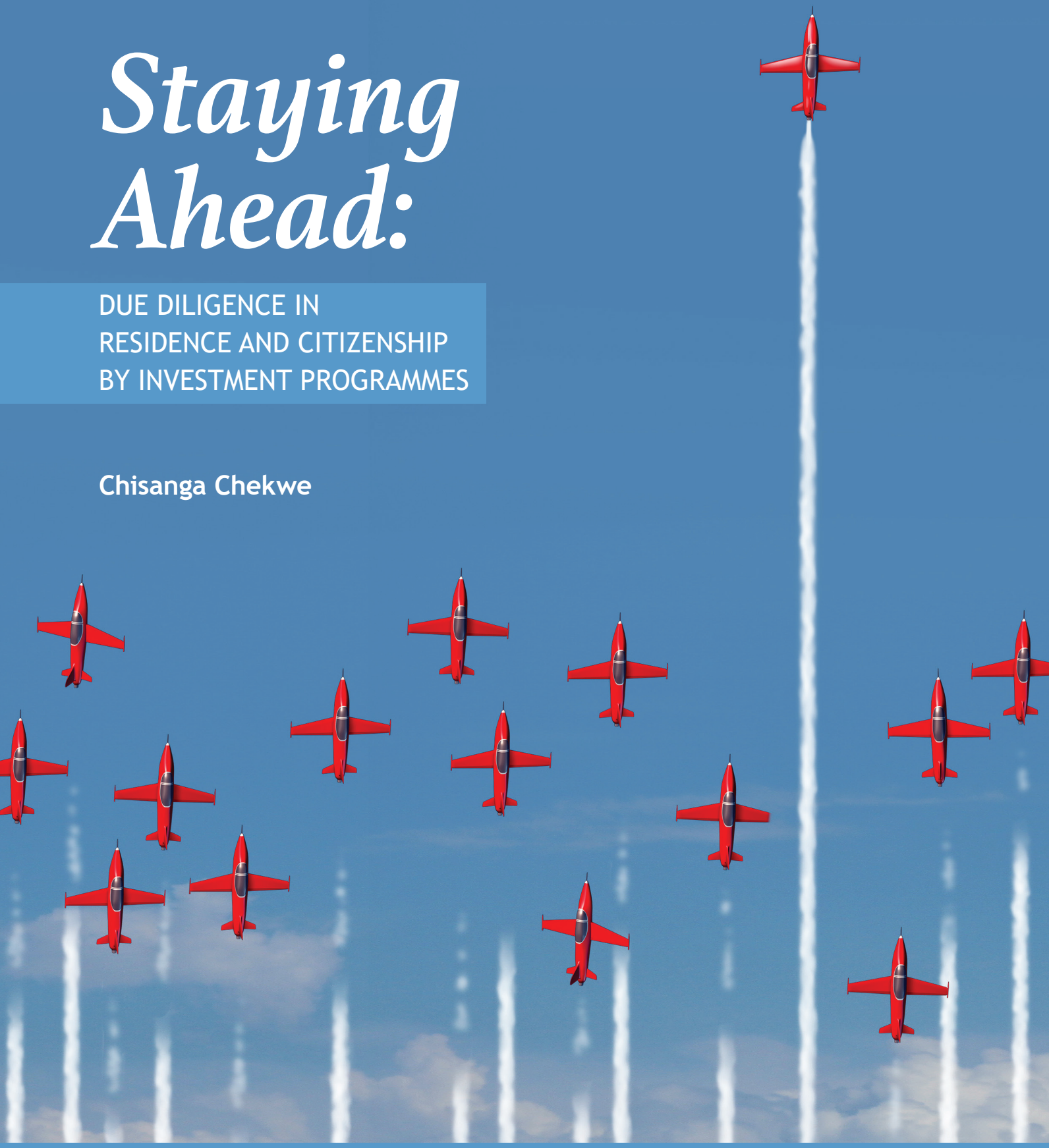
Staying Ahead:

DUE DILIGENCE IN RESIDENCE AND CITIZENSHIP BY INVESTMENT PROGRAMMES

Chisanga Chekwe



INVESTMENT MIGRATION COUNCIL

THOMSON REUTERS™

Chisanga P Chekwe MA (Oxon); LL.M (Lond); ICD.D
Senior Immigration Advisor, Pace Law Firm, Ontario, Canada

with the contribution of

James Swenson,
Global Head of Proposition, Enhanced Due Diligence (EDD),
Thomson Reuters

INVESTMENT MIGRATION COUNCIL

The Investment Migration Council (IMC) is the worldwide association for investor immigration and citizenship-by-investment, bringing together the leading stakeholders in the field and giving the industry a voice. The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration. The IMC helps to promote high professional standards as well as to improve public understanding of the issues faced by clients, professionals and governments in this area.

THOMSON REUTERS™

Risk Management Solutions From Thomson Reuters bring together trusted regulatory, customer and pricing data, intuitive software and expert insight and services – an unrivaled combination in the industry that empowers professionals and enterprises to confidently anticipate and act on risks – and make smarter decisions that accelerate business performance.Enhanced due diligence (EDD) is used by global organizations to mitigate and protect against reputational damage during the on-boarding of higher-risk customers. Customer due diligence procedures and policies should be heightened depending on the risk exposure and money laundering risks that they pose. Enhanced Due Diligence Reports form part of a best-practice, risk-based approach as well as providing a critical framework during the anti-money laundering and know your customer compliance and onboarding lifecycle that enables your organization to comply with all necessary regulatory requirements. Thomson Reuters comprehensive reports offer detailed, discreet, and ethical business intelligence, powered by World-Check risk intelligence (https://risk.thomsonreuters.com/en/products/world-check-know-your-customer.html).

Published in Geneva – May 2018
© Cover photo: iStock.com

ISBN: 978-2-8399-2417-7

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of XXX June 2018. Nevertheless, the authors or publishers cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

The Investment Migration Councils is a non profit association registered in Geneva, Switzerland, registration number CHE-212.779.325

European Commission Joint Transparency Register Secretariat ID: 337639131420-09
http://ec.europa.eu/transparencyregister/public

Thomson Reuters UK is a Limited Liability Company, registration number is 06141013.

Staying Ahead:

DUE DILIGENCE IN RESIDENCE AND CITIZENSHIP BY INVESTMENT PROGRAMMES

Acronyms

API	Advance Passenger Information
CARICOM	Caribbean Community
CTED	Counter Terrorism Executive Directorate
CFATF	Caribbean Financial Action Task Force on Money Laundering
CIP	Citizenship by Investment Programme
EDF	Economic Development Fund
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigations
GTA	Greater Toronto Area
IBIN	INTERPOL Ballistic Information Network
IIP	Immigrant Investor Program (Canada)
IIP	Individual Investor Programme (Malta)
IMC	Investment Migration Council
IMPACS	(CARICOM) Implementing Agency for Crime and Security
JRCC	Joint Regional Communications Centre
KYC	Know Your Customer
NCBS	(INTERPOL) National Central Bureaus
OECD	Organisation for Economic Cooperation and Development
OINP	Ontario Immigrant Nominee Program
PEP	Politically Exposed Person
PT	Provinces and Territories
SLTD	Stolen and Lost Travel Documents
UAE	United Arab Emirates

Table of Contents

Executive Summary

Executive Summary

Citizenship by investment programmes have come under attack for allegedly selling passports in a way that not only devalues citizenship but also threatens international security. Residence programmes have been similarly criticised.

Critics generally allege an absence of due diligence in the screening of would-be citizens and residents and are quick to publicise cases where due diligence may have fallen short and where international security may have been threatened as a result.

This report aims to demonstrate that while there have been occasional lapses, the norm is for due diligence to be taken seriously and for due diligence processes to be established and correctly followed. This report also aims to show that the vast majority of these programmes, which generate investments that lead to the creation of jobs for local citizens, were not only commenced with laudable objectives but are actually managed in a way that minimises threats to international security.

The programmes address the security risk by instituting robust due diligence processes which vet applications for citizenship and residence. The report recognises the temptation faced by political players to overlook applicants' apparent weaknesses, when they promise to inject large amounts of money into the economy in return for citizenship or residence rights. In most jurisdictions this temptation is addressed by ensuring that the agencies operating the programme are operationally independent from the government, and transparent in their work.

> **The end result of all this due diligence is that 'perhaps 1% of the industry's clients are human-rights violators, money-launderers or other fugitives from justice, and the other 99% mostly jet-setters or "doomsday preppers"**

This is however not the case in all jurisdictions. Recommendations made in this report therefore include strengthening the independence and professionalism of the agencies responsible for programmes.

Since one bad experience affects the entire industry, agencies are urged to coordinate effectively with competing agencies with a view to enhancing the reputation of their industry. It is in the collective interest of all migration investment programmes to work together in this way. International organisations such as the Investment Migration Council can be enormously helpful in guiding programmes to focus on due diligence, without which the industry has no future.

Due diligence is however not a responsibility for the state alone. Applicants also conduct their own due diligence on the states they intend to become citizens or residents of. It is therefore in a state's interest to be transparent, uphold the rule of law, conduct due diligence and maintain a reputation for fairness.

Of course, a state's responsibility to conduct due diligence on applicants will often come to nothing if it does not create appropriate institutions to manage its investment migration programme, and commit to managing state affairs transparently.

Chapter I

Background to Citizenship by Investment Programmes

I. Brief history of investment migration programmes

As the biblical conversation between Paul and the Commander in Acts 22: 27-30 illustrates, the concept of citizenship by investment existed in ancient Rome. A link between wealth and citizenship also existed in ancient Greece, as Dr Jelena Dzankic observes.[1] Dr Dzankic goes on to caution that the practice of 'selling citizenship' has potential for corruption. 'Corruption of the state's institutions and corruption of democracy.'[2] This is an important reason for due diligence in investment migration programmes.

Comprehensive steps must be taken at all times by states offering investment migration programmes to ensure that persons applying for residence or citizenship are suitable for the grant of these rights and privileges and that they are in no way a threat to the state or to the international community, from the perspective of state law and international law, particularly those treaties concerned with combating the financing of terrorism and money laundering. These international protocols will be referred to later in this report.

For now, it may be useful to examine briefly the economic imperative behind investment migration programmes.

Citizenship by investment programmes did not really emerge as a systematic practice in modern times until the mid-1980s, when the small Caribbean state of St. Kitts and Nevis passed a law offering citizenship to individuals who 'made a substantial investment in the state'. The regulations regarding citizenship by investment in St. Kitts and Nevis contained in Part II, Section 3(5) of the Citizenship Act, 1984 also require citizens by investment to be persons of good character and not a threat to the country.

Diversifying the economy of St. Kitts and Nevis was also the reason for introducing the longest running citizenship by investment programme in modern times. The dependency of St. Kitts and Nevis on the growing and processing of sugar cane seriously threatened the country when sugar prices started to decline.

---

1 J. Dzankic, 'Are All Animals Equal? Ethical Aspects of Investor Citizenship Programs', IFC Economic Report, 2014.

2 Ibid.

In response to the disastrous 2005 harvest and many decades of losses, the government closed its sugar industry. The consequences of this are perhaps best described by Dr Kristin Surak:

> In 2005, St. Kitts ended sugar production, its traditional economic mainstay, after the World Trade Organization terminated its preferential access to European markets. With little beyond tourism to procure foreign reserves, the government, under the guidance the Swiss residency planning firm Henley and Partners, expanded its discretionary economic citizenship stream into a formal citizenship by investment program.
>
> It established the Sugar Industry Diversification Fund (SIDF), a private entity, for the distribution of government donations; created a list of approved investment options; developed a system for licensing service providers; and required applicants to go through official agents rather than directly to the government.
>
> It also contracted Henley and Partners to promote its program internationally in exchange for a commission of $20,000 for every contribution to the SIDF (Abrahamian 2015: 78-9). In 2006, the firm hosted its first international conference to tout the program, which soon appeared in the pages of the Economist and among the financial planning tools on offer at large multinational banks. By 2011, the government established a dedicated Citizenship Investment Unit (CIU), initially under the Ministry of Security and now under the Ministry of Finance, to handle applicant screenings and approvals – a bureaucratic form that would spread across the Caribbean.[3]

a) The economic imperative

The citizenship by investment programme was partly responsible for returning the country to a reasonable economic state. Notable progress was made in reducing its public debt from 154% of gross domestic product in 2011, the year in which the Citizenship Investment Unit was established, to 83% in 2013.[4] In the same year, 25% of the country's GDP came from the 'sale' of passports.[5]

3 Kristin Surak, Global Citizenship 2.0, The Growth of Citizenship by Investment Programs, Investment Migration Working Papers, IMC-RP 2016/3. Available at: https://investmentmigration.org/download/global-citizenship-2-0-growth-citizenship-investment-programs

4 CIA-World Factbook.

5 IMF Country Reports (2014) 14/86.

Two years after St. Kitts and Nevis started its citizenship by investment programme, Canada launched its Immigrant Investor Program with a view to providing investment capital to private and provincially-administered investment funds and business ventures with the goal of job creation.

The IIP as it came to be known, was designed to meet three economic objectives, namely, to attract experienced business persons to Canada; to raise investment capital for economic purposes; and to contribute to the Immigration and Refugee Protection Act objective of ensuring that the benefits of immigration were shared across all regions of Canada.

In 1999, the programme was redesigned to address issues of fraud and mismanagement, and inefficiencies resulting from burdensome regulation.

The redesigned programme offered permanent residency to individuals who met specific business experience criteria, had a net worth of at least CAD 1.6 million, and were able to make an CAD 800,000, five-year, zero-interest, guaranteed investment. Investment capital raised through the programme was then allocated to participating provinces and territories for the five year term. Specific Provincial and Territorial economic development and job creation objectives determined how the money was spent. At the end of the five-year period, however, the PTs were expected to repay the principal amount.

Between 1999 and 2012, the IIP raised almost CAD 4 billion in capital from more than 9,500 principal applicant investors.[6]

b) Different types of investment migration programmes

The Canadian programme differed from the St. Kitts and Nevis programme in that it was a residence rather than a citizenship by investment programme, with an emphasis on investment of financial capital.

Other programmes like the United States EB-5 visa for immigrant investors and the UK Immigrant Investor Programme followed in 1990 and 1994.

In Austria Article 10(6) of the 1985 Austrian Citizenship Act states that the government can reward foreign persons with citizenship for extraordinary merit. This may take various forms, including economic ones, and can include investment or other economic

6 Government of Canada Backgrounder on the Immigrant Investor Program, 1 August, 2012.

benefits brought to Austria. Austria is thus different from most other programmes because citizenship is not granted on the basis of investment alone.
The foreign investor is also required to make an extraordinary contribution alongside his investment. This contribution could involve bringing new technologies to the country or creating a substantial number of new jobs.

In more recent years, many European Union countries, notably Malta, Cyprus and Portugal, have introduced competing residence by investment programmes.

Throughout the 1990s, however, Canada's was the dominant investor immigration programme, sustained by wealthy individuals seeking political stability. Thus from 1984 to 1998, Hong Kong became the primary source of business immigrants to Canada, accounting for between a third and a half of the total.[7]

Citizenship by investment programmes are always affected by global events. For instance, the transfer of sovereignty of Hong Kong to China in 1997 was a motivation for citizens of Hong Kong to immigrate in large numbers to Canada through the Canadian immigrant investor programme.

In Canada the demand for investor immigration slowed significantly in the late 1990s to mid-2000s. While Canada attracted 53,000 investors between 1991 and 1996, the figure for the next seven years (1997 to 2003) was only 34,000.

Eventually, the federal programme in Canada was terminated in 2014. Dr Miriam Cohen examined the programme in a paper written for the Investment Migration Council and she attributes the closure of the programme to competition from numerous investment immigration programmes worldwide. This competition does not just affect the old Immigrant Investor Program but new programmes such as Canada's Immigrant Investor Venture Capital Programme: 'Although, as explained …the federal IIVC Programme is still in its 'pilot' stage, it is already apparent that it has not been attractive to potential investors. The reported expectation was to select sixty from the pool of applicants; however, it is claimed that there were less than ten applications processed'.[8]

According to Dr Cohen, the reason for this and the failure of the IIP is at least in part due to competition from other investment immigration options: with other

---

7 David Ley, Seeking Homo Economicus: The Canadian State and the Strange Story of Canada's Business Immigration Program (Department of Geography University of British Columbia).

8 Miriam Cohen, The Reinvention of Investment Immigration in Canada and Constructions of Canadian Citizenship, IMC-RP 2017/2 p.11. Available at: https://investmentmigration.org/download/re-invention-investment-immigration-canada-constructions-canadian-citizenship/

programmes available, investors are tempted to select other destinations with more appealing conditions (e.g. climate, economics, residence requirements, etc.).[9]

Investors can still however immigrate to Canada through the Quebec Immigrant Investor Program and other provincial arrangements like the Ontario Immigrant Nominee Program.

The last decade has seen another boom in investor immigration programmes. The Caribbean programmes offered by Antigua and Barbuda, Dominica, Grenada, St. Lucia, and of course St. Kitts and Nevis will be examined in some detail later. Examples from Europe will also be examined from the perspective of their due diligence processes. As it will be demonstrated further in the text, the demand for second citizenships saw several nations introduce poorly planned and badly managed programmes which ultimately failed because of their inability to meet the basic requirements of potential investors.

(c) Recognition of due diligence

All programmes require beneficiaries to be trustworthy individuals who would not bring the country offering citizenship into disrepute. To ensure that this is the case, it is vital to conduct comprehensive due diligence on all applicants for citizenship or residence under these programmes. It is not surprising then that the advent of investment migration programmes has created a service industry designed to assist both governments and immigrant investors. One key service provided by this industry is due diligence.

9 Ibid.

Chapter 2

Taking Care

II Due diligence by the state

It is clear from the above that both the prospective investor and the country chosen for the investment give certain undertakings to each other. In the case of the individual considering investment migration, these undertakings include a declaration that she is of age, is a citizen of the country she claims to be a citizen of, she is in good health, she has no criminal record, and that she not only has the necessary financial resources but that these resources have been legitimately acquired.

All these are issues which need to be verified, as without this verification, the jurisdiction will soon find itself with citizens or residents who add no value and who may actually pose a threat to the jurisdiction. Verification should go beyond simply determining that the applicant is who she says she is. It must include an assessment of the applicant's ability to invest and comply with the legal requirements attached to the investment.

Furthermore, in some instances, the applicant will undertake that she actually has the skills and/or capacity to start the project and employ such persons as may be needed.

The age and nationality of an applicant are easily ascertainable from official documents such as passports, while the physical health of an applicant can be ascertained from a report furnished by a medical practitioner whose qualifications the jurisdiction is comfortable with. In this regard, some jurisdictions are content with the production of a certificate of fitness as well as a note declaring the applicant to be HIV negative.

a) Verification of good character

Ascertaining the applicant's general good character and absence of a criminal record, and determining the source of funds are however more complex matters requiring more thorough investigations.

Citizenship by investment or residence programmes operate in an ever-changing international environment brought about by shifting paradigms within the international regulatory framework. This is partly a result of the 2007/2008 global financial crises from which the Western world is yet to fully recover, as well as the enactment of more stringent legislation with respect to money laundering and terrorist financing. In the financial sector for example, correspondent banks have conspicuously increased the scrutiny of both existing and potential customers.

This new environment brings with it a variety of challenges for any investment migration programme. These challenges include new forms of financial crimes – including money laundering and terrorist financing – which programmes must be on the lookout for; increased expectation for technological innovations to, for instance, help detect wrong doing; increased anxiety by international partners with respect to the vetting of applicants; and greater requirements from banks in the processing of payments under the programmes.

b) Due diligence methodology

In light of these challenges, the best jurisdictions go through a number of stages to determine the suitability of applicants.

Thus the Compliance Department of Antigua and Barbuda's Citizenship by Investment Unit conducts a four-tier due diligence review of all its applicants and associated businesses.

Tier one of the review process involves using Thomson Reuters World Check, INTERPOL Most Wanted list, FBI Most Wanted Terrorist List, and the United Nations Al-Qaeda Sanctions List to scan the name of the main applicant and any businesses the applicant may be associated with. Internet searches are also conducted using search engines such as Google and KYC360.com and the social media network, LinkedIn. These searches are conducted with a view to ascertaining additional credible information on the principal applicant, associated family members and associated businesses.

Tier two involves the use of third party due diligence service providers to conduct background due diligence on the principal applicant and associated family members. These services, provided by independent private sector companies, cover the applicant's entire known public footprint. Typically, the service provider has a physical presence in all countries where the applicant has spent a significant period. The focus is of course on the applicant's stated place of residence.

Tier three involves submitting the applicants' names and other pertinent information to regional and international governmental partners. Tier four involves summarising the findings of the due diligence review and making a recommendation to senior management.

(c) International due diligence partnerships

As in the case of St. Kitts and Nevis, Grenada and St. Lucia, Antigua and Barbuda's regional partner is the Joint Regional Communications Centre which has a broader mandate than individual country partners might have. This means that even in circumstances where a country partner 'clears' a particular applicant, the JRCC may

nevertheless flag the person as a security risk. This is because the JRCC has access to more information than most individual jurisdictions do. It is therefore unfortunate that not all jurisdictions appear committed to using the impressive resources of the JRCC.

The Caribbean Community (CARICOM) Implementing Agency for Crime and Security (IMPACS), is the nerve centre of the region's multilateral crime and security management architecture, specifically designed to administer a collective response to the crime and security priorities of member states. IMPACS's core functions include:

- The implementation of actions agreed by the Council relating to crime and security;
- The development and implementation of projects in furtherance of the Agency's objectives;
- The initiation and development of proposals for consideration and determination by the Council;
- Advising the Council on appropriate regional responses to crime and security arrangements on the basis of research and analysis;
- The execution of regional projects relating to matters of crime and security;
- Providing a clearing house for relevant information in matters relating to crime and security;
- Mobilising resources in support of the regional crime and security agenda and negotiation of technical assistance;
- Contributing to the development and implementation of strategies for effective representation of CARICOM on a regional and international level on matters relating to crime and security;
- The dissemination of information to contracting parties with respect to evolving regional and international trends in crime and security;
- The collaboration and coordination with national and international crime prevention and control agencies to determine trends, methodologies and strategies for crime prevention and enhancing security for the Community; and
- Developing, in collaboration with the CARICOM Secretariat, roles, functions and rules of procedure for such committees as may be established in furtherance of the regional crime and security agenda.

- IMPACS also has responsibility for the coordination of meetings of the following sub-committees:
- The Standing Committee of Commissioners of Police;
- The Standing Committee of Military Heads;
- The Standing Committee of Chiefs of Immigration;
- The Standing Committee of Heads of Custom; and
- The Standing Committee of Heads of Intelligence and Financial Investigative Units

The Joint Regional Communications Centre is a sub-agency of IMPACS whose principal role is to act as the central clearing house for the Advance Passenger Information (API) system and acts on behalf of individual CARICOM Member States for the purpose of pre-screening passengers from air and sea carriers traversing the region.

The JRCC acts as a conduit to ensure effective communication among law enforcement personnel, which is necessary to enhance border control-related activities. The JRCC assists regional law enforcement personnel in the detection of persons who are travelling with stolen, lost and fraudulent travel documents, along with the identification and monitoring of the movements of persons of interest, including those who may be a high security threat to the safety and security of the region.

The JRCC membership consists not only of Caribbean states but also includes the United States, the United Kingdom, Canada, and the European Union. From its mandate above, it is clear that the JRCC has information which would be invaluable to any investment migration programme and for this reason every programme in the region would be advised to use the JRCC in the assessment of applicant suitability for the programme.

d) A risk-based approach

The Antigua and Barbuda due diligence process is risk based. That process therefore includes being on the lookout for Politically Exposed Persons (PEPs). Since there is no global definition of a PEP, Antigua and Barbuda uses the Financial Action Task Force on Money Laundering definition.

The pertinent part of the definition is as follows:[10]

> individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of state or Heads of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.

Requirements for a PEP also apply to the applicant's family members and her close associates. Special attention is paid to PEPs because they generally present a higher risk for potential involvement in bribery and corruption by virtue of their position and the influence that they might have in their home countries. Furthermore, that risk for potential involvement in corrupt practices is exportable.

At the time of writing, the Antigua and Barbuda Citizenship by Investment Unit, the organ charged with the management of the Citizenship by Investment Programme, chooses to subject every single application to this process and scrutiny. Antigua and Barbuda also uses the JRCC's services for every single application.

In contrast, the Dominica Economic Citizenship Program while committing to 'only accept individuals of outstanding character' appears to depend entirely on private sector agencies for due diligence.[11] According to one source,[12] the Government of Dominica relies on a private investigative agency for comprehensive due diligence on applicants. The same source states that Dominica is 'committed to an exemplary standard of due diligence to protect the integrity of its citizenship investment program, and only individuals with no criminal record and whose funds have been legally derived will be permitted to acquire citizenship in the country'.

Another source[13] states that the Government of Dominica uses several private investigation agencies to conduct comprehensive reviews of the criminal records of applicants over 18 years, bearing in mind international obligations to combat money laundering, terrorism and drug trafficking.

That said, the Government of Dominica takes the view that strict due diligence is applied in applications for Dominican citizenship under its Citizenship by Investment

10 February 2012, the FATF's latest definition.

11 tdicitizenship.com/dominica-application.

12 www.dominicacitizenshipbyinvestment.com.

13 Tdicitizenship.com/dominica-application.

Programme. This was expressed by the Foreign Affairs Minister, Francine Baron,[14] who said, in addition to engaging internationally reputable investigative agencies, 'checks are carried out by IMPACS, that is the CARICOM Implementing Agency for Crime and Security, and governments are asked to run the names through their database'.

III The Maltese experience

Dominica is certainly not as rigorous as the Malta Individual Investment Program, the first investment citizenship program of its kind to be recognised by the European Commission.[15] The Maltese Government was quick to realise that obtaining this blessing from the European Commission and being able to offer the ability to travel freely to Schengen countries including Switzerland immensely increased the value of the Maltese passport. That is incentive enough to commit to the highest standard of due diligence and vetting of investor applicants, ensuring only persons of impeccable standing and repute are admitted. It should not be surprising therefore that Malta has some of the strictest due diligence standards of any immigrant investor programme in the world.

The Maltese government has a four-tier due diligence process managed directly by the government to ensure comprehensive assessment of candidates under the Malta Individual Investor Programme.

In order to satisfy itself that the applicant has a clean criminal record, the Maltese government conducts extensive criminal checks with INTERPOL, the world's largest international police organisation with 192 member countries. INTERPOL facilitates cooperation between police services around the world. With its high-tech infrastructure of technical and operational support, the organisation is well equipped to meet the growing challenges of fighting crime in an increasingly borderless world.

INTERPOL offers access to impressive up to date global data which maximises the reach of national authorities. Thus Malta is provided instant, direct access to a number of criminal databases containing millions of records, contributed to by countries across the world.

---

14 Dominica News Online - Tuesday, March 21, 2017 - at 11:47 AM.

15 European Commission Press Release, Brussels, January 29, 2014; see also Nexia.com/news, 29 May 2014.

All databases, except the INTERPOL Ballistic Information Network (IBIN), are accessible real-time through the I-24/7 network, which connects all INTERPOL National Central Bureaus (NCBs).

The organisation has developed online solutions that reach beyond these NCBs to frontline law enforcement officers such as border guards. Frontline law enforcement officers are thus able to search databases on wanted persons, stolen and lost travel documents and stolen motor vehicles.

The Maltese Individual Investor Programme gives due consideration to every element of the application process, with a particular focus on due diligence. The official guide from the IIP gives a detailed step-by-step account of the procedure followed, including the rigorous process of checks each application goes through. The procedure includes the commissioning of two independent third-party due diligence reports.

Applicants to the Malta Individual Investor Programme need to engage Approved or Accredited Agents who are authorised and trained to guide them through the whole application process.

These Approved Agents are professional individuals who are accredited in their own personal capacity but who may also appear on behalf of firms. Identity Malta accredits individuals to ensure traceability, facilitate communication and ensure personal responsibility for each application, including carrying out the Know Your Client procedure on each client in accordance with financial service industry standards.

Persons wishing to become Approved Agents must fulfil ten requirements. Three of the more important are that they must be cleared by Malta Police Authorities, they must show that they have unrestricted access to a Due Diligence Database and that they have attended a mandatory briefing work shop.[16]

a) Robust due diligence helps to avoid pitfalls

INTERPOL's system of Notices is used to issue international alerts for fugitives, suspected criminals, persons linked to or of interest in an ongoing criminal

16 www.iip.gov.mt/becoming-an-accredited-agent.

investigation, persons and entities subject to UN Security Council Sanctions, potential threats, missing persons and dead bodies. Details are stored in a database known as the INTERPOL Criminal Information System, which also contains personal data and the criminal history of people subject to request for international police cooperation.[17]

The value of the INTERPOL databases is almost infinite ranging from identification of international child sex abusers to DNA profiling and face recognition, to cross-checking records in fingerprint databases, to providing dedicated platforms for the storage and cross-checking of images for the purpose of identifying fugitives.

For investment migration programmes, one of the most important services INTERPOL can offer is with respect to Stolen and Lost Travel Documents (SLTD), given the importance of border points in the preservation of national security. INTERPOL provides a range of databases to help detect and prevent the fraudulent use of travel papers and administrative documents, thereby restricting the movement of criminals or illicit items.

The SLTD database contains records on lost, stolen and revoked travel documents – such as passports, identity cards and United Nations laissez-passer or visa stamps, including stolen blank travel documents.[18] This information is critical to any due-diligence process since the identity of the applicant is crucial in the process of acquiring a second citizenship.

b) Collaboration with the International Criminal Court

In addition, the Maltese government engages other sources and authorities including the International Criminal Court, created in Rome by international Statute adopted by 120 countries on 17 July 1998. The ICC did not however begin functioning until 1 July 2002, when the Rome Statute came into effect.

The Court's basic mandate is to prosecute the most serious crimes of concern to the international community. These are crimes of genocide, crimes against humanity and war crimes.[19] It appears however that the ICC will cooperate with a Member State

17 www.interpol.int.

18 Ibid.

19 Article 5, Rome Statute, UNDOC A/CONF.183/9*

seeking information for investigative purposes not necessarily contemplated to lead to prosecution. Article 10 of the Rome Statute provides, inter alia, as follows:

> 10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.
>
> (b) (i) The assistance provided under subparagraph (a) shall include, inter alia:
>
> a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and
>
> b. The questioning of any person detained by order of the Court;

Thus Malta requests information from the ICC on the ground that it wishes to satisfy itself that an applicant under the IIP has not engaged in conduct which constitutes a crime in Malta.

Chapter 3

International Due Diligence Regime

IV The financial action task force on money laundering

Not all jurisdictions follow Malta's lead in utilising the resources of INTERPOL and the ICC. There are however other international protocols which are used more broadly. These protocols create international and domestic legal requirements with respect to issues such as money laundering and terrorist activity financing.

a) FATF Recommendations

In April 1990 the Financial Action Task Force on Money Laundering (FATF)[20] issued a set of 40 Recommendations aimed at improving national legal systems, enhancing the role of the financial sector and increasing cooperation in the global fight against money laundering. In response to technological changes and the rise of more sophisticated ways to launder money, the 40 Recommendations were revised and updated in 1996 and in 2003.

Not surprisingly, the 2003 Recommendations are more detailed and comprehensive than the previous ones, especially with respect to customer identification and the monitoring of suspicious transactions. The 2003 Recommendations also lay out detailed due diligence requirements, reporting requirements, and asset seizure and freezing mechanisms. Furthermore, they include measures to be taken in order to discourage the misuse and abuse of corporate entities by extending the application of the rules to several designated non-financial businesses and professions.

The revised Recommendations have been reasonably successful in curbing the practice of using legal persons to disguise the true ownership and control of illegal proceeds, as well as the practice of using non-financial professionals to provide advice and assistance in money laundering schemes.

20 The Financial Action Task Force (on Money Laundering) (FATF), also known by its French name, *Groupe d'action financière* (GAFI), is an intergovernmental organisation founded by 30 countries in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001 the mandate was extended to include terrorism financing. FATF monitors countries' progress in implementing its Recommendations by 'peer reviews' ('mutual evaluations') of its 36 member countries and eight associate member organisations. The FATF Secretariat is housed at the headquarters of the OECD in Paris.

b) FATF extended to Fight against Financing of Terrorism

Another major change after the turn of the century was the extension of the FATF mandate in October 2001 to include the fight against terrorist financing. Following the terrorist attacks again the Unites States on 11 September 2001, a novel approach to addressing international terrorism emerged. Collective action was strengthened as a central tool in the fight against terrorism. The custodian of this tool appears to be the United Nations Security Council which for the first time, brought into being what is effectively proactive legislation applicable to all Member States.

United Nations Security Council Resolution 1373[21] is closer to domestic legislation than it is to a traditional intergovernmental resolution in the clarity and directness of its language. Consider the following provision:

> Acting under Chapter VII of the Charter of the United Nations,
>
> 1. Decides that all States shall:
>
> (a) Prevent and suppress the financing of terrorist acts;
>
> (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
>
> (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
>
> (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

21 UNSC Res 1373 (28 September 2001) S/RES/1373 (2001).

The importance of Resolution 1373 is underlined by the fact that, in accordance with Security Council Resolution 1535 (2004), a technical guide has been developed to ensure its proper implementation.[22] The Counter-Terrorism Committee Executive Directorate (CTED) is required to assist the Counter-Terrorism Committee in its efforts to monitor the implementation by Member States of Security Council Resolution 1373. In this respect, the Committee requested CTED to prepare the technical guide to serve as a reference tool and to help ensure *consistent* analysis of States' implementation efforts.

The guide addresses each paragraph of Resolution 1373 in turn, and indicates the relevant section or sections of the preliminary implementation assessment (PIA) matrix approved by the Committee in 2006 to facilitate analysis of Member States' implementation efforts. The guide does not purport to impose any obligations upon States apart from those which already exist by virtue of the relevant Security Council resolutions, international treaties, customary international law or other obligations voluntarily undertaken by States.

The Financial Action Task Force and the United Nations play different roles, with the UN being the primary player in the fight against terrorist financing. It is the UN which is responsible for establishing a framework of binding international legal obligations. The Terrorist Financing Convention, Security Council Resolution 1373 is an example of this. The FATF has complemented and reinforced the work of the United Nations by adopting the FATF Recommendations. These Recommendations help countries combat terrorist financing.

Reference has already been made to the original 40 Recommendations which were followed by another eight Recommendations. A ninth Special Recommendation was adopted in October 2004. These new standards recommend the criminalisation of the financing of terrorism in accordance with the United Nations Convention for the Suppression of the Financing of Terrorism.

The FATF 40+9 Recommendations provide a comprehensive regime for the monitoring and combating of money laundering and the financing of terrorism.

Each country is expected to take immediate steps to ratify and implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.[23]

---

22 Technical Guide to the Implementation of Security Council Resolution 1373 (2001).

23 FAFT Recommendation 1, Special Recommendations 2010, p. 3.

Countries are also expected 'immediately' to implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.[24]

c) FATF and the Caribbean region

Twenty-five countries in the Caribbean basin have agreed to implement common counter-measures against money laundering. They belong to an organisation of states called the Caribbean Financial Action Task Force (CFATF). All Caribbean countries with citizenship by investment programmes (Antigua and Barbuda, Grenada, St. Kitts and Nevis, St. Lucia, and Dominica) are members of the Task Force established after two key meetings convened in Aruba and Jamaica in the early 1990s.

It is interesting to contrast the extent to which these countries have complied with the FATF Recommendations.

Compliance with the FATF Recommendations is important to everyone but particularly to countries with citizenship by investment programmes.

These countries are concerned with the levels of national compliance with respect to the global anti-money laundering and combating the financing of terrorism (AML/CFT) standards established by the FATF. Perceived or actual failure to adhere to these standards can be damaging to these nations' reputations and the health of their financial systems.

d) Compliance with FATF Recommendations by Caribbean CIPs

Given the differing cultures and legal and financial systems, measuring the degree of compliance is a challenge. The 2004 Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations is the comprehensive tool used to assess compliance. This tool permits rating compliance by states as fairly and as comprehensively as possible. The Methodology establishes four levels of compliance. Thus a nation can be Compliant (C), Largely Compliant (LC), Partially Compliant (PC), and Non-Compliant (NC).

24 FATF Special Recommendations on Terrorist Financing.

On this basis we shall briefly examine the performance of St. Kitts and Nevis, Antigua and Barbuda, and Dominica. The three jurisdictions were evaluated respectively on 22 June 2009, 23 June 2008 and 2 July 2009. The Appendix below shows a summary of these evaluations.

With respect to the 40 Recommendations[25], all three countries were fully compliant with Recommendation 37, which reads as follows:

> Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality.
>
> Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

e) St. Kitts and Nevis

St. Kitts and Nevis was compliant with Recommendations 4, 18, 19, 20, 22, 36, and 39[26]. These Recommendations read as follows:

> Recommendation 4
>
> Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

25 The FATF Recommendations are available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

26 Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism; St. Kitts & Nevis (22 June 2009), available at: http://www.fatf-gafi.org/documents/documents/mutualevaluationofsaintkittsandnevis.html

Recommendation 18

Countries should not approve the establishment or accept the continued operation of shell banks.[27]

Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

Recommendation 19

Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

Recommendation 20

Countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions, that pose a money laundering or terrorist financing risk.

Countries should further encourage the development of modern and secure techniques of money management that are less vulnerable to money laundering.

Recommendation 22

Financial institutions should ensure that the principles applicable to financial institutions, which are mentioned above are also applied to branches and majority

27 Shell banks are domestic or foreign banks with no physical address or location in the countries where they operate.

owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.

Recommendation 36

Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings. In particular, countries should:
a) Not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance.

b) Ensure that they have clear and efficient processes for the execution of mutual legal assistance requests.

c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions to maintain secrecy or confidentiality.

Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

Recommendation 39

Countries should recognise money laundering as an extraditable offence. Each country should either extradite its own nationals, or where a country does not do so solely on the grounds of nationality, that country should, at the request of the

country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions.

Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgements, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

f) Antigua and Barbuda

Antigua and Barbuda was fully compliant with six recommendations[28]. Unlike St. Kitts and Nevis, Antigua and Barbuda was also fully compliant with Recommendation 28 which reads as follows:

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

---

28 Mutual Evaluation/Detailed Assessment Report: Anti-Money Laundering and Combating the Financing of Terrorism; Antigua and Barbuda Ministerial Report (23 June 2008), available at: http://www.fatf-gafi.org/countries/a-c/antiguaandbarbuda/documents/mutualevaluationofantiguaandbarbuda.html

g) Dominica

Dominica was fully compliant only with Recommendations 10 and 37[29]. Recommendation 37 has already been referred to above. Recommendation 10 reads as follows:

> Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities.
>
> Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal activity.
>
> Financial institutions should keep records on the identification data obtained through the customer due diligence process (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the business relationship is ended.
>
> The identification data and transaction records should be available to domestic competent authorities upon appropriate authority.

h) Non-compliance by St. Kitts and Nevis

Overall, St. Kitts and Nevis was the least non-compliant jurisdiction, having received an 'NC' with respect to Recommendations 5, 13, 16, 17, 24, and 27.

Recommendation 5 aims to suppress unhealthy secrecy in financial dealings and promotes enhanced due diligence. It is worth reproducing the Recommendation which reads as follows:

29 Anti-Money Laundering and Combating the Financing ofTerrorism: The Commonwealth of Dominica (2 July 2009), available at: http://www.fatf-gafi.org/countries/d-i/dominica/documents/mutualevaluationofdominica.html

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:

- establishing business relations;
- carrying out occasional transactions: (i) above the applicable designated threshold; or (ii)

that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII;

- there is a suspicion of money laundering or terrorist financing; or
- the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The customer due diligence (CDD) measures to be taken are as follows:

a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.

b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.

c) Obtaining information on the purpose and intended nature of the business relationship.

d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should apply each of the CDD measures under (a) to (d) above, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction. The measures that are taken should be consistent with any guidelines issued by competent authorities. For higher risk categories, financial institutions should perform enhanced due diligence.

In certain circumstances, where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures.

Financial institutions should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with paragraphs (a) to (c) above, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, though financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

Recommendation 13 requires financial institutions which suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, to be required, directly by law or regulation, to report these suspicions promptly to the financial intelligence unit (FIU).

Recommendation 16 addresses the applicability of Recommendations 13 to 15, and 21 to designated nonfinancial businesses and Designated Non-Financial Businesses and Professions (DNFBPs) as follows:

The requirements set out in Recommendations 13 to 15, and 21 apply to all designated nonfinancial businesses and professions, subject to the following qualifications:

a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d).

Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to in Recommendation 12(e).

Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

Recommendation 17 urges countries to ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by the Recommendations that fail to comply with anti-money laundering or terrorist financing requirements.

Recommendation 24 expands upon Recommendation 16 with respect to DNFBPs as follows:

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. At a minimum:

- casinos should be licensed;
- competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino
- competent authorities should ensure that casinos are effectively supervised for compliance with requirements to combat money laundering and terrorist financing.

b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

The last Recommendation St. Kitts and Nevis was noncompliant with was Recommendation 27, which reads:

> Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques. Countries are also encouraged to use other effective mechanisms such as the use of permanent or temporary groups specialised in asset investigation, and co-operative investigations with appropriate competent authorities in other countries.

Antigua and Barbuda and Dominica were significantly more non-compliant than St. Kitts and Nevis with Antigua and Barbuda being non-compliant with 14 Recommendations while Dominica was non-compliant with 17.

i) Non-compliance by Antigua and Barbuda

The following are the Recommendations that Antigua and Barbuda was non-compliant with. In addition to these Recommendations the country was also non-compliant with Recommendations 10, 16, 18 and 22 which have already been cited above.

> **Recommendation 6**
>
> Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:
>
> a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.
>
> b) Obtain senior management approval for establishing business relationships with such customers.
>
> c) Take reasonable measures to establish the source of wealth and source of funds.
>
> d) Conduct enhanced ongoing monitoring of the business relationship.

Recommendation 7

Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:

a) Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

b) Assess the respondent institution's anti-money laundering and terrorist financing controls.

c) Obtain approval from senior management before establishing new correspondent relationships.

d) Document the respective responsibilities of each institution.

e) With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.

Recommendation 8

Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to face business relationships or transactions.

Recommendation 9

Countries may permit financial institutions to rely on intermediaries or other third parties to perform elements (a) – (c) of the CDD process or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

The criteria that should be met are as follows:

a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a) – (c) of the CDD process. Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.

b) The financial institution should satisfy itself that the third party is regulated and supervised for, and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10.

It is left to each country to determine in which countries the third party that meets the conditions can be based, having regard to information available on countries that do not or do not adequately apply the FATF Recommendations.

Recommendation 11

Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities and auditors.

Recommendation 12

The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:

a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.

b) Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate.

c) Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing 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 and selling of business entities.

e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.

Recommendation 15

Financial institutions should develop programmes against money laundering and terrorist financing. These programmes should include:

a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees.

b) An ongoing employee training programme.

c) An audit function to test the system.

Recommendation 21

Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations.

Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate countermeasures.

Recommendation 23

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations.

Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.
For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes.

Other financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering urposes, having regard to the risk of money laundering or terrorist financing in that sector.

At a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

Recommendation 33

Countries should take measures to prevent the unlawful use of legal persons by money launderers.

Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures.

Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

j) Non-compliance by Dominica

Dominica was non-compliant with Recommendations 5, 6, 7, 8, 12, 13, 16, 17, 18, 19, 21, 23, 24, 25, 30, 32 and 34. All but five of these Recommendations have been cited above.

The remainder are reproduced below:

Recommendation 19

Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

Recommendation 25

The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

Recommendation 30

Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources.

Countries should have in place processes to ensure that the staff of those authorities are of high integrity.

Recommendation 32

Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems.

This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.

Recommendation 34

Countries should take measures to prevent the unlawful use of legal arrangements by money launderers.

In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities.

Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

k) Compliance with Special Recommendations

With Respect to the remaining Recommendations in the group of 40, the jurisdictions were either Largely Compliant or Partially Compliant.

None of the three jurisdictions however were fully compliant with any one of the nine Special Recommendations. St. Kitts was Partially Compliant with all but two, namely Special Recommendations four and nine. Antigua and Barbuda was Largely Compliant with one, Partially Compliant with three, and Non-Compliant with five. Dominica was Partially Compliant with five and Non-Compliant with four.

The one Special Recommendation all jurisdictions were Non-Compliant with was Special Recommendation IV which reads:

> If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

The other Special Recommendation that St. Kitts and Nevis was Non-Compliant with was Special Recommendation IX, which urges countries to put in place measures to detect the physical cross-border transportation of currency and bearer-negotiable instruments, including a declaration system or other disclosure obligation.

Consequently, countries are further urged to ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments suspected to be related to terrorist financing or money laundering, or which are falsely declared or disclosed.

Countries should, furthermore, ensure that effective, proportionate and dissuasive sanctions are available to deal with persons making false declarations or disclosure.

In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.

Antigua and Barbuda was Non-Compliant with Special Recommendations III, IV, VI, VII and VIII which deal with freezing and confiscation of terrorist assets, reporting suspicious transactions relating to terrorism, licensing of alternative remittance service providers, provision of originator details in wire transfers, and revision of

adequacy of laws with respect to entities like non-profit organisations which may be vulnerable to abuse by financiers of terrorism.

Dominica was Non-Compliant with Special Recommendations IV, VI, VII and VIII.

CFATF went on to provide a detailed plan of action for all three jurisdictions, designed to improve their Anti-Money Laundering and Combating of Financing of Terrorism regimes.[30] The plans centred on amending existing legislation and also on fortifying legislation and strengthening implementation capacity.

VI Consequences of non-compliance

a) St. Kitts and Nevis follow up

Since St. Kitts and Nevis was rated PC/NC for thirteen of the sixteen Core and Key Recommendations, the CFATF Council of Ministers which adopted the third round Mutual Evaluation Report decided to place the jurisdiction in the pool of countries subject to the International Co-operation Review Group process. The ICRG has analysed high risk jurisdictions and recommended specific action to address the MLF/FT risks since 2007.

St. Kitts and Nevis' first follow-up report was tabled in May 2010, a year after the tabling of the adoption of the Mutual Evaluation Report. At that time, St. Kitts and Nevis was placed in regular (expedited) follow-up and was required to report back at six monthly intervals.

After reporting back to the May 2014 Plenary, St. Kitts and Nevis exited the CFATF ICRG process. It was also noted that the country had 'almost achieved complete compliance with the Core and Key Recommendations, with only R. 26 being not fully met' i.e. not at the level of a 'C'.[31]

30 CFATF Mutual Evaluation Reports 22 June 2009, 23 June 2008, and 2 July 2009. Table 2: Recommended Action Plan to Improve the AML/CFT System.

31 CFATF, Ninth Follow Up Report, St. Kitts and Nevis, 2 December 2014.

b) Antigua and Barbuda follow up

Antigua and Barbuda's third round Mutual Evaluation Report was adopted by the CFATF Council of Ministers in June 2008, in Haiti. Six months later, Antigua and Barbuda tabled its first follow-up report, and was placed in enhanced follow up and required to report back to the May 2009 Plenary. Antigua and Barbuda reported back in May 2009, October 2009, May 2010, May 2011, May 2012, May 2013, May 2014 and May 2015.

By October 2013, three years after the adoption of Antigua and Barbuda's ICRG Action Plan by the CFATF, Antigua and Barbuda had made significant progress on AML/CFT matters by meeting all its Action Plan items.

Consequently, during the February 2014 Plenary, the FATF indicated that Antigua and Barbuda was no longer subject to specific monitoring by the ICRG, explicitly, the FATF welcomed Antigua and Barbuda's significant progress in improving its AML/CFT regime and noted that Antigua and Barbuda had established the legal and regulatory framework to meet its commitments in its Action Plan.[32]

c) Dominica follow up

With respect to Dominica, the country received PC or NC ratings on thirteen of the sixteen Core and Key Recommendations, namely Recommendations 1, 3, 4, 5, 10, 13, 23, 26, 35, 36 and 40, and Special Recommendations I, II, III, IV and V.

The November 2014 Plenary of CFATF recognised that Dominica had made significant progress in addressing the deficiencies identified in the 2009 Mutual Evaluation Report and therefore could exit the follow-up process.

Dominica had progressed to the point where only Recommendations 32, 33 and Special Recommendation IX could be considered outstanding. Recommendations 9 and 30 had been significantly addressed and now only had very minor shortcomings. All of the other Recommendations which were rated as PC and NC had been fully rectified.

Dominica's 8th Follow-Up Report, which was presented at the November 2014 Plenary contains a detailed description and analysis of the actions taken by Dominica to rectify the deficiencies identified in respect of the Core and Key Recommendations rated PC

32 CFATF, Seventh Follow Up Report, Antigua and Barbuda, 29 May 2015.

or NC, as well as a summary of progress in other Recommendations, in the 2009 Mutual Evaluation Report.[33]

The CFATF's authority to monitor the performance of member countries so closely comes in part from a November 1996 Memorandum of Understanding, under which CFATF members agreed, among other things, to endorse and implement the FATF Forty Recommendations.

VII Responsibilities of national jurisdictions

Clearly an international framework to facilitate effective due diligence with respect to money laundering and combating the financing of terrorism exists. This does not mean however that all political regimes will conduct themselves appropriately in the management of their citizenship by investment programmes. Furthermore, the existence of this regime does not absolve national authorities from the responsibility of continuous monitoring and improvment of their citizenship by investment programmes.

Dr Isaac Newton, the International Leadership and Change Management Consultant and Political Adviser has reportedly warned the Government of Antigua and Barbuda against hubris and recklessness in the management of the country's programme.[34]

Dr Newton, who specialises in government and business relations, and sustainable development projects, has called for the interruption of the Antigua and Barbuda CIP 'to allow important allies to creatively address win-win outcomes'.[35] He has argued that 'more meaningful and constructive back channel conversations are needed to explore best strategies to diminish additional scandals that put the country's image into further disarray while restoring the CIP to its intended glory'.[36]

Dr Newton does not advocate elimination of the programme, merely a temporary closure to allow for reassessment and rectification of past mistakes. Such reassessment would hopefully result in the creation of more robust and confidence-inspiring institutions which complement international due diligence frameworks.

---

33 CFATF, Eighth Follow Up Report, Dominica, 10 November 2014.

34 Guest Commentary, the Daily Observer, 24 July 2017.

35 Ibid.

36 Ibid.

It is important that allies and partners have confidence not only in procedures but also in the institutions of countries with citizenship by investment programmes.

a) Consequences of failure to live up to responsibilities

In 2015 Canada ended the much-cherished visa waiver for visiting Kittitians and Nevisians. This was a result of a lack of confidence on the part of Canadians and other partners about the due diligence institutions and processes in St. Kitts and Nevis. It was concerning to many members of the international community that 'anybody with $250,000 could buy a St. Kitts and Nevis passport without so much as visiting the island nation'.[37]

It did not help that when St. Kitts and Nevis started selling diplomatic credentials, this too was unfairly tied to the citizenship by investment programme. Hence the matter of Iranian businessman Alizera Moghadam, who entered Canada with a diplomatic passport he reportedly claimed to have purchased for CAD1 million,[38] became the symbol of the political abuse of the St. Kitts and Nevis programme. To the outside world it was a nice point that diplomatic passports were not actually issued by citizenship by investment programmes. It was sufficient they were issued by the Government of St. Kitts and Nevis.

The Moghadam matter prompted the United States to warn that '"illicit actors" were freely roaming the globe under the St. Kitts and Nevis name'.[39] The ability of otherwise undesirable persons to enter a jurisdiction on a second passport when they could not do so on their first passport is of course a matter of grave concern to a country's international partners. These partners need assurance that the passport holders of countries with which they have visa waiver arrangements have been properly vetted and will not threaten the security of their country.

b) Importance of designing appropriate governance models

For the most part, citizenship by investment programmes are managed by competent professionals aware of these risks. Why then do some programmes run into difficulties?

---

37 National Post (Canada) 28 December 2015.

38 Tristin Hopper, ,"Greed" blamed after Canada punishes St. Kitts and Nevis over its buy-a-passport program' (Naational Post, 28 December 2015), available at: http://nationalpost.com/news/world/greed-blamed-as-buy-a-passport-program-lands-st-kitts-and-nevis-off-canadas-visa-waiver-list

39 Ibid.

The answer perhaps lies in the nature of the relationship between the agencies and their governments, and also the institutions employed to manage that relationship. While government must set policy for citizenship by investment, actual operations must be left entirely in the hands of the professional agencies with the heads of these agencies being accountable either to the legislature or the supervisory board of that agency. The agency itself may be supervised by a member of the executive branch. Even with this supervision, the relationship between the agency and the government must be 'arm's length'.

c) Malta's governance model

An example of a good governance model can be found in the central Mediterranean, where the Individual Investor Programme of the Republic of Malta (IIP), by virtue of Legal Notice 47 of 2014, permits the granting of citizenship by a Certificate of Naturalisation to individuals and their families who contribute to the economic and social development of Malta. The IIP is managed by Identity Malta, whose mission is to execute the functions and duties of Public Administrator in matters relating to passports, identity documents, work and residence permits for expatriates, land registration and registration of public deeds, acts of civil status and individual investment programmes.

Identity Malta is a body corporate with its own distinct legal personality and the capacity to enter into contracts, acquire and dispose of any property, commence legal proceedings and do all such things and enter into all such transactions as are incidental or conducive to the exercise or performance of its functions under the Agreement between the Agency and the Permanent Secretary in the Ministry for Home Affairs and National Security. Identity Malta is headed by the Executive Chairperson who performs all the duties and functions as the Chief Executive Officer of the Agency.

Under Subsidiary Legislation 497.07, the Minister responsible for identity management has responsibility for the agency.[40] This arrangement is meant to ensure that while there is public accountability through the Minister, the actual operations are left to the Chairperson and competent professionals and technocrats.

The specific responsibilities laid out for the Agency in Legal Notice 47 of 2014 reveal a clear understanding of what constitutes 'operational' matters. It is worth reproducing here the Agency responsibilities laid out in Section 3 of the legal notice:

40 Section 4 of the Identity Malta Agency (Establishment) Order.

(3) Approved Agents shall be licensed by Identity Malta after carrying out a due diligence process in their regard. They shall be entitled to introduce prospective applicants to Identity Malta.

(4) Approved Agents shall pay an annual licence fee and shall abide by the conditions of their licence.

(5) Identity Malta shall be entitled to withdraw a licence issued to an Approved Agent if, after due investigation, it is satisfied that:

(a) the Approved Agent has acted in an unethical or an unprofessional manner and has substantially prejudiced the programme; or

(b) the Approved Agent has committed a serious breach of guidelines, codes of conduct or codes of ethics issued by Identity Malta from time to time and made specifically applicable to Approved Agents.

The fact that Identity Malta is a body corporate with a distinct legal personality and the fact that the agency is headed by a Chairperson with executive powers, strengthens the independence of the citizenship by investment regime in Malta.

The arm's-length nature of the relationship between the programme and the government is further strengthened by Article 25 of the Maltese Citizenship Act (Cap 188), which provides for the appointment of the Regulator (Individual Investor Programme).

The Regulator is appointed by the Prime Minister after consulting the Leader of the Opposition. It is a requirement that such a person should have held the office of Judge, Magistrate, Attorney General or Permanent Secretary. In the alternative, the person should have practiced as an advocate in Malta for a period of at least twelve years.

It is interesting that in any interim period during which a Regulator is not appointed, the Ombudsman (appointed under the Ombudsman Act) acts as ex officio Regulator. All this adds to the credibility of the citizenship by investment programme as an independent regime.

The Regulator keeps under review all aspects of the Individual Investor Programme. In particular, as provided by Article 25A of the Citizenship Act, he or she has the power to investigate complaints made about Programme.

In keeping with the spirit of autonomy and independence, Article 25(5) of the Citizenship Act specifies that, in the discharge of his functions under the Act, the

Regulator shall act in his individual judgement and shall not be subject to the direction or control of any other person or authority.

Furthermore, there is a duty on any person involved in the administration of the Programme (or of any other matter in relation to which the Regulator is assigned functions) to disclose or give to the Regulator such documents or information as the Regulator may require for the purpose of enabling him to discharge his functions.

The Regulator is obliged to report annually on the discharge of his functions to the Minister. He may also make reports at other times as he sees fit. These reports may not include personal data relating to individuals who have acquired Maltese Citizenship under the Programme. This is a sensible provision which protects new citizens coming from authoritarian regimes without diluting the value of information and data needed to assess the workings of the Programme.

Thus on December 20, 2017, the Office of the Regulator for the Individual Investor Programme released its fourth annual report containing a variety of statistical data for the 12-month period between July 1st, 2016 and June 30th 2017.

According to the new data, the number of applications submitted in the period fell from the 451 recorded in the previous year to 377, a decrease of some 17%.

Even so, interest in the Programme is still robust as evidenced by the fact that the largest source of applicants, Europeans (chiefly Russians and Ukrainians), applying to the programme remained stable at 44.5%, virtually unchanged since the previous year, while the proportion of applicants hailing from Asia has increased from 15.3% to 21.5%.

Nationals of the Gulf Region, Africa, and North America accounted for 8.2%, 5.6%, and 4.8% of applications, respectively.

The figures also reveal a drastic increase in the number of investors receiving their Maltese citizenship, as 386 main applicants – as well as 1,023 dependents – were naturalised during the period, up from 137 the previous year.

Unusually for a programme of this nature, female applicants appear to be in the ascendency. While females made up only 8% of the main applicants in the period July 2014 to June 2015 (the first year such data was reported), their representation grew to 12% a year later and reached 21% in 2017.

Malta is not shy about turning down applicants who do not satisfy the strict criteria for citizenship. It is therefore not too surprising that of the 377 submitted applications, 83 were either rejected or withdrawn, up from the 52 rejections recorded during the same period in the previous year.

In addition to the Individual Investor Programme, Malta also has, under the Immigration Act, the Malta Residence and Visa Programme. This programme offers applicants the opportunity to reside, settle and stay indefinitely in Malta, as well as the ability to travel within the Schengen area without applying for a visa.

In addition to the due diligence conditions attached to the Malta Residence and Visa Programme, applicants are also required to pay a non-refundable administration fee of EUR 5,500. Once the applicant has satisfied the due diligence requirements and it has been established that he or she qualifies for such status, the applicant must make a contribution of EUR 30,000 (less the non-refundable fee that was paid on application).

Furthermore, the applicant must also present title to a qualifying property. In terms of the regulations, a qualifying property is an immovable property purchased for a minimum consideration of EUR 320,000 if situated in Malta or EUR 270,000 if situated in Gozo or the south of Malta. A 'leased' property would also qualify if the rent is at least EUR 12,000 per annum (where the property is situated in Malta) or EUR 10,000 per annum (where the property is situated in Gozo or the south of Malta).

There is also a requirement to make a qualifying investment. This is an investment in the form determined by Identity Malta holding an initial value of EUR 250,000. The Investment needs to be retained for a minimum period of five years.

This report focuses on the IIP as this is the programme most comparable to other citizenship by investment models which will be examined.

d) Antigua and Barbuda's governance model

In contrast, the Antigua and Barbuda citizenship by investment governance model does not create a convincing arm's length relationship between the agency charged with managing the programme and the government. In Antigua and Barbuda it is the Cabinet which establishes the Citizenship by Investment Unit.[41] Under previous legislation the Unit was established by the Minister responsible for the programme.[42] The Unit has four broad responsibilities. These responsibilities are to generally administer the Citizenship by Investment Programme in an efficient manner; to market and promote the programme to ensure it has maximum international visibility; to make recommendations to the Minister on the development of the programme

41 Section 3, Antigua and Barbuda Citizenship by Investment (Amendment) Act 2016.

42 Section 3, Antigua and Barbuda Citizenship by Investment Act 2013.

with a view to ensuring efficiency; and to collect information relating to the performance and competitiveness of the programme.

Unlike the Individual Investor Programme of the Republic of Malta, the Citizenship by Investment Unit in Antigua and Barbuda does not have specific statutory authority to carry out due diligence checks on applicants. In practice however, this function is one of the more important responsibilities undertaken by the Unit.

The Unit's staff are employed by the Permanent Secretary in the Office of the Minister, but are not civil servants.[43] The Cabinet appoints one of these persons to be the Chief Executive Officer.[44] The Chief Executive Officer is obliged to keep the Minister 'fully informed of the business of the Unit [and to] furnish the Minister with such information as the Minister may request with respect to any particular matter relating to the business and activities of the Unit'.[45]

The CEO may also engage such staff as may be necessary and proper 'for the due and efficient management and administration of the Unit' as he or she may think fit. In this eventuality, however, the CEO needs the Minister's approval.

The legislation seems to suggest that the Minister is entitled to request information about an applicant whose application has not yet been determined and may influence the outcome of that particular application. In the world of independent or quasi-independent agencies, this is heresy.

Unlike the case in Malta, the legislation in Antigua and Barbuda does not establish the Citizenship by Investment Unit as a body corporate with its own distinct legal personality. Furthermore, despite receiving advice on the matter, the Antigua and Barbuda government has not developed a memorandum of understanding akin to the Agreement between Identity Malta, as manager of the Individual Investment Programme, and the Permanent Secretary in the Ministry for Home Affairs and National Security.

As we shall see later, the structure of a citizenship or residence by investment programme affects due diligence.

---

43 Section 3(3) of the Antigua and Barbuda Citizenship by Investment (Amendment) Act 2016.

44 Section 3(4) and Section 3(7) of the Antigua and Barbuda Citizenship by Investment (Amendment) Act 2016.

45 Section 3(5), Antigua and Barbuda Citizenship by Investment (Amendment) Act 2016.

Chapter 4

Scrutinising the New Country

VIII Due diligence by the individual

The importance of due diligence is not confined to security matters affecting countries and the general population. The successful applicant also deserves protection from investments which are offered in bad faith and which are likely to result in financial ruin for the applicant.

While there may be little risk to the applicant in investing in the various national development funds, the applicant takes a risk by investing in business or real estate. The risk is greatest where the business or real estate investment is 'greenfield', the term applied to a form of foreign direct investment where the investor builds her operations in a foreign country from the ground up.

Whether greenfield or not, however, a successful applicant must bring the promised investment funds into the jurisdiction. This is necessary even when the applicant is investing by way of a donation into a national development fund. This money cannot be sourced locally as that would defeat the objective of attracting foreign direct investment.

No respectable bank will accept money today without following the Know Your Customer (KYC) Guidelines whose objective is to prevent banks from being used, wittingly or unwittingly, for money laundering activities. There are of course other procedures which also enable banks to understand their customers and their financial dealings better. The effect of the combination of the KYC Guidelines and these other procedures is to strengthen the ability of banks to manage their risks prudently. In the case of citizenship or residence by investment programmes, customer identification procedures and the monitoring of transactions are key elements of risk management.

Both the successful applicant and the government to whose development fund money is being transmitted, as well as the applicant's real estate developer or business partner, will be considered 'customers' under the KYC Guidelines.

In all jurisdictions with migration investment programmes the author is familiar with, banks use KYC Guidelines to collect and analyse basic identity information. They also use the Guidelines to check applicants' names against lists of politically exposed persons and other persons of interest in the context of anti-money laundering legislation. In this regard, the banks must determine their customer's risk in terms of propensity to commit money laundering, terrorist finance or identity theft. Banks have a very good incentive for following these procedures. Failure to comply with KYC Guidelines exposes banks to the prospect of losing correspondent banking arrangements.

Correspondent banking with global partners allows smaller banks access to the international payments system, which facilitates money transfers through transactions such as wire transfers, cheque clearing and currency exchange. Without these banking relationships, businesses are cut off from international trade and financing and (in the Caribbean region in particular) families are unable to collect remittances from relatives working abroad. Furthermore, foreign investors would be reluctant to invest if there is a risk of non-repatriation of profits because local jurisdictions do not have these critical correspondent banking arrangements.

a) Due diligence by the real estate investor

The need for due diligence does not end just because the investment funds have been accepted into the jurisdiction. In many ways the exercise is just beginning for the new citizen investing either in real estate or a business venture.

In both Antigua and Barbuda and St. Kitts and Nevis, the minimum investment required for citizenship under the real estate option is USD 400,000 in a government-approved real estate project. The required amount in Cyprus is EUR 2,000,000. The investor must therefore be satisfied at the very beginning of the process that the real estate project she is investing in is indeed approved by the government. In most jurisdictions this is not a challenge as the government typically certifies the approval of the project prior to the grant of citizenship.

Even so, the fundamentals of the specific property in the project need to be thoroughly inspected. The investor needs to know, for example, that the specific unit within the project has been properly constructed. If it has not yet been constructed, the investor needs to know that it will be built according to acceptable standards, and that the investor's money will be safe while the construction is taking place. While liens are unlikely to be attached to a property which has not yet been built, there may well be liens or other encumbrances with respect to the entire project. The investor must therefore know the full extent of her potential liability as owner of one of the units in the project.

Real estate documentation can be quite intimidating. Prudent investors will want to be confident that they understand at least the gist of all this documentation. They should certainly be clear about their title to the unit in the project. Even issues such as tax certificates and compliance with zoning regulations must be understood as they are not as remote to the investor's interest as may appear initially.

Prudent investors also take time to examine the reputation and standing of project managers. The short comings of a project manager cannot always be detected and will sometimes only emerge after injurious wrongdoing has been detected. A property manager might have borrowed impressive amounts of money for the project and offer

all kinds of incentives to purchasers. It is also possible, however, for the impressive resources to be diverted to an unrelated project which fails. In that eventuality, the investor stands to lose as her unit within the project is unlikely to be completed.

Where the investor acquires a unit which has been previously occupied, the investor must determine whether she will absorb legal liabilities from the previous owner's legal and regulatory violations. If there is any likelihood of this, the extent to which the seller or project manager will be accountable to the investor for this loss must also be determined.

Generally, the investor must seek appropriate advice and be on the lookout for scams. Writing in Fortune magazine, Andy J Semotiuk, a former United Nations correspondent who now practices immigration law in four jurisdictions, shared this experience:

> A few years ago a client from Africa came to see us about investing in Canada's Quebec investor program. While in our office he asked about the United States. We briefly told to him about the EB-5 program. His Quebec case went along smoothly but about a year later he called because he had invested into an EB-5 project through someone else and learned he was in trouble.
>
> Unfortunately, fraud artists looted his EB-5 project and disappeared with most of the money. We were able to get the U.S. Securities Commission involved in the case to recover at least some of the assets for this investor. Although luckily for our client not all was lost, to this day we are waiting for a court-supervised distribution of what money remains.
>
> This experience is increasingly common in the EB-5 program and was the recent focus of an article in The Washington Times:
>
> 'High-profile incidents of EB-5 fraud, and skepticism about the government's claims of job creation, have led three Republican senators – Chuck Grassley of Iowa, Bob Corker of Tennessee and Tom Coburn of Oklahoma – to request a federal audit so Congress can evaluate the program before it comes up for reauthorization next year.
>
> Mr. Grassley said whistleblowers have raised serious concerns with national security implications, and he wants to "sort through the vulnerabilities" of the program.'[46]

46 Andy J Semotiuk, EB-5 Fraud Highlights Risks of Investor Program, Forbes Magazine, 5 January 2015.

The US government has since introduced measures designed to address this kind of fraud. For example, conflict of interest rules have been tightened with respect to attorneys, consultants and advisers. The prudent advice from seasoned practitioners now is that investors should only use registered persons to sell, solicit, market, distribute or accept payments of fees related to EB-5 securities offerings.[47]

In most jurisdictions offering citizenship or residence by investment programmes, the due diligence for companies seeking approval for purposes of satisfying the requirements under the real estate option is performed by the agency responsible for managing the programme. But this due diligence is necessarily general, as it cannot address all the specific concerns of a particular investor. For this reason, prudent investors will usually prepare a comprehensive due diligence checklist, marking off each item of concern as it is addressed.

b) Due diligence by the business investor

The same is true of due diligence with respect to the business option. In all jurisdictions offering the business option in one form or another, the agency responsible for managing the programme will investigate in some detail the suitability of a business. This investigation will however be from the state's perspective. Thus the state may only address the benefits of the business to the country.

In the United States, however, the authorities have identified the danger of investors being misled. On 1 October 2013, the US Securities and Exchange Commission's Office of Investor Education and Advocacy and the US Citizenship and Immigration Services jointly issued an Investor Alert to warn individual investors about fraudulent investment scams which exploited the Immigrant Investor Program, known as 'EB-5'.

The two agencies said they were aware of investment scams targeting foreign nationals seeking to become permanent lawful US residents through the EB-5 Immigrant Investor Program. In close coordination with USCIS, which administers the EB-5 programme, the SEC has taken emergency enforcement action to stop fraudulent securities offerings made through EB-5.

47 Ibid.

In one case, *SEC v. Marco A. Ramirez, et al.*,[48] the SEC and USCIS worked together to stop an alleged investment scam[49] in which investors were allegedly falsely promised by USA Now regional centre a 5% return on their investment and an EB 5 visa. Their funds were instead misused for personal use by the defendant.

By way of explanation, the EB-5 programme provides foreign investors who can demonstrate that their investments are creating jobs in the US with an avenue to lawful permanent residence. Business owners apply to USCIS to be designated as 'regional centres' for the EB-5 programme. These regional centres offer investment opportunities in 'new commercial enterprises' which may involve securities offerings. Through EB-5, a foreign investor who invests a certain amount of money placed at risk, and creates or preserves a minimum number of jobs in the United States, is eligible to apply for conditional lawful permanent residence. Toward the end of the two-year period of conditional residence, the foreign investor is eligible to apply to have the conditions on their lawful permanent residence removed, if he or she can establish that the job creation requirements have been met. Foreign investors who invest through EB-5, however, are not guaranteed a visa or to become lawful permanent residents of the United States.[50]

In another case, *SEC v. A Chicago Convention Centre, et al.*,[51] the SEC and USCIS worked together to halt an alleged USD 156 million investment fraud.[52] The defendant used allegedly misleading information to solicit investors in the 'World's First Zero Carbon Emission Platinum LEED certified' hotel and conference center in Chicago and promised them to get back any administrative fees they paid if their EB-5 visa applications were denied. The defendants allegedly spent most of administrative fees, some also for personal use.

In response to cases like these, the SEC and the USICS recommended the following due diligence steps be followed with respect to any offering purporting to be affiliated with EB-5:

---

48 Securities and Exchange Commission v Marco A. Ramirez; Bebe Ramirez; USA Now, LLC; USA Now Energy Capital Group, LP; and Now Co. Loan Services LLC, United States District Court for the Southern District of Texas McAllen Division.

49 'Why Many EB-5 Investments Fail, and How Greenfield Advisors Can Help' (Greenfield Advisors), available at: https://www.greenfieldadvisors.com/why-many-eb-5-investments-fail-and-how-greenfield-advisors-can-help/

50 EB-5 Immigrant Investor section, www.uscis.gov.

51 United States Securities and Exchange Commission v A Chicago Convention Centre, LLC, Anshoor R Sethi, and Intercontinental Regional Centre Trust of Chicago, LLC, US District Court for Northern District of Illinois Eastern Decision, 6 February 2013.

52 'Why Many EB-5 Investments Fail, and How Greenfield Advisors Can Help' (Greenfield Advisors), available at: https://www.greenfieldadvisors.com/why-many-eb-5-investments-fail-and-how-greenfield-advisors-can-help/

1. Confirm that the regional centre has been designated by USCIS. If you intend to invest through a regional centre, check the list of current regional centres on USCIS's website at www.uscis.gov. If the regional centre is not on the list, exercise extreme caution. Even if it is on the list, understand that USCIS has not endorsed the regional centre or any of the investments it offers.

2. Obtain copies of documents provided to USCIS. Regional centres must file an initial application (Form I-924) to obtain USCIS approval and designation, and must submit an information collection supplement (Form I-924A) at the end of every calendar year. Ask the regional centre for copies of these forms and supporting documentation provided to USCIS.

3. Request investment information in writing. Ask for a copy of the investment offering memorandum or private placement memorandum from the issuer. Examine it carefully and research similar projects in evaluating the proposal. Follow up with any questions you may have. If you do not understand the information in the document or the issuer is unwilling or unable to answer your questions to your satisfaction, do not invest.

4. Ask if promoters are being paid. If there are supposedly unaffiliated consultants, lawyers, or agencies recommending or endorsing the investment, ask how much money or what type of benefits they expect to receive in connection with recommending the investment. Be skeptical of information from promoters that is inconsistent with the investment offering memorandum or private placement memorandum from the issuer.

5. Seek independent verification. Confirm whether claims made about the investment are true. For example, if the investment involves construction of commercial real estate, check county records to see if the issuer has obtained the proper permits and whether state and local property tax assessments correspond with the values the regional centre attributes to the property. If other companies have purportedly signed onto the project, go directly to those companies for confirmation.

6. Examine structural risk. Understand that you may be investing in a new commercial enterprise that has no assets and has been established to loan funds to a company that will use the funds to develop projects. Carefully examine loan documents and offering statements to determine if the loan is secured by any collateral pledged to investors.

7. Consider the developer's incentives. EB-5 regional centre principals and developers often make capital investments in the projects they manage. Recognize that if principals and developers do not make an equity investment in the project, their financial incentives may not be linked to the success of the project.

8. Look for warning signs of fraud. Beware if you spot any of these hallmarks of fraud:

   Promises of a visa or becoming a lawful permanent resident. Investing through EB-5 makes you eligible to apply for a conditional visa, but there is no guarantee that USCIS will grant you a conditional visa or subsequently remove the conditions on your lawful permanent residency. USCIS carefully reviews each case and denies cases where eligibility rules are not met. Guarantees of the receipt or timing of a visa or green card are warning signs of fraud.

   Guaranteed investment returns or no investment risk. Money invested through EB-5 must be at risk for the purpose of generating a return. If you are guaranteed investment returns or told you will get back a portion of the money you invested, be suspicious.

   Overly consistent high investment returns. Investments tend to go up and down over time, particularly those that offer high returns. Be suspicious of an investment that claims to provide, or continues to generate, high rates of return regardless of overall market conditions.

9. Unregistered investments. Even though a regional centre may be designated as a regional centre by USCIS, most new commercial enterprise investment opportunities offered through regional centres are not registered with the SEC or any state regulator. When an offering is unregistered, the issuer may not provide investors with access to key information about the company's management, products, services, and finances that registration requires. In such circumstances, investors should obtain additional information about the company to help ensure that the investment opportunity is bona fide.

10. Unlicensed sellers. Federal and state securities laws require investment professionals and their firms who offer and sell investments to be licensed or registered. Designation as a regional centre does not satisfy this requirement. Many fraudulent investment schemes involve unlicensed individuals or unregistered firms.

11. Layers of companies run by the same individuals. Some EB-5 regional centre investments are structured through layers of different companies that are managed by the same individuals. In such circumstances, confirm that conflicts of interest have been fully disclosed and are minimized.

The agencies conclude with the warning that 'if your investment through EB-5 turns out to be in a fraudulent securities offering, you may lose both your money and your path to lawful permanent residence in the United States. Carefully vet any EB-5

offering before investing your money and your hope of becoming a lawful permanent resident of the United States'.[53]

This is very helpful as states do not always address investor-specific risks and concerns. For example, the government may wish to encourage the development of a particular industry but the individual investor may not be familiar with this industry and may not necessarily have any past management or operational experience in this regard. It would be prudent then for an investor to engage a business consultant with the skill and ability to pinpoint promising companies within the industry to invest in.

Finding the 'right' company is not however the end of the story. There are still a number of questions to be asked.

The first question would be 'What is the state of the industry in which the business operates?' This question is meant to ascertain whether the industry is in a state of growth or not. The question is extremely important because often the government will encourage investments in sectors which are in decline. Where this is the case, an investor will want to know why the sector is in decline. It may be that the reasons for the decline are not insurmountable. If this is the case, the issue may then become one of incentives. A government that is confident that a particular industry can be revived is likely to offer incentives to the investor. The case for the incentives becomes easier where the investor undertakes to employ nationals.

Since all businesses depend on the existence of viable markets, it is also important to know the state of the particular business's target market. Specifically, the investor needs to ask if this market is growing or shrinking. Factors influencing growth or shrinkage include demographic change, such as an aging population, and reduction in disposable income in that market.

On the other hand, a business's customer base could be growing. In that case it would be a mistake for the investor to rest on his laurels and assume all is well because the growth could be driven entirely by new customers in the industry who do not yet form part of the business's profile. In this case the business must diversify its customer base.

There are two other factors related to this. The first concerns the degree of competition and how the business compares to its rivals in the industry. However great the competition, it is important to assess the strengths and weaknesses of

53 Investor Alert-Investment Scams Exploit Immigrant Investor Program, 1 October 2013, Official website of the Department of Homeland Security.

these competitors. The second factor has to do with the state of the particular area where the business is located. In this regard it is important to study area-specific population and demographic changes with a view to determining whether people are moving into the area and how this movement affects the population profile. Furthermore, a general study of the local economy focusing on the performance of existing businesses would be helpful.

Even where market conditions appear ideal, businesses still need to have employees with the skills and training to exploit these favourable conditions. Where such staff are difficult to find, investors should negotiate an agreement to bring in skilled staff from abroad. This of course would have the effect of increasing the company's operating costs, so a cost-benefit analysis must be conducted.

IX Is the country worth investing in?

More broadly, the investor must be confident that she is investing in a high quality and transparent country. In light of this it is useful to examine how some of the countries with citizenship and residence by investment programmes compare in terms of quality and transparency, and the power of their passports. Since 1996 the anti-corruption watchdog, Transparency International, has published the Corruption Perceptions Index which ranks countries each year 'by their perceived levels of corruption, as determined by expert assessments and opinion surveys'.

The Henley & Partners – Kochenov Quality of Nationality Index (QNI) claims to be the first to objectively rank the quality of nationalities worldwide. It explores both internal factors (such as the size of the economy, human development, and peace and stability) and external factors (including visa-free travel and the ability to settle and work abroad without burdensome formalities) which makes one nationality better than another in terms of the legal status in which to develop talent and business.

The QNI is the result of successful collaboration between Henley & Partners and Professor Dimitry Kochenov, a leading constitutional law professor with a long-standing interest in European and comparative citizenship law.

The Global Residence Program Index and the Global Citizenship Program Index are recent creations by the global residence and citizenship planning firm Henley & Partners. The two indices are a product of collaboration by a distinguished panel of independent experts – immigration and citizenship lawyers, economists, country risk experts, academic researchers and other specialists. These two indices have quickly become the global standard in gauging and

reflecting the relative worth of residence and citizenship programmes around the world. The ranking of countries under the indices is preceded by analysis of a broad range of factors which are then synthesised into an overall global view and ranking of the different investment migration programmes on offer.

a) Measure of corruption

The 2016 Transparency International Corruption Perceptions Index does not show results for either St. Kitts and Nevis or Antigua and Barbuda. It does however rank Grenada at 46 out of 176 countries with a score of 56 out of a possible 100. A country's score can range from zero to 100, with zero indicating high levels of corruption and 100 indicating low levels. On this measure therefore, Grenada is perceived to be the 46th most transparent country of the 176 countries surveyed. Saint Lucia does even better with a ranking of 35 and a score of 60. At 38, Dominica is ranked below Saint Lucia but above Grenada, with a score of 59.

Both Cyprus and Malta are ranked at 47 with a score each of 55.

Of the residence programmes, Portugal is one of the most transparent with a ranking at 29 and a score of 62.

b) Passport power

With respect to 'passport power', the Global Passport Power Rank allocates a visa-free score to countries based on the number of countries allowing visa free entry for a given passport. Both Antigua and Barbuda and St. Kitts and Nevis feature on the Global Passport Power Rank 2018. Antigua and Barbuda scores 132, just two less than St. Kitts and Nevis. Saint Lucia scores 129, one more than Grenada. Dominica scores 123.

In contrast, Portugal has a score of 162. Malta and Cyprus have respective scores of 160 and 155.[54]

54 Scores available at: <https://www.passportindex.org/byRank.php>

c) Quality of Nationality Index

On 20 April 2017, France's quality of nationality was ranked first in the world, according to the Henley & Partners – Kochenov Quality of Nationality Index (QNI)[55]. As indicated above, the Index explores both internal factors (such as the scale of the economy, human development, and peace and stability) and external factors (including visa-free travel and the ability to settle and work abroad without cumbersome formalities) that make one nationality better than another in terms of legal status in which to develop your talents and business.

French nationality scored 81.7% out of a possible 100% on the index. Somalian nationality found itself at the bottom of the index with a score of 13.4%.

French nationality was followed by nationalities of Germany (81.6%) and Iceland (81.5%). Although the United Kingdom missed making the top 10, it nonetheless made it into the 'Extremely High' category on the index, with a score of 78.2%. The UK came thirteenth overall.

The United States did not fare as well, being ranked only 27th on the QNI with a score of 69.4%. This relatively low ranking was due largely to the country's relatively low 'Settlement Freedom' compared to the nationalities of EU Member States, and also its weak showing on the 'Peace and Stability' element of the index.

Of the countries with residence and citizenship by investment programmes, the most spectacular finding was perhaps with respect to Malta. Malta was ranked 23rd, a drop of six places since the index commenced in 2011.

Malta, teetering between 'Extremely High Quality' and 'Very High Quality' remains ahead of the US, Japan, Australia and Canada.

Austria, which also has a citizenship by investment programme, just made the top 10 best nationalities.

55 Online version of the Quality of Nationality Index can be found on www.nationalityindex.com

Of the five Caribbean countries running citizenship by investment programmes, Antigua and Barbuda was ranked 56th, St. Kitts and Nevis 58th, Saint Lucia 67th, Grenada 67th, and Dominica 69th.

d) Transparency and passport power are important

The transparency and passport power of countries are significant in the determination of countries' desirability for citizenship purposes. Just as countries are keen to conduct due diligence on prospective citizens, these prospective citizens are, for the most part, also keen to conduct due diligence on potential new homelands. A country that fails to maintain a clean reputation and a reasonably high visa-free score will soon lose its appeal as a destination for citizens or residents by investment.

But the importance of transparency goes beyond the relationship between governments and citizens. Transparency is also key to building trust between governments both for purposes of economic development, and maintaining visa-free arrangements. A transparent high-income country, for example, will be loath to grant visa-free access to passport holders from a notoriously corrupt country. A corrupt country with a citizenship by investment programme places at risk those partners with which it has visa-free travel arrangements when its citizenship can be granted without proper due diligence and in a manner which allows actual or potential terrorists or money launderers to enter a visa-free partner country.

Chapter 5

Threats to CIPs

X Negative perception of programmes

Despite most jurisdictions' commitment to due diligence, as demonstrated above, the idea of citizenship or residence by investment continues to cause discomfort in many circles. Among the threats to the concept is the perception that these programmes are no more than dubious schemes for the sale of passports. The other threat worth noting has to do with the institutions put in place to attract investment from prospective citizens.

The perception that citizenship by investment programmes are no more than nefarious schemes to sell passports was given prominence in a television documentary aired by the US broadcaster, CBS Corporation, on New Year's Day 2017. Unfortunately, in the 60 Minutes programme in question, the American network missed the opportunity to inform the public about the need for and value of these programmes. It also missed the opportunity to conduct a useful comparison between the different programmes by choosing to focus on three Caribbean nations, with an emphasis on one jurisdiction which does not require residence as a precondition for citizenship. As pointed out earlier, there are many different programmes in North America, Europe and elsewhere.

Not all such programmes are perfect all the time, as the below Comoros experience shows.

a) The Comoros example

The Comoros, unlike its neighbours, the Seychelles and Mauritius, has not been able to exploit its natural beauty for tourist purposes, nor has it been able to become a financial hub. For that reason, the Comoros is much poorer than Mauritius and the Seychelles.

There are historical reasons for this. When the Comoros gained its independence from France in 1975, the richest territory in the Comoros islands grouping, Mayotte, voted to remain a part of France. The status of Mayotte has been the cause of tension between France and the Comoros.

Within one month of independence, a coup orchestrated by a French mercenary, Bob Denard, under the orders of Jacques Foccart, the French government's chief advisor on Africa, ousted the first president, Ahmed Abdallah. Since then, there have been twenty coup attempts. Understandably, this history has undermined the country's development.

The government needed to find a creative way to raise funds for infrastructure development and badly needed social services. The government solution was to

establish a citizenship by investment programme centred on its historic relationship with the Gulf Arab states.[56]

The connection between statelessness in some Middle Eastern countries and citizenship by investment has been well described and analysed by journalist Atossa Araxia Abrahamian.[57] In the United Arab Emirates, for example, fewer than fifteen percent of residents have citizenship. The rest of the non-citizen population is on rolling work visas. In wealthy UAE citizenship is granted sparingly. There are therefore many expatriates who are not entitled to an Emirati passport, despite living in the country for decades.

The more concerning segment of the population however, is the group called 'Bidoon'. Members of this group, which exceeds one hundred thousand, are unrecognised as citizens of any state. This lack of recognition stems from the fact that at the time of independence from Britain, their citizenship was not registered. As a result, the Bidoon have no reliable identity papers, cannot easily get employment, are denied many social benefits, and cannot leave the country they live in.

The existence of the Bidoon constitutes a political embarrassment to the rulers of the Emirates.

However, the Comoros saw this as an opportunity to earn income through citizenship by investment. The Indian Ocean archipelago provided the balance of the needed citizenship papers. The sweetener for the Bidoon was that once they had completed that process, the UAE would consider applicants as potential candidates for UAE nationality.

Although only a handful of Bidoon actually obtained full UAE citizenship, the Comoros were paid the relatively princely sum of USD 200 million by the UAE. Nearly 48,000 foreigners – mostly Bidoons - received passports, according to the Parliamentary Commission of the Comoros.[58]

On the face of it, Comoros was helping resolve a huge issue and providing certainty of status to a previously marginalised community. In reality, however, this process raised legitimate human rights concerns.

---

56 Atossa Araxia Abrahamian, The Cosmopolites (Columbia Global Reports 2015).

57 Ibid.

58 David Lewis and Ali Amir Ahmed, 'Exclusive: Comoros passport scheme was unlawful, abused by "mafia" networks - report' (Reuters, 23 March, 2018), available at: https://www.reuters.com/article/us-comoros-passports-exclusive/exclusive-comoros-passport-scheme-was-unlawful-abused-by-mafia-networks-report-idUSKBN1GZ37H

The UAE government response to these concerns increased suspicion and even contempt for citizenship by investment programmes. In 2012 a Bidoon human rights activist was deported after organising an online political campaign. Because this activist now had Comoros citizenship, the authorities reportedly deported him on the basis that he was no longer stateless. This deportation only became possible because the activist had obtained Comorian citizenship. Ironically, Bidoon statelessness would have afforded him protection from deportation, since a stateless Bidoon cannot be deported.[59]

On the other hand, the Comoros were able to invest the money earned in key areas of the economy, such as marine transportation. Unfortunately, the programme was reportedly misused by high level officials. In June 2017, a parliamentary commission was set up to investigate the citizenship programme. In its report, the parliamentary commission stated: 'The at least tacit complicity of authorities at the highest levels with the parallel networks inside and outside the country has turned the Comoros passport into a product advertised for sale on the international market'.[60] The report further concluded: 'The economic citizen programme generated significant financial resources. Sadly a big part of the funds generated never arrived in the state coffers'.[61]

The Comoros story is useful in highlighting the dilemmas often faced by countries which resort to citizenship by investment programmes. The perception is that the Comoros were concerned neither about human rights nor due diligence. No doubt the Comoros could have done a better job of complying with better standards of due diligence and management. It would be a mistake however to conclude from this that only developing nations are susceptible to hastily crafted money making programmes without due regard to due diligence and appropriate management.

b) The Comoros is not the standard

It would be a mistake to assume from the above that the Comoros experience is typical in the investment migration industry. In fact, most of these programmes adhere to stringent standards of due diligence. As Sir Ronald Saunders pointed out

59 Ibid.

60 David Lewis and Ali Amir Ahmed, 'Exclusive: Comoros passport scheme was unlawful, abused by "mafia" networks - report' (Reuters, 23 March, 2018), available at: https://www.reuters.com/article/us-comoros-passports-exclusive/exclusive-comoros-passport-scheme-was-unlawful-abused-by-mafia-networks-report-idUSKBN1GZ37H

61 Ibid

in the Jamaica Observer, the vast majority of persons who become citizens as a result of these programmes do so only after being 'subjected to intense scrutiny by enforcement agencies before their applications were even considered'.[62]

When functioning appropriately, these programmes do not offer passports for sale; they attract investors with the added inducement of the prospect of citizenship, subject to the investor meeting very high standards of scrutiny. This is a way of attracting foreign direct investment with reduced risk for the investor. Ordinarily, a foreign investor relies entirely on the goodwill of the government of the country he has chosen to invest in. In the case of citizenship by investment, the foreign investor ceases to be a foreigner and can actually rely on the protection afforded to all citizens of his new country.

On the other hand, the country receiving the investment increases its ability to raise employment levels, expand infrastructure and provide badly-needed social services without resorting to borrowing. Properly run, therefore, citizenship by investment programmes can be mutually beneficial for both the country and the investor.

Casting CIPs as no more than schemes for the 'sale of passports' may be simplistic.

It is equally erroneous to state that by their very nature, these programmes pose an international security threat. Here the reader is reminded of the role that the Barbados-based Joint Regional Communications Centre plays in the vetting of applicants for citizenship under these programmes. The reader is further reminded that the JRCC is only one agency involved in the vetting process. Typically, there are additional players which perform a similar role. The reader is further reminded of the role played by the Financial Action Task Force.

The end result of all this due diligence is that "perhaps 1% of the industry's clients are human-rights violators, money-launderers or other fugitives from justice, and the other 99% mostly jet-setters or 'doomsday preppers'".[63] That is the assessment of Peter Vincent, a lawyer and immigration and security expert who was appointed Director Counsellor for BORDERPOL in October 2015.

Those concerned about CIPs constituting an international threat point to well documented cases of diplomatic passports being issued to undesirable persons. As pointed out earlier, diplomatic passports are not issued by citizenship by investment programmes, although a person granted citizenship under such a programme can of

62 Sir Ronald is the Antigua and Barbuda Ambassador to the United States. His piece appeared in the Jamaica Observer on 2 January 2017.

63 Matthew Valencia, Citizens of Anywhere, The Economist 1843, 2 October 2017.

course subsequently be issued a diplomatic passport. The way to address abuses in the issuance of diplomatic passports is to engage governments and encourage them to be more diligent in the issuance of passports which accord the holders diplomatic immunity and other privileges, not to malign the very idea citizenship by investment.

Even so, everyone should continue to work towards establishing a global due diligence system which is impenetrable to terrorists, human-rights violators, money-launderers or other fugitives from justice.

The structure of a citizenship or residence by investment programme affects due diligence. The Maltese structure has been held up as an example of a programme with a governance model which encourages transparency. What needs to be examined in greater detail now is the effect on due diligence of a poorly designed mechanism for making decisions to grant citizenship or residence and for reviewing or appealing these decisions.

In most jurisdictions decisions to grant residence or citizenship are made by professionals aware of the full implications of admitting to citizenship persons flagged as undesirable. These professionals take care and subject applications for citizenship to appropriate scrutiny. They do all this in the context of appropriately designed structures. The risk of granting residence or citizenship to undesirable persons is quite low at this stage.

c) A comparison between Malta and Dominica

In Malta for example, 'almost one in four applicants for Malta's golden passport scheme are refused'.[64] According to official data, about half the applications denied in 2015 came from Russian nationals and the remainder included significant numbers from Chinese, Libyan, Indian, Ukrainian and American applicants.

In the process of Malta's Individual Investor Programme being recognised by the EU Commission, Malta committed itself to a rule that no applicant can become a citizen of Malta unless the main applicant has possessed effective residence status in Malta for a minimum period of 12 months. Identity Malta is very strict in enforcing this requirement. No applicant has been naturalised without possession of an effective residence status and without fulfulling the 12-month residence condition. The following are the investment requirements:

64 Times of Malta, 9 July 2016.

- The acquisition of real estate with a minimum value of EUR 350,000 to be held for at least 5 years; or
- Lease a residential immovable property in Malta for a period of 5 years, at an annual rent of at least EUR 16,000; and
- A contribution to the National Development and Social Fund; and
- An investment in stocks, bonds or special purpose vehicles to be identified by Identity Malta, for a minimum value of EUR 150,000 to be held for a minimum period of 5 years.[65]

Malta justifies the high number of application refusals on the ground that it has to protect its integrity and has to take citizenship seriously in light of the fact that the decisions it takes affect the interests of 27 other EU Member States. Accordingly, only very reputable candidates of good moral character, clean criminal records and strong financial backgrounds are invited to apply for citizenship in Malta.

The following list of common reasons for refusing applications for economic citizenship shows how committed to due diligence Malta is, and how seriously the country takes its responsibility in this regard:

Provide misrepresentation, false or concealed information in the application.

Has a criminal record at home (paedophilia, defilement of minors, rape, violent indecent assault, prostitution, abduction, kidnapping etc.)

Pose as a potential national security threat to Malta or other Member States in EU.

Involved in Financial or economic fraud (embezzling funds).

Red flag entry in SIS (Schengen information system)

Individual has frozen assets or properties in the EU.

Involved in any activity likely causing disrepute to Malta

65 www.iip.gov.mt.

Denied a visa to a country with which Malta has visa-free travel arrangements (EU, USA, UK etc.) and has not subsequently obtained a visa to the country that issued the denial.

Involved with financial transactions in OFAC sanctioned countries

Assisting enemy at war.

Deported from USA, UK or EU Member States.

Tax evasion.

Failure to satisfy health checks.

Failure to meet IIP rules with investment, and satisfy residency requirements.

An applicant whose application has been refused may appeal the decision under the Immigration Act. The relevant provisions in that Act are as follows:

25A.(1) (a)There shall be a board, to be known as the Immigration Appeals Board, hereinafter referred to as the Board consisting of a lawyer who shall preside, a person versed in immigration matters and another person, each of whom shall be appointed by the President acting on the advice of the Minister:

Provided that the Minister may by regulations prescribe that the Board shall consist of more than one division each composed of a Chairman and two other members as aforesaid.

(b) The Minister may make regulations to regulate the distribution by types of appeals or applications amongst the divisions of the Board.

(c) The Board shall have jurisdiction to hear and determine appeals or applications in virtue of the provisions of this Act or regulations made thereunder or in virtue of any other law.

(2) A member of the board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in terms of Sub-Title II of Title II of Book Third of the Code of Organization and Civil Procedure; and in any such case either the member shall be substituted by another person appointed for the purpose by the President acting on the advice of the Minister, or the appeal, when there is more than one division of the Board in office, may be referred by order of the Board from one division of the Board to another.

> (3) The members of the Board shall hold office for a period of three years, and shall be eligible for re-appointment.
>
> (4) A member of the Board may be removed from office by the President acting on the advice of the Prime Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.
>
> (5) Any person aggrieved by any decision of the competent authority under any regulations made under Part III, or in virtue of article 7, article 14 or article 15 may enter an appeal against such decision and the Board shall have jurisdiction to hear and determine such appeals.[66]

It makes sense for appeals or reviews of decisions made under a citizenship by investment programme to be handled in the same way as other immigration appeals are. This increases the perception of transparency and helps normalize the programme, which is thus administered entirely in accordance with ordinary law and procedures. Subsections 2 and 4 minimize the likelihood of conflicts of interest by insisting that members hearing an appeal have no interest in the matter they are adjudicating. It is equally important that these adjudicators are actually competent to adjudicate in the area of immigration. The Immigration Appeals Board is presided over by a lawyer, supported by a person versed in immigration matters and one other person.

While Malta has a very high refusal rate, Dominica prides itself in having one of the lowest rejection rates. The most recent report presenting Malta's rejection rate is from the Office of the Regulator entitled *Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July-30th June 2017)* published in November 2017. The figures quoted in the relevant section do not tally with those recorded in the previous year because there is a time-lapse during which an application is processed, meaning that a significant number of the applications received between July 2016 and June 2017 would still be in the due diligence stage (and thus their outcomes would be recorded in following year's report).[67]

The number of applications approved was 422, which is an increase compared to the previous year when there were 241 such approvals and also to the year before when there were 75 approvals. Most approvals were registered in August 2016 (69) and least in May 2017 (11).

---

66 Chapter 217 Immigration Act 1970; see also Malta Residence and Visa Programme (Amendment) Regulations, 2017.

67 Fourth Annual Report on the Individual Investor Programme Of the Government of Malta (1st July 2016 – 30th June 2017), available at: https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf

The number of rejected or withdrawn applications was 83 while the overall rate of applications not approved was 16%. The overall average of applications which have not been approved since the launch of the Programme stands at 18%. [68]

The Dominica citizenship through investment programme is incorporated expressly by law, and since Dominican law does not contain any restrictions on holding dual nationality, obtaining second citizenship by investment in Dominica does not require a person to renounce their existing citizenship.[69] It can therefore be a confidential process and for this reason, Dominica, like Malta, does not publish the names of persons who acquire citizenship by investment.

Recently, however, the European Parliament passed a 'Resolution on the rule of law in Malta' which includes calls for Malta to clearly identify persons who have obtained Maltese citizenships through the country's Individual Investor Programme (IIP), and to monitor actively whether applicants are physically present in Malta during the preliminary one-year residence period.[70]

The Dominican Permanent Representative echoed the words of the Foreign Minister when he explained that the rejection rate was low because Dominica had very high standards of due diligence. Clearly Dominica and Malta take different approaches to the issue.

The Dominica Citizenship by Investment Programme is established pursuant to Section 101 (a) of the Constitution of the Commonwealth of Dominica, which provides for the acquisition of citizenship by persons who are not eligible or who are no longer eligible to become citizens of Dominica. The other supporting legislation is Section 20 of the Commonwealth of Dominica Citizenship Act under which the Programme's regulations have been issued.

68 Ibid, pp. 11-12.

69 www.dominicacitizenshipbyinvestment.com.

70 Investment Migration Insider, 12 November 2017.

With respect to persons whose applications have been refused, there may be a review of the decision to deny the application. The review process is laid out in the Regulations as follows:

---

9. (1) The Minister may appoint a committee to review an application and interview an applicant.

(2) Where the Minister appoints a review panel, the panel may request the applicant to appear in person before it to be interviewed.

(3) The interview will normally be conducted in Dominica, however, at the request the applicant and where considered by the Unit to be appropriate, provision may be made for the interview to be conducted elsewhere at the expense of the applicant.

(4) A committee that is appointed pursuant to sub regulation (1) shall be comprised of at least three of the following persons:

(a) the Attorney General or a Senior representative from the Attorney General's Chambers;

(b) the Financial Secretary, Director of the Citizenship by Investment Unit or a Senior Examiner of the Unit;

(c) the Head of Special Branch or other police officer designated by the Minister;

(d) the Permanent Secretary in the Ministry with responsibility for immigration;

(e) any other person duly authorised by the Minister.

(5) Where the Attorney General sits on an interview committee he shall be the Chairperson of that committee. In the absence of the Attorney General, the Chairperson shall be the most senior diplomatic, consular or government officer being a member of the committee.

> (6) The committee shall make a recommendation to the Minister based on its findings in relation to the application under review.
>
> (7) Thereafter the Minister shall promptly consider the said recommendation and as he considers appropriate approve or disapprove the application.[71]

The Regulations attempt to bring some expertise to the Review Panel. It is certainly a good idea to have security expertise in the form of the Head of Special Branch of the Dominican police. The Permanent Secretary of the relevant ministry would also be a welcome addition. While the Attorney General has expertise in the area of law, including immigration law, his or her presence on the Review Committee will not assure committee independence from the Executive branch of government. In this regard, it is also noted that 'any other person' duly authorised by the Minister could serve as a committee member. This person need not have expertise in the subject matter and could conceivably be appointed for the purpose of doing the Minister's bidding on the committee.

The kind of quasi-judicial independence and impartiality we have seen in the Maltese model is not replicated in the Dominican Review Process.

d) Independence of review committees and appellate bodies

It is important that the Review Committee be as independent as possible and be knowledgeable about immigration investment issues. For example, the committee must be aware of the importance of and reasons for due diligence. Where the review committee is closely aligned to a government which is desperate for CIP funds, the temptation to ignore warnings from security organs about risks posed by the person whose application was denied may be irresistible.

The fact that the review process is not well structured is therefore a threat to citizenship and residence by investment programmes because the lack of structure can undo all the good that a robust due diligence process assures.

The risk is greatest where the legislation gives a broad mandate either to the minister responsible for the programme or the cabinet to appoint the review panels, without stipulating appropriate qualifications for these panel members.

---

71 Commonwealth Of Dominica Citizenship by Investment Regulations, 2014.

Chapter 6

Practical Application of Due Diligence Practices for Economic Citizenship and Residence Programmes

Customer and third-party due diligence programmes are increasingly being applied in a variety of business and commercial contexts to comply with regulatory requirements, to prevent the proliferation of financial crime and guard organisations against reputational damage. Financial institutions, namely banks and other organisations which accept deposits from customers have pioneered due diligence programmes to vet clients thoroughly and verify that funds originate from legitimate and legal sources.

Over the last decade, non-financial services organisations have also employed due diligence practices to vet third parties such as suppliers, distributors and partners. Complying with anti-money laundering and anti-bribery/anti-corruption requirements has been the main motivator for the institutionalisation of due diligence practices though non-regulatory drivers such as safeguarding against reputational damage, which have also paved the way for wider adoption and acceptance of background screening and third-party vetting in business.

XI Importance of due diligence

While perhaps not regulated in a similar fashion to traditional financial services institutions, immigration investor programmes face similar challenges to banks in terms of the risk of exposure to financial crime. By their very nature, immigrant investor schemes tend to attract wealthy individuals, many of whom originate from emerging markets and potentially higher-risk jurisdictions. While the majority of applicants for immigration schemes may be motivated by legitimate financial and personal reasons in seeking alternative citizenship, the possibility that some are criminals or other individuals seeking to evade justice should not be discounted. By applying customer vetting best practices developed by banking institutions, immigrant investor administrators can prevent undesirable applicants from negatively affecting the integrity of their programmes and ensuring only legitimate applicants are granted citizenship or residence.

Should a country inadvertently grant citizenship to someone involved in terrorism financing, money laundering, drug trafficking or other forms of criminal activity, the impact on the general reputation of the programme can be immeasurable. Countries with poor due diligence controls may also face repercussions from international organisations such as the Financial Action task Force (FAFT) if evidence of vetting practices or other such information is requested and the country is unable to provide documented proof that these practices have been applied. Such actions could have serious political, reputational and financial consequences in the country, impacting the financial and private sector, as well as government programmes. Countries with immigrant investor schemes therefore need to ensure that they have strong procedures in place to guarantee that they are able both to deter undesirable investors and comply with international guidelines and best practices.

a) Risk-based approach

Much like financial services institutions, immigrant investor schemes should regularly conduct risk assessments on their customer base, vetting practices and administration of their programmes to identify and remedy vulnerabilities. There are several approaches to conducting risk assessments prior to taking on new customers. Programmes can use publicly-available data to construct risk assessments to identify client profiles which represent a heightened risk of financial crime or reputational risk. Once the risk is identified, programmes should apply levels of due diligence proportionate to the risks involved. This risk-based approach is similar to the methodologies used by financial services institutions for anti-money laundering and counter-terrorism financing (CFT) due diligence. Banks, asset managers and other institutions accepting deposits from customers identified as higher risk, either based on geography, industry or client profile, should apply proportionate mitigation efforts to minimise any risks.

Common variables used as part of the risk assessment process can include jurisdictional risk, customer profile risk and an assessment of the source of the customer's wealth. Banks and other institutions have long utilized the perceived risk of money laundering and other criminal activity in specific jurisdictions to determine a customer's risk potential. A risk score can be based on the prevalence of financial crime in a specific country and the country's efforts at combating such criminal activity. For example, a potential customer from Colombia[72] may be considered to present a higher money laundering risk than a customer from Denmark[73] based on the perceived pervasiveness of criminal activity in one jurisdiction over the other. Risk assessments do not mean that a bank or an investor programme would not accept customers from higher risk locations, it merely recommends a higher level of due diligence be applied to mitigate against those risks.

Customer profile is another variable commonly used to identify individuals who may pose a greater risk of financial crime. Politically Exposed Persons (PEPs), or those with significant influence in government, either directly or indirectly, are generally perceived as being of higher risk due to the increased likelihood of exposure to bribery and corruption. While the definition of a PEP varies across jurisdictions, the most commonly accepted guideline comes from the FAFT, which defines PEPs as 'individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government,

72 Named as a country of concern in the 2016 US International Narcotics Control Strategy Report.

73 Named as the world's most transparent economy in the 2017 World Economic Forum Growth and Development Report.

judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories'.

b) Due diligence focused on source of wealth

An applicant's source of wealth should also be examined as part of the risk assessment. Immigrant investor schemes should ensure their vetting and due diligence practices include a thorough assessment of an applicant's declared sources of wealth and also steps to uncover any undeclared income streams. Unexplained wealth, especially for individuals defined as PEPs, should undergo further due diligence to ensure that the funds are not derived from illegal activities. Additional scrutiny should be applied to sources of wealth deriving from higher-risk industries or those with significant exposure to government officials such as mineral resource extraction, government contracting or gambling.

Examples of information retrieved in the course of a source of wealth due diligence process:

- Money invested in a deposit account and interest accrued
- Investment originating from the sale of property or business
- Inheritance
- Compensation payments
- Accumulated cash from trading profit
- Shares owned
- Assets (including real estate, luxury goods and vehicles)
- Divorce/alimony settlements
- The individual subject's wealthy family members (if known)
- Derogatory information, e.g., connections with sanctioned countries and sanctioned persons

c) Due diligence standards for citizenship by investment

Once a risk assessment has been completed based on country risk, customer profile and source of wealth risks, the due diligence process can be initiated. Immigrant investor programmes have slightly different due diligence requirements but in general the vetting includes:

- Verification of the applicant's identity and his/her family members. This can include confirmation of address, education, employment and other personal details declared on the application. Written consent may be needed to conduct these verification steps in certain jurisdictions, depending on data privacy legislation.

- Reputational assessment and identification of risks, by means of searches for adverse media in the international and local media. This can include a review of recognised news sources and social media fora.

- Review of regulatory, litigation and bankruptcy databases in the jurisdictions where the applicants are from and have significant commercial footprints. These databases may include records of civil and criminal litigation, breaches of regulations and standards, and indications of insolvency or financial difficulties.

- Due diligence research should include a reputational review of the main sources of wealth of the applicants and their family members. In addition, due diligence research methodologies should attempt to identify any PEPs or individuals with significant political influence and/or government ties.

- Applicants, their family members and their sources of wealth should be screened against international sanctions, watch-lists and prohibited parties' databases published by governments, international organisations and development banks. Watch-lists such as the US Office of Foreign Assets Control Specially Designated Nationals, HM Treasury's Financial Sanctions List and the European Union's Restrictive Measures List, stipulate certain economic and trading restrictions with countries, companies and individuals.

d) Restrictive measures, certain economic and trading restrictions with countries, companies and individuals.

Obtaining information on private individuals and their sources of wealth can be more challenging depending on the jurisdiction. The breadth and type of information publicly available through public records will vary from jurisdiction to jurisdiction. Moreover, data privacy regimes in many jurisdictions can thamper due diligence efforts. Information in emerging markets and offshore jurisdictions is generally more limited. A survey conducted in 2017 by Thomson Reuters showed only 45% of jurisdictions publicly disclosed directorship information from company registries, while only 36 disclosed shareholders.

Adverse media searches include scanning the available and searchable media archives for risk information on applicants, their family members and their sources of wealth. Electronic tools are available to automate adverse media searches by using common negative search strings of keywords of interest such as ‘arrested’, ‘investigated’, ‘money laundering’, etc. Conducting media searches allows investor programmes to survey press coverage on potential suppliers to understand any previous risk issues or areas of concern. Increasingly, best practice in financial services is to include English and appropriate foreign language content in the search.

e) Risk categories commonly used in the due diligence process include:

- Government Prohibited Persons and Entities: individuals and companies listed on international sanctions or prohibited persons lists, including OFAC, HM Treasury, the European Union, the World Bank etc.
- Politically Exposed Persons and Entities: individuals entrusted with prominent political positions and state or government-controlled entities.
- Corruption and Bribery: organisations or individuals involved in offering money or goods or services of value to gain an illicit advantage or the abuse of a position to gain an unfair advantage.

- Serious and Organised Crime: organisations or individuals engaged in criminal activity, as defined by international standards.
- Money Laundering: organisations or individuals engaged in efforts to legitimise financial gains acquired through illegal activities.
- Fraud and Regulatory Breaches: organisations or individuals cited by regulatory agencies for improprieties or breaches of national/international standards.
- Arms Trafficking and War Crimes: organisations or individuals involved in the illegal trading of weaponry or involved in war crimes, as defined by international standards.
- Intellectual Property Violations: organisation or individuals involved in the infringement of copyrights, trademarks or patents.
- Conflict Minerals: organisations or individuals associated with the illegal extraction and trading of minerals sourced from conflict areas, most prominently from the Democratic Republic of Congo (gold, coltan, cassiterite, tin or tungsten).
- Social Accountability: organisations or individuals involved in activities related to environmental degradation, poor labour practices, human rights violations etc.

Evidence of due diligence and client on-boarding assessments should also be documented and stored. Documented proof of the KYC process should be kept in client files which must be updated on a defined basis and/or when there are major changes to the client profile. In financial services, regulators are increasingly requiring banks to actively monitor client profiles to identify changes in their risk profile. For example, should a customer's PEP status change, this may require additional due diligence in the overall risk score changes. In addition, screening against international sanctions, watch-lists and prohibited parties' databases should be included in ongoing due diligence efforts.

f) Managing the due diligence results

Investor immigration programmes should maintain primary responsibility for accepting or rejecting applicants and it is important administrators have documented policies specifically stating due diligence requirements and risk assessments. These should be consistently applied to all applicants. Policies and procedures should also be reviewed and updated as regulations and best practices evolve. If outsourcing the due diligence

checks to an external provider, the immigrant investor programmes should ensure sufficient in-house staff is available to review and query due diligence reports for thoroughness and completeness. Due diligence providers, in turn, should be vetted to ensure they have a proven track record working with other programmes, banks, or wealth managers.

Immigrant investor programmes should remain transparent in terms of describing the level of due diligence undertaken as part of the application process. As such, applicants should be educated on the level of due diligence and scrutiny they will undergo during the vetting process. While due diligence should aim to access publically available information from official government sources such as public registries and press outlets, some verification checks may require due diligence practitioners to access information outside the public domain. Education, employment and confirmation of personal details such as addresses may require consent from the applicant. A clear and concise consent form should be included as part of the application package. For privacy reasons, this should not disclose the applicant is applying for citizenship or residence.

Solid due diligence practices within the immigrant investor space can facilitate the processing of applicants while safeguarding the programmes from regulatory or reputational damage. Investor schemes should apply and enhance the due diligence and customer on-boarding best practices implemented by banks and other financial services companies. Due diligence should aim to establish the suitability of applicants, ensure the sources of the wealth which will be invested in the scheme originate from legitimate means, and uncover any risk factors which may negatively impact the programme's integrity. Lax due diligence practices can even encourage criminals and undesirable actors to gravitate to certain investor programmes, which can have adverse repercussions on the country's reputation and the overall business climate.

Chapter 7

Conclusions and Recommendations

Formal citizenship by investment programmes and immigrant investor programmes have been in existence for almost 35 years, starting with the St. Kitts and Nevis Citizenship by Investment Programme established a year after the country gained independence from the United Kingdom. The reasons for establishing this programme were and continue to be understandable. St. Kitts and Nevis needed to diversify its sugar-based economy.

The Caribbean country may have been the first nation to use a citizenship by investment programme to develop its economy but it was not the only one to realise the value of this new development vehicle. Since those pioneering days St. Kitts and Nevis has been followed by jurisdictions in Asia, North America, Europe, the Pacific and East Africa.

The global popularity of these programmes is often overlooked and the assumption is made that the programmes are only for cash-starved developing countries prepared to risk the world's security by granting citizenship to what the 60 Minutes broadcast referenced above, called 'scoundrels, fugitives, tax cheats and possibly much worse'. This viewpoint is reinforced by the fact that in many jurisdictions the period of residence required for qualification for citizenship is not significant. In Dominica for example, residence is not a pre-condition for citizenship.

The fact is, however, that no one is admitted to citizenship without undergoing a thorough vetting process in the vast majority of programmes. The end result is that for the most part, only high net worth law-abiding persons are granted citizenship under these programmes. As Peter Vincent, of BORDERPOL has estimated, 99% of the persons admitted to citizenship under these programmes are legitimate.[74]

It is precisely because this is the norm that the Comoros experience raised so many eyebrows. In contrast, the applicants who succeed under any one of the Caribbean or European programmes are exactly the kind of people that Canada was looking for when it launched its Immigrant Investor Programme in 1986 with the stated aim of 'having experienced business people contribute to Canada's growth and long-term prosperity by investing in Canada's prosperity'. Although that programme was discontinued 2014, there have been calls recently to reinstate it. In July 2017 the Conference Board of Canada issued a report calling on the Canadian federal government to bring back the Immigrant Investor Program, as long as this time it is 'done right'.[75]

---

74 Matthew Valencia, The Economist 1843, 2 October 2017.

75 Jesse Ferreras, Global News, 6 July 2017.

By its own admission,[76] the United States started its Investor Immigrant Program, also known as EB-5, 'to stimulate the US Economy through job creation and capital investment by foreign investors'.

The genesis of these programmes is as respectable as its aims. Despite this, however, the programmes continue to attract bad publicity even from ordinarily well informed quarters. What can be done to enhance the credibility of the programmes and boost the confidence of the international community in countries' ability to manage them?

There are certainly risks associated with these programmes but these risks can be aggressively mitigated through more visible commitment to robust due diligence, effective regulation and responsive policy frameworks.

I. The various programmes need to cooperate

The oxymoron 'cooperative competition' describes fairly accurately what all citizenship by investment programmes and immigrant investor programmes have to do collectively to enhance the credibility of their industry. They may not all be responsible for the current reputation of the industry but they all have an interest in ending the negative perception of their world. We have seen how when there is a scandal in one jurisdiction, all programmes are looked upon with suspicion, contempt and derision. Because all the programmes suffer from the real or imagined misbehaviour of one, they all have an interest in building regimes which enhance the entire industry's reputation.

This could be achieved, for example, through the Investment Migration Council (IMC), the worldwide association for investor migration and citizenship by investment programmes, which brings together leading stakeholders in the field and gives the industry a common voice. At the very least, programmes should adopt the IMC's Code of Ethics and Professional Conduct.

76 Official Website of the US Department of Homeland Security.

II. Publicise Commitment to Due Diligence

The first thing to be done is to ensure that each programme has a well-publicised robust due diligence process. It is not enough simply to have this process. The world must also be informed of the existence of this process. Thus, in the case of the Caribbean programmes, all jurisdictions must involve the Joint Regional Communications Centre in scrutinising applicants for citizenship. Programmes outside the Caribbean must similarly utilize equivalent organisations in their regions, along the lines adopted by Malta. The use of the JRCC and similar bodies must be in addition to other resources such as private sector due diligence companies, internal resources within the agency responsible for managing the programme, and resources from friendly governments, especially those with whom the jurisdiction has visa-free travel arrangements.

It is important to publicise the process (but not necessarily the content of individual reports) to both the local population and the international community. This gives comfort to critical stakeholders that citizenship is not handed out casually. It is also important for all to understand that these programmes are about investment attraction, not the 'sale of passports'. As part of the strategy to address this misperception, the law must require prospective investors to show a connection with the country through reasonable periods of residence. Allowing foreigners to become citizens without prior residence in the country reinforces the perception that citizenship by investment programmes are no more than potentially dangerous schemes to sell passports.

III. Continuously educate stakeholders about programmes

Educating the public must be an ongoing exercise and must include highlighting economically beneficial projects resulting from a programme. This is an area where the IMC would be able to help, given its track record in helping to improve public understanding of the issues faced by clients and governments in the area of investment migration, as well as its record in promoting education and high professional standards among its members.

It is important for citizens, and even the international community, to make a connection between the national citizenship by investment programme and economic development in the jurisdiction.

IV. Strengthen Independence of Programmes from Government

While Malta has a transparent governance model, not all countries can claim this for their programmes. Since programmes are typically tarred with the same brush, it is important they all have good governance models. At a minimum, each programme should be managed by an agency with an arm's-length relationship with the government. The agency should be led by a chief executive officer who reports to a nonpartisan board of directors which is in turn led by a chairperson known for integrity and actual knowledge of the investment migration industry.

The agency should of course have a relationship with the government. For this reason there should be a minister with policy responsibility for the programme. Among the more important tasks for the minister should be the tabling of the agency's reports to parliament. This arrangement helps ensure that while there is public accountability through the minister, the actual operations are left to competent professionals and technocrats. The arrangement also helps to ensure that the agency is not under pressure to succumb to short term political interests which may well see the country admitting undesirable people to citizenship.

In this environment, decisions to grant or not to grant citizenship will effectively be made by impartial and nonpartisan professional persons.

V. Review of unsuccessful applications should be conducted by impartial panels

It is equally important however that requests for review are similarly handled by professionals. The chairperson of the board (not involved in day-to-day operations) should have the power to establish either ad hoc or permanent review committees for the purpose of hearing requests for review. The legislation should require the members of these committees to have a background in quasi-judicial proceedings and adequate knowledge of investment migration.

In the event the person asking for a review remains unsatisfied with the outcome of the review, there should be a right of appeal to the regular court system. This has the benefit of building authoritative jurisprudence on the programme, and also informing the public about programme issues. Transparency would be well served by this arrangement.

VI. Adopt memoranda of understanding to clarify roles and responsibilities of the various players in programmes

Because of the number of players involved in the management of a modern programme, it is important to have a comprehensive memorandum of understanding executed by the CEO, the board chair, the minister responsible for the programme and the nonpartisan public officials assisting the minister. The purpose of the memorandum is to clarify the roles and responsibilities of, and the lines of accountability for, the various parties. This document should certainly contain a clause barring any person except the lawful representative of the applicant from enquiring about the status of an application. Attempts by anyone to influence the decision to grant or deny an application should also be expressly forbidden.

VI. Use programme funds prudently and transparently in accordance with pre-determined priorities

Since the basic reason for the introduction of these programmes is to enhance economic development, jurisdictions should seriously consider the International Monetary Fund 2015 Working Paper guidelines which advocate the creation of Sovereign Wealth Funds as the principal vehicle for managing monies flowing into the economy as a result of citizenship by investment programmes.[77] At the time of writing, one jurisdiction in the Caribbean has already committed to establishing such a fund. On Tuesday 20 December 2016, the Prime Minister of St Lucia announced that early in 2017 a Saint Lucia Sovereign Wealth Fund into which applicants can invest for a stipulated time would be established. According to the Prime Minister, 'this fund will be managed by professional investment managers and will provide investors with a greater assurance of the return of their capital and a return on their capital than currently exists with the real estate option in the Caribbean'.[78]

77 WP/15/93 IMF Working Paper: Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs, by Xin Xu, Ahmed El-Ashram and Judith Gold, May 2015.

78 St. Lucia News Online, 29 December 2016.

Priorities for spending the money should be established and publicised. For example, the focus of expenditure could be education, healthcare and infrastructure. Public support for programmes is likely to increase when development priorities affecting the entire community are clearly identified.

VII. Strengthen anti-corruption mechanisms and strategies

With respect to the state itself, the most important contribution it can make is to ensure that the country is managed transparently and in a way that ensures that monies flowing from citizenship by investment will not be corruptly diverted from economic development. The state must also be prepared at all times to respond to allegations of corruption. States with investment migration programmes appear especially vulnerable to allegations of corruption.

An important reason for public education is to increase public confidence in the institutions responsible for managing citizenship by investment programmes. Citizens will not have this confidence and may even refuse to participate in the public education offered if there is no transparency. When citizens are not thus engaged, they cannot participate in the development process. Meaningful participation is only possible when citizens and governments enjoy a relationship based on trust. Citizens will insist on knowing who is benefiting from funds generated by investment migration money flows.

Indeed, without transparency, any citizenship by investment programme will lack sustainability as few law-abiding high net worth individuals will seek the citizenship of a corrupt country.

Appendix

Comparative evaluations of St. Kitts and Nevis, Antigua and Barbuda, and Dominica by the Financial Action Task Force on money laundering

SAINT KITTS AND NEVIS[1]

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	PC	Recent amendments have affected ability to assess effectiveness of implementation. Terrorist financing is not a predicate offence for money laundering. No one has been charged or prosecuted under the POCA. Insufficient training for investigators and prosecutors
2. ML offence – mental element and corporate liability	LC	No one has been charged or prosecuted under the POCA.
3. Confiscation and provisional measures	PC	No provision in the POCA for the confiscation of instrumentalities intended for use in the commission of an offence. No provision in the ATA for the seizure of instrumentalities used in or intended for use in the commission of an offence. No stated procedure under the ATA for the forfeiture and confiscation of property. No seizures, freezing or confiscation of property relative to the offences of ML and FT therefore unable to determine how effectively the Recommendation has been implemented.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	Recommendation has been fully observed.
5. Customer due diligence	NC	The AMLR may not extend to terrorism financing obligations. No requirement for CDD on de minimis transactions if TF is suspected. Guidance re: money transfer business does not apply to banks. Requirements re: occasional transfers are not in law or regulations. Requirements for the use of independent documentation are not in law or regulations. The requirement to identify and verify the beneficial owner using data from a reliable source not in law or regulations. No direct requirement to verify authority of person purporting to act for a principal. Enhanced due diligence measures do not take into account cases and circumstances cited in the Basel CDD paper. No direct obligation to ascertain legal status of party to legal arrangement/ trust arrangement. There is no prohibition of the use of reduced due diligence where there is a suspicion of TF. No reference to special risk management procedures that should take place where a customer is allowed to utilise a business relationship prior to verification. Measures for ongoing due diligence does not include scrutiny that ensures that transactions are consistent with the source of funds. Effectiveness cannot be assessed due to the recent passage of Regulations and Guidance Notes and the limited knowledge of the supervised constituents about the new requirements. Concern relating to verification of compliance with this recommendation by Captive and International Insurers, given the fact that the bulk of their activities occur offshore.
6. Politically exposed persons	LC	The Regulation is not clear as to whether the requirement for establishing source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.

1 CFATF, Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism. St. Kitts and Nevis. 22 June 2009.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
7. Correspondent banking	LC	The GN whilst considered OEM for ML purposes does not cover TF issues. Thus cannot properly cover correspondent banks carrying out assessments of TF measures in respondent jurisdictions.
8. New technologies and not face-to-face business	PC	The AMLR do not extend to TF obligations. Neither the Regulations nor the Guidance Notes provide for specific and effective CDD measures that financial institutions should apply to cases of not face-to face business.
9. Third parties and introducers	PC	No requirement for regulated business to immediately get necessary information from introducers re: elements of the CDD process. No requirements for Introducers and intermediaries to follow appropriate CDD measures (e.g. using independent evidence for verification). No requirement for financial institutions to be satisfied that information undertaken to be provided will be provided without delay. Regulated businesses should ensure that the authority of a customer purporting to act for another is valid, and ascertaining the nature of the customers' business. Introducers and Intermediaries are not required to be subject to CFT obligations. Ambiguity regarding whether introducers are required to be supervised under FATF requirements. Lack of industry compliance to requirements relating to ensuring that introducers and intermediaries are subject to AML/CFT supervisory regime.
10. Record keeping	LC	Concerns re: verifying levels of compliance with the record-keeping obligations established in the law by Captive and International Insurance Companies.
11. Unusual transactions	PC	There is ambiguity between the GN and the Regulations with regard to the appropriate treatment of unusual transactions. The law does not state that unusual transactions should be available for competent authorities or auditors. There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements for treating with unusual transactions.
12. DNFBP – R.5, 6, 8–11	PC	Deficiencies identified for all financial institutions for R.5, R.6, R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs The powers of the FSC under the FSC Act extend only to financial services. There is no evidence of effective supervision of Casinos for AML/CFT purposes. The relevant activities specified for accountants and auditors in the POCA are not in line with E.C. 12.1(d). Assessment of the effectiveness of CDD measures for legal professionals as well as jewellers and dealers of precious stones metals is not possible due to recent additions to Schedule 1 of the POCA. There are no requirements for third parties to be regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with Recommendations 5 and 10.
13. Suspicious transaction reporting	NC	The suspicious transaction reporting requirements under the AMLR and the ATA are not in keeping with the FATF requirements. Sanctions under AMLR are not proportionate and may affect effectiveness for more serious offences. Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
14. Protection and no tipping-off	PC	Requirement limited to ML investigations No requirement with regard to the reporting of a STR or related information to the FIU which could lead to a ML or FT investigation.
15. Internal controls, Compliance and audit	PC	Requirements regarding internal audit and testing, compliance officers and staff training may only apply to ML (and not to TF issues) under the AML Regulations. No requirement that internal testing should be independent and adequately resourced
16. DNFBP – R.13-15 and 21	NC	Deficiencies identified for financial institutions for R13, R15, and R21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBPs.
17. Sanctions	NC	Key offences under the AMLR carry homogenous penalties and thus are not proportionate, dissuasive or effective. Penalties for reporting offences under the ATA vary widely. Offences under the AMLR are not applicable to senior managers. The FSC has not applied the range of sanctions provided by the FSC Act and the AMLR. The ECSRC does not have power to sanction for AML/CFT breaches. The ECCB may only apply sanctions of breaches uncovered via examination.
18. Shell banks	C	Recommendation has been fully observed
19. Other forms of reporting	C	Recommendation has been fully observed
20. Other NFBP and secure transaction techniques	C	Recommendation has been fully observed
21. Special attention for higher risk countries	PC	There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and international Insurance companies are fully complying with the requirements. Financial institutions only required to apply enhanced CDD regarding dealings with and transactions with countries with weak AML/CFT systems. Apparent inability to enforce measures as they relate to CFT issues. Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards
22. Foreign branches and subsidiaries	C	Recommendation has been fully observed
23. Regulation, supervision and monitoring	PC	'Fit and proper' requirements do not apply currently to credit unions, domestic insurance companies and money service providers (insofar as the Money Services Act has not yet been implemented). Fit and Proper requirements under the FSRO are not imposed on directors or managers of institutions covered by that Order. There are no fit and proper requirements under CICA for owners or directors. Offshore and Domestic insurance are not supervised on a group wide basis. ECCB powers to inspect for AML/CFT not expressed in the Banking Act. The Offshore Banking law is does not provide for senior managers to be fit and proper, nor for consolidated supervision. The Supervisory Authorities face difficulties in verifying levels of compliance by international and captive insurers. ECSCR lacks powers to inspect and sanction for AML/CFT measures. Supervisory authorities require more resources.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
24. DNFBP – regulation, supervision and monitoring	NC	Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures. The FSC Act does not explicitly give powers to the FSC for the supervision and regulation of non-financial services. Lawyers have challenged the FSC's authority to conduct on-site inspections for AML/CFT purposes.
25. Guidelines and feedback	PC	No feedback given with regard to AML/CFT trends and typologies. The GN are legally constrained to ML issues. The deficiencies identified for financial services for R 25 at sections 3.7, 3.10, and 4.3 apply to DNFBPs. FIU has not provided feedback with respect to disclosures and sanitised cases to DNFBPs. There is no sector-specific AML/CFT guidance applicable to DNFBPs, except for trust and company service providers.
Institutional and other measures		
26. The FIU	PC	No specified time period for the making of reports on TF. A number of reporting entities have not received training in relation to the reporting guidelines and are unaware of their obligations under the POCA. The FIU's independence and autonomy can be unduly influence by its Director's inability to recruit appropriate and competent staff. The Minister is given too much authority under the Act as he is responsible for the Policy making and the appointment of consultants to the FIU decision making functions. (Sec 6 FIU Act). The FIU does not prepare and disseminate trends and typologies to relevant reporting entities. Information held by the FIU is not sufficiently secured and protected. There is no standard reporting time in which reporting entities are required to file STRs to the FIU. No guidance on the filing of STRs in relation to TF has been issued by the FIU. The FIU has not been fully constituted in accordance with the FIU Act.
27. Law enforcement authorities	NC	St. Kitts and Nevis has not considered enacting legislation or putting measures in place to waive or postpone the arrest of suspected persons and /or the seizure of cash with the view to identify persons involve. No clear indication that money laundering and terrorist financing are properly investigated.
28. Powers of competent authorities	LC	The level of enforcement and effectiveness of implementing the tools available to law enforcement cannot be clearly ascertained.
29. Supervisors	PC	The powers of the ECCB to inspect do not directly extend to AML/CFT. The ECSRC lacks power to inspect for AML/CFT measures. Limitation on sanctions under the AMLR and the ATA.
30. Resources, integrity and training	PC	Inadequate staff in the Office of the DPP. Lack of AML/CFT training for staff in the Office of the DPP. There is no law library in the Office of the DPP available for the use of law officers. There is a lack of both human and technical resources in the Police Force, the FIU and Customs and Excise (Enforcement Division). The procedures in place in the FIU and the Customs and Excise Department are not adequate to ensure that staff maintains a high level of integrity and confidentiality. Need for more training in relation to ML/TF matters for members of the Police Force and Customs and Excise.

Forty Recommendations	Rating	Summary of factors underlying rating
Institutional and other measures		
31. National co-operation	PC	There is insufficient cooperation and consultation between the DPP and the Police when investigating possible money laundering and terrorist financing offences. No pro-active role taken by the DPP with regard to giving guidance to the police in relation to their AML/CFT investigations.
32. Statistics	PC	There is no comprehensive and independent statistics maintained by the FIU in relation to international wire transfers. There are no complete statistics kept by the FIU on production orders, monitoring orders and restraint orders, so as to show the effectiveness of the of the AML/CFT framework. Customs and Excise does not keep any comprehensive statistics on cross border seizures. No statistics maintained by Customs and Excise on matters that were referred to other Agencies such as the FIU for investigations. The statistics on mutual legal assistance is limited, in that it does not explain the nature of the requests and what processes were used to obtain the funds. The statistics on extradition and the mutual legal assistance do not include the response time.
33. Legal persons beneficial owners	LC	No provision in the Companies Act with regard to beneficial ownership or control.
34. Legal arrangements beneficial owners	LC	Inability to access whether information on private trusts is adequate and accurate. International Co-operation
International cooperation		
35. Conventions	PC	All relevant Articles of the Conventions have not been fully implemented.
36. Mutual legal assistance (MLA)	C	Recommendation has been fully observed.
37. Dual criminality	C	Recommendation has been fully observed.
38. MLA on confiscation and freezing	LC	No arrangement is in place for the sharing of assets under the ATA. No provision in the MACMA with regard to instrumentalities used in or intended for use in the commission of an offence
39. Extradition	C	Recommendation has been fully observed.
40. Other forms of co-operation	PC	Law enforcement is not authorised to conduct investigation on behalf of its foreign counterparts. The ECSRC would not be able to share information about AML issues as it does not supervise for AML purposes.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	The ATA does not provide for the freezing of funds belonging to Al-Qaida, the Taliban or their associates or other persons designated by the U.N Security Council. No designations have been made under UNSCR 1373. The limitation period for commencing prosecution for money laundering offences is too short. There is no provision for extending the statute of limitation where a person deliberately tries to escape from prosecution. No legislative provision for any aircraft belonging to Al-Qaida, the Taliban or their associates to be denied permission to land.
SR.II Criminalise terrorist financing	PC	Terrorist financing does not meet the requirements to be considered a predicate offence. There are inadequate stipulated penalties for legal persons under the ATA.
SR.III Freeze and confiscate terrorist assets	PC	Section 43 of the ATA does not satisfy the requirement of S/RES/1267 for the freezing without delay of funds belonging to the Taliban and Al-Qaida. No regulations made with regard to the procedure for an application for de-listing as a terrorist or terrorist group. There is no programme in place for informing the public of the procedure for de-listing. There is no programme in place to inform the public about the procedure for unfreezing funds or assets. No procedure in place for authorising access to funds or other assets that are frozen under UNSCR 1267 and that are to be provided for basic expenses. There is no legislation in place to provide for the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452(2002). There is no provision for extraordinary expenses. There has been no implementation of SR. III provisions and accordingly the effectiveness of the measures cannot be determined.
SR.IV Suspicious transaction reporting	NC	The suspicious transaction reporting requirements under the ATA are not in keeping with the FATF requirements. Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA.
SR.V International cooperation	PC	The deficiencies noted in Rec. 38 also affect SR.V. Law enforcement is not authorised to conduct investigation on behalf of its foreign counterparts. The ECSRC does not supervise for compliance relating to TF and would not be able to share information on this issue.
SR.VI AML requirements for money/value transfer services	PC	Money Services Business Act not yet implemented. Supervisors are not required to maintain listing of operators. Sanctions under the FSC Act and the AMLR appear to be under-utilised. Compliance obligations under the Money Services Business Act do not extend to TF issues. Issues relating to the scope of the AMLR and the deficiencies in reporting requirements under the AMLR and the ATA.
SR.VII Wire transfer rules	PC	Money Services Act and Payment System Act not implemented. Detailed originator information not expressly required for all types of transfers. No appropriate guidance to funds transfer businesses and banks with regard to treatment of fund transfer transactions that do not have sufficient originator information. Ambiguity regarding inspection and sanction powers against banks and offshore banks for AML/CFT issues. No requirements for financial institutions to take appropriate action when they receive a transfer accompanied with inadequate originator information. Criminal sanctions under AMLR and FSCA not proportionate.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.VIII Non-profit organisations	PC	The purpose and objectives, and identity of persons who control the activities of non-profit organisations are not publicly available and there is no documented evidence of public availability. The recent issue of requirements to monitor compliance does not allow for sufficient time to test for effective implementation.
SR.IX Cross border declaration and disclosure	NC	Cases of cross border seizures of cash and bearers instruments are not properly investigated. There is no coordination domestically between the relevant authorities in relation to the implementation of SR 9. There are no records kept on the seizure of cross border cash and bearer negotiable instruments. Need for greater information sharing and liaison between Customs Officials in St. Kitts and the originating country when there is a report of the seizure. No proper maintenance of records for the availability for AML/CFT purposes. Sanctions are not proportionate and difficult to assess effectiveness since there has been no implementation.

Acronyms used in St. Kitts and Nevis table

AG	Attorney General
AML	Anti-Money Laundering
AMLR	Anti-Money Laundering Regulations, 2008
BGCA	Betting and Gaming (Control) Act
CA	Companies Act
CALP	Caribbean Anti-Money Laundering Programme
CCLEC	Caribbean Customs Law Enforcement Council
CDD	Customer Due Diligence
CFT	Combating Financing of Terrorism
CFTAF	Caribbean Financial Action Task Force
CGBS	Caribbean Group of Banking Supervisors
CICA	Captive Insurance Companies Act
CO	Compliance Office
DNFBP	Designated Non-Financial Businesses & Professions
DPP	Director of Public Prosecutions
ECCB	Eastern Caribbean Central Bank
ECSRC	Eastern Caribbean Securities Regulatory Commission
FA	Foundation Act
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FOA	Fugitive Offenders Act
FSC	Financial Services Commission
FSCA	Financial Services Commission Act
FSRO	Financial Services (Regulations) Order
FT	Financing of Terrorism

GN	Guidance Notes
IAIS	International Association of Insurance Supervisors
IOSCO	International Organisation of Securities Commissions
KYC	Know Your Customer
LP Act	Limited Partnership Act
LPA	Legal Profession Act
MACMA	Mutual Assistance in Criminal Matters Act
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MOF	Ministry of Finance
MSBA	Money Services Business Act
NGOA	Non-Government Organisation Act
NBCO	Nevis Business Corporation Ordinance
NIETO	Nevis International Exempt Trust Ordinance
NLLCO	Nevis Limited Liability Company Ordinance
POCA	Proceeds of Crime Act
REDTRAC	Regional Drug Law Enforcement Training Centre
STR	Suspicious Transaction Report
S/RES	Security Council Resolution
UK	United Kingdom
US/USA	United States of America
WCO	World Customs Organisation

ANTIGUA AND BARBUDA[1]

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	NC	Key definitions are inconsistently defined in the Statutes and these definitions are not in the terms provided under the Palermo and Vienna Conventions. The list of precursor chemicals does not accord with the list under the Vienna Convention. The list of money laundering predicate offences under the POCA is too limited. The predicate offences for money laundering do not cover three (3) out of the twenty (20) FATF's Designated Category of Offences, specifically Participation in an Organised Criminal Group, Trafficking in human beings and migrant smuggling and Piracy.
2. ML offence – mental element and corporate liability	LC	The number of money laundering prosecutions is remarkably low given the wide measures and the absence of thresholds available under the MLPA
3. Confiscation and provisional measures	LC	Ineffective implementation of the freezing and forfeiture regime. No express provision in the PTA for third parties to have their interest in property excluded from seized property.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	The ECCB and FSRC are not legislatively empowered to share information with other competent authorities either domestically or internationally without a MOU. There are no legislative provisions allowing the Registrar of Co-operative Societies and the Registrar of Insurance to share information with other competent authorities.
5. Customer due diligence	PC	Legislative requirement for CDD measures The requirement to apply CDD requirements where there is suspicion of money laundering or the financing of terrorism is limited to occasional transactions. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to-date is not enforceable. The requirements concerning the time frame and measures to be adopted prior to verification are not enforceable. The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 for a new customer or an occasional transaction is not enforceable. The requirement for a financial institution to consider making a suspicious transaction report when it is unable to comply with criteria 5.3 to 5.6 when it has already commenced a business relationship is not enforceable. to all existing customers is limited to IBCs and is not enforceable
6. Politically exposed persons	NC	The requirement for domestic and offshore banks to gather sufficient information to establish whether a new customer is a PEP is not enforceable. The requirement for banks to obtain senior management approval for establishing business relationships with a PEP is not enforceable. No requirement that when a customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, that financial institutions are required to obtain senior management approval to continue the business relationship.

1 CFATF, Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism. Antigua and Barbuda 23 June, 2008.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
7. Correspondent banking	NC	Requirement for fully understanding and documenting the nature of the respondent bank's management and business and assessing customer acceptance and KYC policies and whether it is effectively supervised is not enforceable. Requirement for assessing a respondent's controls does not include all AML/CFT controls or whether it has been subject to money laundering or terrorist financing investigation or regulatory action and is not enforceable. Financial institutions are not required to document the respective AML/CFT responsibilities of each institution in a correspondent relationship. Financial institutions are not required to obtain approval from senior management before establishing new correspondent relationships. The requirement for financial institutions to ensure that respondent institutions have performed normal CDD measures set out in Rec. 5 for customers utilising payable through accounts or are able to provide relevant customer identification upon request for these customers while only applicable to IBCs is not enforceable.
8. New technologies and not face-to-face business	NC	There are no enforceable provisions which require all financial institutions to have measures aimed at preventing the misuse of technology in ML and FT schemes. Requirements for financial institutions to have policies and procedures in place to address specific risks associated with non-face-to-face customers are not enforceable.
9. Third parties and introducers	NC	The requirement for IBCs to immediately obtain from a third party the necessary identification information on the customer is not enforceable. No requirement for financial institutions – except for an unenforceable requirement for IBCs to obtain CDD documentation – to take adequate steps to satisfy themselves that copies of identification data and other relevant CDD documentation will be made available for the third party upon request and without delay. No requirement for financial institutions to satisfy themselves that third parties are regulated and supervised in accordance with Recommendations 23,24 and 29 and have measures in place to comply with the CDD requirements set out in R.5 and R.10. Competent authorities have not issued any guidance about countries in which third parties can be based since the FATF NCCT listing.
10. Record keeping	NC	Single transactions under XCD 1,000 are exempted from record keeping requirements. Only IBCs are required to maintain transaction records in a manner that would permit reconstruction of individual transactions to provide evidence that would facilitate the prosecution of criminal activity. There is no requirement for financial institutions to retain business correspondence for at least five (5) years following the termination of an account or business relationship. There is no enforceable requirement for financial institutions to ensure that customer and transaction records are available to the Supervisory Authority or other competent authorities on a timely basis.
11. Unusual transactions	NC	There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and put their findings in writing. There is no requirement to keep findings on all complex, unusual large transactions or unusual patterns of transactions for competent authorities and auditors for at least five (5) years.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
12. DNFBP – R.5, 6, 8–11	NC	Lawyers and notaries, other independent legal professionals, accountants and company service providers are not considered financial institutions under the MLPA, and they are therefore outside the ambit of the AML/CFT regime. Deficiencies identified for all financial institutions as noted for Recommendations 5, 6, 8-11, in the relevant sections of this Report are also applicable to listed DNFBPs.
13. Suspicious transaction reporting	PC	The requirement for FIs to report suspicious transactions is linked only to transactions that are large, unusual, complex etc. The obligation to make a STR related to money laundering does not apply to all offences required to be included as predicate offences under Recommendation 1. The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism.
14. Protection and no tipping-off	PC	The tipping-off offence with regard to directors, officers and employees of financial institutions is limited to information concerning money laundering investigations rather than the submission of STRs or related information to the FIU.
15. Internal controls, Compliance and audit	NC	Requirement for financial institutions to develop internal procedures and controls is limited to money laundering and does not include financing of terrorism. Requirement for financial institutions to appoint a compliance officer at management level is not enforceable. Requirement for financial institutions to provide compliance officers with necessary access to systems and records is not enforceable. No requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls. Requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees is not enforceable.
16. DNFBP – R.13–15 and 21	NC	Deficiencies identified for financial institutions for R13, R14, R15 and R21 in sections 3.6.3, 3.7.3 and 3.8.3 of this Report are also applicable to DNFBPs.
17. Sanctions	PC	Sanctions in the MLPA for breaches of the guideline are not dissuasive. Sanctions under the PTA and the MLPA except for money laundering are not applicable to the directors and senior management of legal persons. The range of AML/CFT sanctions in enacted legislation is not broad and proportionate as required by FATF standards.
18. Shell banks	NC	Requirement for domestic and offshore banks not to enter into or continue correspondent banking relationships with shell banks is not enforceable. 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	C	Recommendation is fully observed
20. Other NFBP and secure transaction techniques	C	Recommendation is fully observed

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
21. Special attention for higher risk countries	NC	There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries. Financial institutions are not required to examine the background and purpose of transactions that have no apparent economic or lawful purpose from or in countries that do not or insufficiently apply the FATF Recommendations and make available the written findings to competent authorities or auditors. There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.
22. Foreign branches and subsidiaries	NC	Requirement for financial institutions to ensure that principles in guidelines are applied to their branches and subsidiaries is not enforceable. Requirement for financial institutions to ensure that principles in guidelines are applied to branches and subsidiaries operating in countries which do not or insufficiently apply the FATF Recommendations is not enforceable. Requirement for financial institutions to inform the regulator and the Supervisory Authority when the local applicable laws and guidelines prohibit the implementation of the guidelines is not enforceable. Requirement for IBCs' branches and subsidiaries in host countries to apply the higher of AML/CFT standards of host and home countries is not enforceable.
23. Regulation, supervision and monitoring	NC	The supervisory authorities have not been designated with the responsibility for ensuring that the relevant financial institutions adequately comply with AML/CFT requirements. No provisions in the BA for the ECCB to approve changes in directors, management or significant shareholders of a licensed financial institution. No provisions for the Registrar of Insurance to apply fit and proper criteria in assessing directors, managers or shareholders of an applicant to carry on insurance business. No provision for a registered insurer to obtain the approval of the Registrar of Insurance for changes in its shareholding, directorship or management. No provision for the Registrar of Cooperative Societies to use fit and proper criteria in assessing applications for registration. The Registrar of Co-operative Societies has no power of approval over the management of a society. Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.
24. DNFBP – regulation, supervision and monitoring	PC	Casinos, real estate agents, dealers in precious metals and stones are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.
25. Guidelines and feedback	PC	The Supervisory Authority has not provided financial institutions and DNFBPs with adequate and appropriate feedback. The respective guidelines and directives are in practice not issued to all persons and companies in the sectors.

Forty Recommendations	Rating	Summary of factors underlying rating
Institutional and other measures		
26. The FIU	PC	The Supervisory Authority has not been appointed. SARs are being copied to the FSRC by the entities they regulate. A number of reporting bodies have not received training with regard to the manner of reporting SARs. There is no systematic review of the efficiency of ML and FT systems. The ONDCP's operational independence and autonomy can be unduly influenced by its inability to hire appropriate staff without the approval of Cabinet. The ONDCP does not prepare and publish periodic reports of it operations, ML trends and typologies for public scrutiny.
27. Law enforcement authorities	LC	No legislative or other measures have been put in place to allow the ONDCP when investigating ML to postpone or waive the arrest of suspected persons or the seizure of cash so as to identify other persons involved in such activities.
28. Powers of competent authorities	C	Recommendation is fully observed.
29. Supervisors	PC	Neither the Registrar of Insurance nor the Registrar of Co-operative Societies has adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirements.
30. Resources, integrity and training	PC	The resources of law enforcement agencies are insufficient for their task, particularly the Police. A number of these entities have not received training in ML/FT matters.
31. National co-operation	LC	There are no effective mechanisms in place to allow policy makers, the ONDCP, the FSRC and other competent authorities to cooperate and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and FT.
32. Statistics	PC	While statistics on money laundering investigations, prosecutions and convictions are kept, the low number of convictions which result from investigations gives credence to the view that these statistics are not adequately reviewed to ensure optimum effectiveness and efficiency of the anti-money laundering regime. There are no investigations or prosecutions whereby the effectiveness of the terrorist financing investigations and prosecutions may be measured. The effectiveness of the financing of terrorism mechanisms could not be ascertained. No statistics have been provided to show whether the restraint and confiscation mechanisms under the POCA are effective. No measures had been instituted to review the effectiveness of their AML/CFT systems. No available statistics with regard to MVTs.
33. Legal persons beneficial owners	NC	Statutory obligation to provide information as to the ownership and management of partnerships is lacking. There are no measures in place to ensure that bearer shares under the IBCA are not misused for money laundering.
34. Legal arrangements beneficial owners	PC	No measures for the registration or effective monitoring of local trusts.
International cooperation		
35. Conventions	LC	There are some shortcomings with regard to the implementation of provisions in the Vienna, Palermo and Terrorist Financing Conventions.

Forty Recommendations	Rating	Summary of factors underlying rating
International cooperation		
36. Mutual legal assistance (MLA)	C	Recommendation is fully observed.
37. Dual criminality	C	Recommendation is fully observed.
38. MLA on confiscation and freezing	LC	No provision has been made for confiscated proceeds of terrorism or terrorism assets seized to be deposited into a Forfeiture Fund. No provision has been made for the sharing of assets confiscated as a result of coordinated law enforcement actions. No provision has been made for assets from terrorist activity to be deposited into a Forfeiture Fund.
39. Extradition	C	Recommendation is fully observed.
40. Other forms of co-operation	LC	The FSRC is not authorised to exchange information with its foreign counterparts. The level of cooperation between the ECCB and the FSRC is unclear.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	The definitions of 'person' and 'entity' are not consistent, and this may affect whether terrorist groups are captured for some offences. No provision has been made under the terrorism legislation for access to frozen funds as required by the UNSCRs 1373 and 1452.
SR.II Criminalise terrorist financing	PC	The deemed money laundering terrorism offences under the PTA and their reference to limited sections of the MLPA introduce an element of uncertainty into the financing of terrorism framework with respect to the extent to which either Act is applicable, and hence, the extent to which the elements of Special Recommendation II are covered. Sanctions should include fines to be dissuasive. Under the PTA, the intentional element of the offence cannot be inferred from objective factual circumstances.
SR.III Freeze and confiscate terrorist assets	NC	It is difficult to ascertain the extent of the application of the freezing mechanism under the MLPA and the PTA to deemed PTA money laundering terrorism offences. There is no provision for access to funds for basic expenses and certain fees as required by UNSCR 1452. The term "funds" is undefined in the PTA. Guidance to financial institutions that may be holding targeted terrorist funds is not sufficient. The type of property which may constitute other assets is not explicit. De-listing procedures are not publicly known. There is no specific provision for specified entities to have funds unfrozen. The PTA does not provide third party protection consistent with Article 8 of the Terrorist Financing Convention.
SR.IV Suspicious transaction reporting	NC	The reporting of STRs with regard to terrorism and the financing of terrorism does not include suspicion of terrorist organisations or those who finance terrorism. The obligation to make a STR related to terrorism does not include attempted transactions.
SR.V International cooperation	LC	The provisions of Rec. 38 have not been met with regard to the establishment of a Forfeiture Fund and the sharing of confiscated assets.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.VI AML requirements for money/value transfer services	NC	No requirement for registered MVT service operators to maintain a current list of agents. Unable to assess the effectiveness of current monitoring and compliance system for MVT service operators due to lack of information. Sanctions are not applicable to all criteria of SR VI .i.e. failure to licence or register as a MVT service provider. Deficiencies in Recs. 4-11, 13-15, 21-23, and SR VII are also applicable to MVT operators.
SR.VII Wire transfer rules	NC	Requirements for wire transfers in the ML/FTG are not enforceable in accordance with the FATF Methodology.
SR.VIII Non-profit organisations	NC	No review of the adequacy of domestic laws and regulations that relate to NPOs has been undertaken by the Authorities in Antigua and Barbuda. There are no measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing. No periodic reassessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted. There is no regulatory framework for friendly societies. Although NPOs come within the regulatory framework of the FSRC, it appears that this sector is not adequately monitored. No programmes have been implemented to raise the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse. The sanctions and oversight measures do not serve as effective safeguards in the combating of terrorism. The provisions for record keeping under the FSA are inadequate.
SR.IX Cross border declaration and disclosure	PC	Cases of cross border transportation of cash or other bearer negotiable instruments are not thoroughly investigated. Customs, Immigration, ONDCP and other competent authorities do not co-ordinate domestically on issues related to the implementation of Special Recommendation IX.

Acronyms used in Antigua and Barbuda table

ABDF	Antigua and Barbuda Defence Force
BA	Banking Act, 2005
BGA	Betting and Gaming Act, Cap. 47
CA	Companies Act, 1995
CED	Customs and Excise Department
CCGDR	Customs (Currency and Goods) Declaration Regulations 1999
CCMA	Customs (Control and Management) Act, 1993
CDDG	(IGWC) Customer Due Diligence Guidelines for Interactive Gaming & Interactive Wagering Companies
DEA	Drug Enforcement Administration
DPP	Director of Public Prosecutions
EA	Extradition Act, 1993
ECCB	Eastern Caribbean Central Bank
ECR	Exchange Control Regulations

FATF	Financial Action Task Force
FBI	Federal Bureau of Investigations
FSRC	Financial Services Regulatory Commission
GIIC	Guidelines for International Insurance Companies (Issued by FSRC December 2003)
IBCA	International Business Companies Act, Cap. 222
IBC	International Business Companies
IBCR	International Business Corporations Regulations (as amended)
IGIWR	Interactive Gaming & Interactive Wagering Regulations
IGIWG	International Gaming & International Wagering Guidelines
ITA	International Trust Act, 2004
IMF	International Monetary Fund
MACMA	Mutual Assistance in Criminal Matters Act, 1993
MIMOU	Multilateral Interagency Memorandum of Understanding
MLAT	Mutual Legal Assistance Treaty
MLRO	Money Laundering Reporting Officer
MLFTG	Money Laundering and Financing of Terrorism Guidelines
MLPA	Money Laundering Prevention Act, 1996 (as amended)
MVT	Money Value or Transfer Service
NJCC	National Joint Coordination Centre
NPO	Non-Profit Organisation
OECS	Organisation of Eastern Caribbean States
ONDCP	Office of National Drug and Money Laundering Control Policy
ONDCPA	Office of National Drug and Money Laundering Control Policy Act, 2003
POCA	Proceeds of Crime Act, 1993
PTA	Prevention of Terrorism Act, 2005
SA	Supervisory Authority
STA	Suppression of Terrorism Act
UNDP	United Nations Drug Control Programme (UNDCP)
URL	Uniform Resource Locator

DOMINICA[1]

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	PC	The physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer. Designated categories of offences, Piracy (Pirates at Sea) and Extortion not criminalised
2. ML offence – mental element and corporate liability	LC	The Money Laundering (Prevention) Act 2000 (Chapter 40:07), does not adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been found criminally liable. No civil or administrative sanctions are provided for ML. No powers are given to administer administrative sanctions.
3. Confiscation and provisional measures	PC	In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica do not have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. There is little authority in The Commonwealth of Dominica to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	Inability of the competent authorities to share information without an MOU or court order
5. Customer due diligence	NC	The requirements that documents, data or information collected under the CDD process should be kept up to date by the financial institution is not enforceable. The obligation that financial institutions should perform ongoing due diligence on the business relationships is not enforceable. The determination by the financial institution as to who are the ultimate beneficial owners is not enforceable. No guidance for the insurance companies with regards to identification and verification of the underlying principals, persons other than the policyholders. Financial institutions do not perform enhanced due diligence for higher risk customers. Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts. The business clients on the exempted list of the banks do not submit a source of fund declaration for each transaction.
6. Politically exposed persons	NC	It should be enforceable on the financial institutions that they apply enhanced and ongoing due diligence on their PEPs.

1 CFATF, Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism. Dominica 2 July 2009.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
7. Correspondent banking	NC	No requirement to determine the nature of business reputation of a respondent and the quality of supervision. No assessment of a respondent AML/CFT controls and responsibilities. No provision to obtain senior management approval before establishing new correspondent relationships. No condition to document respective AML/CFT responsibilities in correspondent relationships. No requirement for financial institutions with correspondent relationships involving "payable through accounts" to be satisfied that the respondent. Financial institutions have not performed all normal CDD obligations on its customers that have access to the accounts. No requirement for the financial institution to satisfy themselves that the respondent institution can provide reliable customer identification data upon request.
8. New technologies and not face-to-face business	NC	There are no provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing.
9. Third parties and introducers	PC	No requirement for financial institutions to immediately obtain from all third parties necessary information concerning certain elements of the CDD process referenced in Recommendation 5.3 to 5.6 The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients is not enforceable. Competent authorities should give guidance with regards to countries in which the third party can be based.
10. Record keeping	C	Recommendation is fully observed.
11. Unusual transactions	PC	No requirement for financial institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.
12. DNFBP – R.5, 6, 8–11	NC	The requirements of Recommendations 5, 6, 8 to 11 are not adequately enforced on DNFBP's.
13. Suspicious transaction reporting	NC	The requirement to report suspicious transactions should be linked to all transactions and not only to complex, large, unusual. No requirement to report attempted transactions. The reporting of an STR does not include transactions that are linked to terrorism financing, terrorism, terrorism acts, and terrorist organisations. The legislation does not require the STR be reported to the FIU.
14. Protection and no tipping-off	LC	The prohibition against tipping-off does not extend to the directors, officers and employees of financial institutions.
15. Internal controls, Compliance and audit	PC	Financial institutions do not maintain an independent audit function to test compliance with policies, procedures and controls internal procedures do not include terrorist financing.
16. DNFBP – R.13–15 and 21	NC	No effective application of R 13-14, R 15 and 21. No competent body to impose sanctions/fines.
17. Sanctions	NC	Lack of a designated regulatory body to apply sanctions/fines and the absence of a clearly defined process in the law or guidance notes.
18. Shell banks	NC	The requirement for domestic and offshore banks not to enter into correspondent banking relationship with shell banks is not enforceable. No requirement for financial institution to satisfy themselves that the respondent financial institutions do not permit their accounts to be used by shell banks.
19. Other forms of reporting	NC	No evidence that Dominica has considered the feasibility and utility of implementing a fixed threshold currency reporting system.

Forty Recommendations	Rating	Summary of factors underlying rating
Preventive measures		
20. Other NFBP and secure transaction techniques	PC	Procedures adopted for modern secure techniques are ineffective.
21. Special attention for higher risk countries	NC	There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries. There are no provisions that allow competent authorities to apply counter measures to countries that do not or insufficiently apply the FATF Recommendations.
22. Foreign branches and subsidiaries	PC	Requirement to inform the home country supervisor when local laws and guidelines prohibit the implementation.
23. Regulation, supervision and monitoring	NC	No competent authority assigned the responsibility of monitoring and ensuring compliance with AML/CFT requirements. No specific body entrusted with the responsibility for conducting on-site examinations and regular off-site monitoring.
24. DNFBP – regulation, supervision and monitoring	NC	No regulatory/supervisory measures are in place to ascertain compliance with AML/CFT laws and guidelines nor is the FSU charged with the responsibility of monitoring and ensuring compliance with AML/CFT requirements.
25. Guidelines and feedback	NC	Non issuance of specific guidelines to assist DNFBPs and other financial institutions with implementing the requirements of the AML/CFT regime. Non issuance of guidelines by SROs and other competent authority (FSU) for DNFBPs. The authority has not provided the financial sector with adequate and appropriate feedback on the STRs Institutional and other measures
Institutional and other measures		
26. The FIU	PC	The FIU is not the central authority for the receipt of STRs from reporting entities. In practice STRs are filed with the MLSA and copies are made available to the FIU. The FIU does not have total control over the STRs it maintains on behalf of the MLSA. Although the FIU has almost immediate access to the STRs submitted by the Financial Institutions and other scheduled entities, the MLPA charges that the STRs should be sent to the Money Laundering Supervisory Authority (MLSA) who is then charged with sending it to the FIU. At the same time the legislation requires that STRs relating to the TF should be sent to the Commissioner of Police. The data held by the FIU however, all backup data are housed on site which effectively defeats the purpose of having the backup done. To the extent that the budget of the FIU is controlled by the Ministry this could impact on its ability to be operationally independent. The annual report prepared by the Unit is not made public.
27. Law enforcement authorities	PC	No consideration of taking measures providing for the postponement or waiving of arrest of suspects or seizure of money for the purpose of identifying suspects or for evidence gathering. There is no group specialised in investigating the proceeds of crime.
28. Powers of competent authorities	PC	No provision in the SFTA which affords the FIU or the Commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations. No explicit legal provision for predicate offences investigators to obtain search warrants to seize and obtain business transaction records.

Forty Recommendations	Rating	Summary of factors underlying rating
Institutional and other measures		
29. Supervisors	PC	FSU does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure effective monitoring and compliance.
30. Resources, integrity and training	LC	The staff of the FIU consists of only four persons where the Sr Investigator functions as the systems administrator who in the absence of the Director also has to take on those duties. There is not a sufficient staff compliment in the Police, the FIU and the Supervisory Authority to be able to completely deal with issues relating to ML, FT and other predicate offences. There is also only limited continuous vetting of officers to ensure that the highest level of integrity is maintained. The FSU should be adequately staffed to discharge its functions. The staff, and budget and Anti-money laundering/combating of terrorist financing training of the staff in the DPP Office is in adequate
31. National co-operation	PC	There are no joint meetings dedicated to developing policies and strategies relating to AML/CFT The Supervisory Authority does not adequately supervise the DNFBPs and other entities in the financial sector at this time. There should be measures in place so that the authorities can There are, coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT.
32. Statistics	NC	Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering & Financing of Terrorist investigations- prosecutions and convictions- and on property frozen; seized and confiscated Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Terrorist financing freezing data. In the Commonwealth of Dominica the Competent authorities do not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. Annual statistics are however maintained on Mutual legal assistance or other international requests for co-operation and all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including whether it was granted or refused but no statistics maintained on the nature of the request and the time frame for responding. While the examiners found that statistics were kept, the examiners finds that the competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. There are no statistics kept on formal requests made or received by law enforcement authorities relating to ML and FT, including whether the request was granted or refused. No statistics are kept on on-site examinations conducted by supervisors relating to AML/CFT and the sanctions applied. There is no statistics available on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether the request was granted or refused. Lack of databases to facilitate sharing of information between authorities responsible for discharging AML/CFT requirements. The Supervisory Authority is not effective in relation to some entities in the financial sector. The effectiveness of the money laundering and terrorist financing system in Dominica should be reviewed on a regular basis. No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.

Forty Recommendations	Rating	Summary of factors underlying rating
Institutional and other measures		
33. Legal persons beneficial owners	PC	Lack of ongoing monitoring and compliance. The FSU should implement such a programme for AML/CFT purposes as well as general supervision and regulation. Measures should be in place to make sure that the bearer shares are not misused for money laundering
34. Legal arrangements beneficial owners	NC	The Authorities should include current and accurate information of the beneficial ownership and control as part of the register information on international trusts. Registration of Trusts does not include information of the settler and other parties to a Trust. Competent Authorities do not have access to information on the settler, trustees or beneficiaries of a Trust.
International cooperation		
35. Conventions	PC	The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime - (The Palermo Convention). In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention have been implemented. In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001are not fully implemented.
36. Mutual legal assistance (MLA)	LC	The Commonwealth of Dominica has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.
37. Dual criminality	C	Recommendation is fully observed
38. MLA on confiscation and freezing	PC	Unclear legislation regarding request relating to property of corresponding value. Unclear legislation regarding arrangements for coordinating seizure and confiscation actions with other countries. No consideration of the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited No consideration of authorising the sharing of assets confiscated when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.
39. Extradition	LC	The Commonwealth of Dominica do not have specific measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay
40. Other forms of co-operation	LC	There is no evidence that in The Commonwealth of Dominica requests for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (The Palermo Convention). In the Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention have been implemented. In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001are not fully implemented.
SR.II Criminalise terrorist financing	PC	The law is not clear that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica 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 law does not specifically permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance. The law does not specifically speak to the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available. No civil or administrative penalties are defined in law. The effectiveness of the regime has not been tested by actual cases. The definition of terrorist, terrorist act and terrorist organisation are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
SR.III Freeze and confiscate terrorist assets	PC	The Commonwealth of Dominica has limited and need adequate laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. The laws of the Commonwealth of Dominica do not speak to having an effective system for communicating actions taken under the freezing mechanisms The Commonwealth of Dominica do not have appropriate procedures 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 No guidance has been issued.
SR.IV Suspicious transaction reporting	NC	The reporting of STRs does not include suspicion of terrorist organisations, terrorism, terrorist acts or those who finance terrorism.
SR.V International cooperation	PC	Factors in Recommendations 37 and 38 are also applicable. Unclear laws as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value. Unclear as to whether the Commonwealth of Dominica could have arrangements for co-coordinating seizure and confiscation actions with other countries. No measures or procedures adopted to allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay. No evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).
SR.VI AML requirements for money/value transfer services	NC	Lack of an effective supervisory or regulatory regime. No requirements for licensing and registration by the authorities.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.VII Wire transfer rules	NC	No measures in place to cover domestic, cross-border and non-routine wire transfers. There are no requirements for intermediary and beneficial financial institutions handling wire transfers. No measures in place to effectively monitor compliance with the requirements of SR VII.
SR.VIII Non-profit organisations	NC	NPO's not subject to AML/CFT regime. There is no proper supervision of NGOs. There are no sanctions in place for non-compliance with the reporting requirements. There are no guidelines to aid the NGO in selecting its management. There are no requirements for the NGO to report unusual donations. The NGOs have not been sensitised in issues of AML/CFT. No review of the laws and regulations that relate to NPOs by the authorities. No measures for conducting reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing. No assessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted. No efforts at raising the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse. No sanctions for the violations of the rules in the NPO sector. No monitoring of NPOs and their international activities.
SR.IX Cross border declaration and disclosure	PC	No authority to conduct further investigations pursuant to false declaration. No dissuasive criminal civil or administrative sanctions are available for application where persons make false declarations. No dissuasive criminal civil or administrative sanctions are available for application where persons are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF. The declaration system does not allow for the detention of currency or bearer negotiable instruments and the identification data of the bearer where there is suspicion of ML or TF. There is no evidence that there are formal arrangements in place for the sharing of information with international counterparts in relation to cross border transactions.

ACRONYMS USED IN DOMINICA TABLE

FIU/Unit	Financial Intelligence Unit
MLSA	Money Laundering Supervisory Authority
NJIC	National Joint Intelligence Centre
CID	Criminal Investigations Department
IIP	INTERPOL International Police
SFTA	Suppression of the Financing of terrorism Act
MLPA	Money Laundering (Prevention) Act
POCA	Proceeds of Crime Act
MACMA	Mutual Assistance in Criminal Matters Act
FSU	Financial Services Unit
ECSC	Eastern Caribbean Supreme Court
CISNET	CARICOM Intelligence Sharing Network
CDPF	Commonwealth of Dominica Police Force
SRO	Self-Regulatory Organisations
GN 2008	Guidance Notes
2008CTR	Currency Transaction Reporting
MLAT	Mutual Legal Assistance Treaty
CCMA	Customs Control & Management A

investmentmigration.org

THOMSON REUTERS™