

Regulation at its best

By Michael Gordon, Senior Partner,
Gordon Gordon & Co., Castries, St. Lucia

St. Lucia has a unique regulatory structure that has ensured from the outset that offshore service providers and clients operate at the highest industry standards. The basis of the regulatory environment is the Registered Agent and Trustee Licensing Act that allows only licensed entities to provide services to international business companies and trusts. This Act, as well as an effective Money Laundering (Prevention) Act (MLPA), has met international standards expected of offshore centres thereby ensuring that St. Lucia was always perceived as a good centre for business and never listed by the FATF as a non-cooperative country.

Apart from legislative provisions, the government of St. Lucia established the Financial Services Supervision Unit or FSSU headed by the Director of International Financial Services. This department is responsible for the licensing of all banks, insurance companies, mutual funds and service providers and for ongoing supervision of all licensed entities. The FSSU, which is regulatory, falls under the portfolio of the Minister of International Financial Services, Prime Minister Dr. Kenny D Anthony, who is also Minister of Finance, Information and Economic Planning.

The St. Lucia government, in its continued commitment to maintaining the highest industry standards, has introduced a draft Financial Intelligence Authority Act (FIAA). This Act, which is in accordance with the FATF guidelines for financial intelligence unit legislation, provides a framework for the “receiving, analysing, obtaining and disseminating information which relates to the proceeds of offences under the Proceeds of Crime Act No. 10 of 1993, the Money

Laundering (Prevention) Act No. 36 of 1999 or any act replacing them”.

The Financial Intelligence Authority (FIA) will comprise five persons appointed by the Minister and having expertise in law, accounting and law enforcement. While the draft bill provides that “Minister” means the person responsible for the administration of the Act as notified in the Gazette, it is felt that the Minister of Justice, and Attorney General, will be the one appointed. It seems a logical choice, as the Minister of Justice is the Minister responsible for the administration of the Money Laundering Prevention Act. It is felt that the St. Lucia model potentially provides a useful separation of powers between the Minister responsible for international financial services and the Minister responsible for money laundering prevention and the functioning of the financial intelligence authority.

The FIAA provides that information necessary to the fulfilment of the functions of the Authority must be produced by any person so requested, with a criminal penalty in default of so doing. There are provisions for immunity from criminal and civil proceedings (including breach of banking or professional confidentiality) to be granted to directors and employees of financial institutions who in good faith submit reports to the authority. While these provisions are useful and it is likely that most reports will emanate from financial institutions, the immunity could have been expanded to include any person who may have relevant information on financial crimes.

There are strong confidentiality provisions for the information obtained by the Authority. Any such information is to be kept confidential and disclosed only in circumstances prescribed

under the Act. Breach of this provision carries a penalty on summary conviction of a fine of US\$50,000 or imprisonment for a term not exceeding 10 years or both.

Some professionals in the industry have expressed the view that the same effect could have been achieved by amending the Money Laundering Prevention Act. The MLPA also establishes a five-person authority and it is felt that another committee could have been constituted, or the scope of the MLPA authority expanded, to include the functions of the FIA.

While this approach has its merits, I am of the opinion that the approach taken in having two separate pieces of legislation is preferable. The MLPA is charged with, inter alia, establishing standards for financial institutions as far as reporting requirements and transaction reports are concerned, and also with developing training standards/programmes to be implemented. As a result, the MLPA will have to work and monitor the policies and practices of financial institutions and other persons to whom its provisions apply. Thus the role of the MLPA is broader and more policy-oriented than that of the FIA, which is focused on collecting information for the purpose of investigation, information sharing and enforcement.

As with all legislative programmes, implementation will be the key. St. Lucia has shown in the past its commitment to ensuring there is substance to form, and as such the authority is expected to be well staffed, equipped and operated. While the MLPA and the FIA are separate bodies, it is anticipated that they will work closely together with the information generated under the MLPA being supplied to the FIA for investigation and, where necessary, action.

This draft legislation signals to the industry and the international regulatory bodies that St. Lucia is proactive and responsive. While each licensee operating in the country is subject to rigorous scrutiny upon application and ongoing supervision, in the event something slips through the net, there are the infrastructure and agencies in place to deal with any such challenge. In these trying times for the industry, quality will be the hallmark of continued sustained success and St. Lucia is ensuring that it does all in its power to maintain its quality and to be successful in the long term.