Anti-money laundering and counter-terrorist financing measures

Vanuatu

Mutual Evaluation Report

September 2015

The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

APG members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF).

For more information about the APG, please visit the website: www.apgml.org

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Executive Summary

1. This report provides a summary of the anti-money laundering (AML) and counter-terrorist financing (CFT) measures in place in Vanuatu as at the date of the on-site visit (26 January to 7 February 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vanuatu's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- Overall, the preconditions for an effective AML/CFT system are not present in Vanuatu, including a consistent and informed understanding of ML/TF risk; high level political commitment; adequate financial and human resources, including capability and technical skills in law enforcement and regulatory/supervisory authorities; and a formal and dedicated domestic cooperation/coordination structure.
- The lack of these essential pre-conditions poses significant obstacles to effective implementation of Vanuatu's existing system and will pose challenges for further development and implementation, unless they are urgently addressed.
- There is little understanding amongst the Vanuatu authorities of the principal ML and TF risks for Vanuatu, including the high risk and vulnerabilities relating to the international financial (offshore) sector, as well as those associated with TF, and all types of legal persons. Added to this, there has been no effective engagement with the private sector. This has resulted in little understanding by most private sector agencies of the principal ML and TF risks in Vanuatu.
- The National Risk Assessment (NRA) exercise has not been completed and while the assessment team concluded that the draft NRA draws reasonable conclusions with respect to Vanuatu's ML risks, the analysis is described as preliminary and focuses largely on ML and predicate offences. It does not cover specific TF risks and all types of legal persons, which is a material deficiency. It did not involve some relevant government agencies, and is not based on objective national statistics, as Vanuatu does not maintain comprehensive statistics on matters relevant to its AML/CFT system.
- Vanuatu does not have a national AML/CFT coordination body or an AML/CFT policy (or series of policies) informed by ML/TF risks. Neither is there a dedicated strategic framework to prioritise and coordinate actions and allocate AML/CFT resources on the basis of the assessed risks. There are no mechanisms and no effective national co-operation and co-ordination amongst the operational agencies.
- Vanuatu has a basic legal framework for ML, however the Proceeds of Crime Amendment Act (POCAA) No. 27 of 2014, amended the definition of 'serious offence' to *inter alia* exclude offences attracting more than 12 months imprisonment. This has rendered the ML offence inconsistent with the FATF standards as it now excludes a majority of the FATF designated categories of predicate offences. It has also had a critical impact on the overall ability to implement Vanuatu's AML/CFT system effectively.
- Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for ML and has a threshold of VT3 million (approx. USD30,000) property value for ML. Neither has Vanuatu criminalised ancillary offences to ML.
- The legal framework for confiscation is not comprehensive and has never been successfully utilised since the enactment of Vanuatu's first POCA in 2002. The lack of confiscation arises from deficiencies in national policy and priorities, as well as a lack of resources and technical capacity.
- Vanuatu has adequate legal provisions governing the power, functions and operations of the Financial Intelligence Unit (FIU). The Vanuatu FIU (VFIU) develops and disseminates good quality financial intelligence; however the VFIU's operating capability is severely undermined by the lack of resources

available to perform its day-to-day operations, which includes both analytical and supervisory functions.

- Vanuatu authorities do not understand the role of the VFIU and the value of financial intelligence. As a result, there is a low value placed on financial intelligence. Authorities beyond the Vanuatu Police Force (VPF) do not utilize the VFIU, or other financial information to any extent and the VPF's requirement for reports to be submitted in the form of criminal complaints prevents the FIU from making justified disseminations
- Vanuatu's law enforcement agencies (LEAs) have not investigated or prosecuted any cases of ML, despite it being a criminal offence since 2002. Money laundering has never been actively pursued by LEAs and prosecutors and is not considered as an additional offence to predicate offences. This is due largely to a lack of technical expertise and awareness of ML/TF issues on the part of VPF and prosecutors, but also to the lack of overarching policy, internal procedures and guidelines to pursue ML.
- Vanuatu's legislative framework to combat TF is generally consistent with the international standards, however the TF offence is linked with a requirement that the person providing funds knows that they will be used by a person/group to carry out one or more terrorist acts. In addition, TF no longer meets the threshold to be a predicate offence to ML, which is a significant shortcoming.
- VPF has no policy, procedures or mechanisms to identify, prioritise, and handle TF cases. Whilst the TF risk is generally considered to be low, the absence of any TF investigations or prosecutions arises from a lack of understanding of the TF risk, as well as specialist forensic accounting expertise.
- Vanuatu has elements of a basic legal framework to implement targeted financial sanctions in accordance with UNSCR 1267/1989 and UNSCR 1373, however the lack of a timely legal freezing mechanism for terrorist property is a major deficiency and no procedures and mechanisms exist for the update and dissemination of the UN lists to private sector reporting entities. There is no clear procedure and mechanism for domestic designations, and targeted outreach to financial and non-financial sectors on freezing of terrorist property is lacking.
- Vanuatu has not undertaken a review of the Non-Profit Organisation (NPO) sector to identify the features and types of NPOs that are particularly at risk of being abused for TF. Outreach to the NPO sector is lacking and implementation controls are weak as there is little understanding of the risks associated with the NPO sector.
- Vanuatu has no statutory provisions in place to give effect to Proliferation Financing (PF) sanctions under R.7.
- Vanuatu's legal framework for preventive measures as recently amended does not cover all relevant FATF recommendations in a sufficiently comprehensive manner.
- Commercial banks and some international banks have an adequate understanding of their ML/TF risks and have mostly implemented a risk-based approach. Other international banks and financial institutions, and the Designated Non-Financial Business or Profession (DNFBP) sectors, did not display the same level of understanding and application of risk-based procedures.
- Except for the commercial banks, AML/CFT compliance procedures, internal audit and training do not appear to be well-embedded and most reporting entities have not yet updated their procedures to reflect the 2014 AML/CFT requirements.
- Guidance issued from the Reserve Bank of Vanuatu (RBV) for banks is comprehensive and consistent with the AML/CTF Act, but no guidance has been provided by VFIU to other reporting entities on the 2014 AML/CFT requirements. The VFIU has not undertaken any effective outreach to, and supervision of, the DNFBP sector due primarily to a lack of supervisory resources and direction.

- The level of suspicious transaction reporting appears to be inadequate, other than from commercial banks and Money or Value Transfer Service(s) (MVTS).
- In general terms, the RBV and the VFIU have sufficient legislative powers to supervise the financial institutions; however one of the most important reasons for the poor record of execution of the powers is the lack of resources within the RBV and the VFIU to adequately supervise the number of entities involved for AML/CFT purposes.
- There is no formal process for the RBV and the VFIU to regularly identify and assess the ML/TF risks of the financial institutions and reporting entities they supervise; consequently AML/CFT supervision priorities are not driven by any assessment of ML/TF risk.
- There is a lack of supervision for TF and of knowledge of its risks amongst financial institutions (FIs) and DNFBPs and the competent authorities do not monitor or supervise reporting entities with regards to their obligations to freeze terrorist assets or assets relevant to proliferation financing.
- There is a real risk that criminals misuse legal persons and arrangements for ML in Vanuatu, in particular through international companies. Only basic shareholder and beneficial information on local companies is collected by the Vanuatu Financial Services Commission (VFSC) and made publicly available. The risks posed by bearer shares and bearer share warrants for domestic companies are not mitigated.
- Information about the beneficial ownership of international companies is extremely difficult to obtain, given prohibitions in the International Companies Act (ICA), punishable by imprisonment, on disclosure of information about the shareholding, beneficial ownership, management, business, affairs, financial affairs or transactions of the company by "any person" except under a court order. This makes Vanuatu's international companies particularly attractive to criminals for ML.
- International cooperation in Vanuatu can be conducted both through (i) formal request under the Mutual Assistance in Criminal Matters Act (MACMA) and the Extradition Act, or (ii) informal sharing of information by competent authorities and their regional counterparts and the VFIU can exchange information with foreign FIUs in accordance with the Egmont Group principles, or under the terms of the relevant MOU.
- Vanuatu's ability to provide informal assistance in relation to international companies is prohibited by the ICA (s.125) which requires a court order/warrant. Vanuatu has been unable to provide mutual legal assistance (MLA) in a timely manner for most incoming requests and the recently amended definition of 'serious offence' in the POCA, has further impeded Vanuatu's ability to render MLA. Vanuatu has not received or issued any extradition requests.

B. Risks and General Situation

2. The draft NRA identifies Vanuatu's money laundering threats as arising primarily from foreign predicate offences (including foreign tax crimes), illicit cross-border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences. The high risk sectors are identified as the international sector (including international banks and companies), the remittance sector, trust and company service providers (TCSPs), currency exchange businesses, casinos, and interactive gaming businesses. Of less, but still significant risk are lawyers and accountants, real estate and high value asset dealers. The draft NRA does not quantify or estimate the size of the criminal economy in Vanuatu (both domestic and foreign proceeds of crime), however it attempts to put a range on the extent of ML in Vanuatu at between USD16.6m – USD41.7m, in the first instance, or approximately USD14.2m in the second instance, but these figures are not based on national statistics and associated analysis.

3. Political instability, with frequent government leadership changes, has an impact on high level political commitment to establish and maintain an efficient and effective AML/CFT system, including allocating adequate financial and human resources, and supporting the development of technical expertise

and capacity building in the law enforcement and regulatory/supervisory authorities. As a result, Vanuatu lacks an overarching national AML/CFT strategy and dedicated risk-based policies and coordination mechanisms, as well as reliable and relevant statistical information and interagency processes to promote and support cooperation between the operational agencies.

4. While the draft NRA intends to focus on ML and TF risks, the primary focus of the report is on ML and predicate crimes due primarily to the limited information provided to the independent consultants who prepared the report. There is no specific focus in the draft report on TF risks and vulnerabilities. In addition, while the draft NRA draws reasonable preliminary conclusions on the main ML risks, the ML/TF risks associated with all types of legal persons created in the country have not been assessed, which is an important deficiency.

C. Overall level of compliance and effectiveness

5. Vanuatu has increased its levels of technical compliance with the FATF standards since the 2006 mutual evaluation in some areas, particularly for responsibilities of LEAs, record keeping, politically exposed persons (PEPs), correspondent banking, new technologies, reporting of suspicious transaction reports (STRs), FIU and cash couriers. However compliance remains at the NC or PC level across the majority of the 40 Recommendations, with deficiencies remaining in respect of a significant number of preventive measures, regulation and supervision of financial institutions and DNFBPs, powers of LEAs and investigative authorities, statistics, guidance and feedback, sanctions and international cooperation.

6. In terms of effectiveness, though some measures are in place, overall Vanuatu has achieved only low levels of effectiveness across all the Immediate Outcomes. In most areas a significant factor affecting effectiveness is the absence of policy and operational priorities and inadequate training and resources allocated to AML and CFT issues.

C.1 Assessment of risk, coordination and policy setting

7. While Vanuatu has undertaken a NRA exercise leading to a draft NRA document in 2014, the government of Vanuatu and the private sector have little or no understanding of the ML and TF risks facing the country, due primarily to the fact that the exercise was undertaken by external consultants with only limited input, consultation and post-assessment information-sharing involving the private and public sectors. As at the date of the on-site visit, Vanuatu had not adopted the NRA as a government document.

8. The draft NRA identifies:

- foreign predicate offences (including foreign tax crimes), illicit cross-border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences as the primary ML threats in the country; and
- the international sector (including international banks and companies), the remittance sector, trust and company service providers (TCSPs), currency exchange businesses, casinos, and interactive gaming businesses as high risk sectors.

9. The NRA focuses primarily on ML and predicate crimes with no specific focus on TF risks and vulnerabilities. Nor does the report assess ML/TF risks associated with all types of legal persons.

10. Vanuatu does not have a national AML/CFT policy or strategy which articulates what the current AML/CFT system is meant to achieve and it lacks a national coordination framework for its AML/CFT efforts. At the operational level, Vanuatu lacks specific mechanisms that enable policy makers, and relevant competent authorities to coordinate and cooperate with each other concerning the implementation of AML/CFT policies and activities, including law enforcement authorities and prosecutors.

C.2 Financial intelligence, ML and confiscation

11. Financial intelligence and other financial information are not being used for ML/TF investigations, though they are to some extent being used for the investigation of predicate offences.

12. The VFIU has improved its technical compliance compared to the last mutual evaluation report in 2006, but there is a need to improve the level of effectiveness particularly in relation to dissemination and cooperation with LEAs and to develop the capacity to undertake strategic analysis. One of the deficiencies in STR dissemination is a particular hindrance; that is the requirement that all STRs disseminated to VPF be in the form of a criminal complaint. This requirement (by the VPF) undermines the role of the FIU as a source of intelligence for law enforcement. The VFIU does not have sufficient resources to perform all its FIU functions, including analysis, outreach and education, as well as its supervisory functions, though further recruitment is planned.

13. The definition of 'serious offence', which includes a penalty threshold of "less than" 12 months' imprisonment as the threshold for ML predicate offences, seriously limits the scope of the ML offence. In addition, some categories of predicate offences for ML are not criminalised or not adequately covered, including tax offences. No ML cases have been investigated or brought for prosecution. The VPF Transnational Crime Unit (TCU) is responsible for investigating ML and TF cases and is staffed by four police officers. The TCU is also responsible for investigating drug offences with transnational dimensions, surveillance, and other sensitive investigations referred by the Police Commissioner. The TCU lacks financial analysis skills and an understanding of the jurisdiction's AML/CFT laws.

14. There needs to be a commitment from all agencies involved in the investigation and prosecution of crime to focus on ML where appropriate, particularly for more serious proceeds-generating offences when they occur. This will require an improved understanding of each agency's role and responsibilities, enhanced domestic co-ordination, particularly between LEAs and the FIU and improved and appropriate resourcing to enable the successful investigation and prosecution of ML offences. Law enforcement should consider conducting ML cases in parallel with the investigations of predicate offences, in particular in relation to more serious proceeds-generating offences and third-party ML when they occur.

15. Vanuatu has the basis of an effective confiscation regime, but confiscation of criminal proceeds, property related to TF, instrumentalities and property of equivalent value is not being pursued as a policy objective in Vanuatu. The effectiveness of the cross-border declaration system needs to be improved, particularly given that this has been identified as a higher risk area.

C.3 Terrorism financing and proliferation financing

16. Vanuatu does not have any national counter-terrorism strategies and cannot demonstrate an effective system for preventing and combating TF.

17. Vanuatu's TF offence is not fully consistent with the international standards. There have been no TF investigations, prosecutions or convictions in Vanuatu, and the VPF has no policy, procedure or mechanism in place for identifying and handling TF cases. The effectiveness of implementation of the legal framework for combating TF has not, therefore, been demonstrated.

18. Vanuatu has only a basic legal framework in place to implement targeted financial sanctions (TFS) in accordance with UNSCR 1267/1989 and UNSCR 1373 and has not used the TFS framework; consequently it does not have any of the characteristics of an effective system.

19. The VFIU is responsible for updating and disseminating the UN sanctions lists to the government and private sector agencies. However, as the VFIU has no clear policy and procedures for disseminating the UN sanctions lists the system is not effective. No dissemination of UN sanctions lists has been made by

Vanuatu authorities since 2008 (which contained only the UN web link). A major deficiency includes the lack of a timely freezing mechanism for terrorist property and clear procedures and mechanisms for domestic designation.

20. Vanuatu has no mechanism to implement sanctions in relation to PF.

C.4 Preventive measures and supervision

21. The AML/CTF Act 2014 came into force last year and strengthened some of the legal requirements. Deficiencies in Vanuatu's preventive measures remain, including in relation to wire transfers, MVTS, and third party reliance and internal controls. Some banks and most non-bank reporting entities have not revised their AML/CFT procedures to comply with the 2014 AML/CTF Act and regulations leading to limited implementation of the new requirements. The RBV's guidance for banks has been updated in 2015 to be consistent with the AML/CTF Act, but the only guidance provided to other reporting entities, by the VFIU, is still based on the obsolete Financial Transactions Reporting Act (FTRA) requirements.

22. Preventive measures applied by reporting entities are strongest in respect of the three domestic commercial banks which adopt risk-based procedures as appropriate. Other domestic banks and some international banks and TCSPs have a reasonable understanding of their AML/CFT risks, but most non-bank reporting entities are not well informed about the risks in their business.

23. Vanuatu's offshore banking entities are inherently more risky than the domestic banking sector, dealing with a relatively small number of non-resident customers, and in many cases, applying less robust customer due diligence (CDD) and other preventive measures than the domestic commercial banks. Although the offshore banking sector's significance has been declining, some new international banks have been licensed recently.

24. Within the DNFBP sector, the activities of TCSPs in creating and providing services to international companies and trusts is of greatest concern for AML/CFT risk purposes. Some TCSPs have already established measures consistent with the AML/CTF Act and Regulations but overall effectiveness of implementation varies. The casino sector and on-line gaming sector, while currently small in number, is also a significant risk factor. There is no information regarding the effectiveness of implementation of preventive measures in that sector. Similar concerns arise in respect of other categories of DNFBP.

C.5 Transparency and beneficial ownership

25. Vanuatu has not specifically assessed the risks associated with all types of legal persons. The draft NRA does, however, state that in general there is a high risk of ML and TF through the use of Vanuatu companies, in particular with international companies.

26. Only basic shareholder and beneficial information on domestic companies is collected by the VFSC and publically available. However, existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date beneficial ownership details are maintained and are accessible by competent authorities. Deficiencies in legislation such as the absence of filing requirements for charities and secrecy provisions like those contained in the ICA would greatly impede the access to such information by the competent authorities, even if it was maintained.

27. International companies are particularly attractive to criminals given the prohibitions (punishable by imprisonment) on disclosure of information about the shareholding, beneficial ownership, management and business, financial and other affairs of the company by "any person" (including the VFSC) except by a court order. As a consequence of these prohibitions, information about the beneficial ownership of international companies is extremely difficult to obtain and none of the information on such companies is publicly available.

28. The risks posed by bearer shares and bearer share warrants for domestic companies are not mitigated by any additional measures or requirements. Competent authorities agree that domestic companies can be used for criminal purposes. International companies are required to immobilise bearer shares but they are not subject to supervision to ensure compliance with this requirement and, in any event, this immobilisation requirement does not apply to bearer share warrants. The VFSC is not aware of the number of bearer shares/warrants issued by any Vanuatu companies.

29. Nominee shareholders and directors are permitted in Vanuatu. International companies are required to maintain a register of members at their registered office; however the VFSC has not conducted any checks to verify that this requirement is being complied with.

30. The VFSC does not collect any information on domestic trusts unless the trust is incorporated under the Companies Act (CA) as a trust company. Vanuatu trusts are not required to collect and hold beneficial ownership information.

C.6 International Cooperation

31. Vanuatu has ratified the Vienna, Palermo, Terrorist Financing, and Corruption Conventions, however, further measures are needed to ensure domestic legislation fully implements these conventions, including for tax offences given Vanuatu's status as a tax haven.

32. The legal framework to provide MLA for freezing, seizing and confiscation of property for ML, predicate offences for ML and TF needs improvements. A limited number of MLA requests have been received but only one has been completed. No priority is given to MLA requests from high-risk countries or requests involving a high-risk offence. In the absence of a systematic case management system, and with insufficient detail recorded in the spreadsheets, Vanuatu failed to demonstrate that it can process requests without delay. No mechanisms are used amongst authorities to select, prioritise, and make requests for MLA.

33. With respect to the international companies sector, and beneficial ownership information, the secrecy provisions in the law affect Vanuatu's ability to provide timely responses to requests for cases that are identified as high risk for Vanuatu.

34. Vanuatu has a legal framework for extradition relating to ML and TF, both of which are extraditable offences. While there are no unreasonable and unduly restrictive conditions against extradition there is no case management system and no clear process for prioritisation and timely execution of requests. Vanuatu's extradition laws have only been rarely used (no foreign requests have been received since 2010 and no outgoing extradition request has ever been made). The system has not, therefore, been tested for effectiveness.

35. Vanuatu is a member of the Egmont Group of FIUs and may exchange information with foreign FIUs With respect to cooperation on information sharing despite the lack of procedures Vanuatu LEAs demonstrated some capability to provide informal assistance and cooperation with foreign FIUs and LEAs. However, Vanuatu has not established that it targets resources for international cooperation in relation to its ML and TF risks and in relation to customers of the offshore sector and higher risk countries. Vanuatu cannot informally provide information to foreign LEAs regarding beneficial ownership of international companies as authorities require a search warrant to obtain this information, hence necessitating a formal MLA request. Vanuatu LEAs have not formed joint investigative teams to conduct cooperative investigations.

D. Priority Actions

36. The priority recommended actions for Vanuatu, based on these findings, are:

Risk, policy and coordination

a. A dedicated national AML/CFT co-ordinating body (e.g. an 'anti-money laundering council') should be established as a matter of priority to receive reports and update information on Vanuatu's threats and risks of ML, TF and PF and to monitor the performance of key agencies against the strategic priorities.

b. Comprehensive awareness training is required for legislators and senior government officials on the ML/TF/PF risks for the country and the importance of having an effective AML/CFT regime that is consistent with FATF standards. This would increase the understanding of the important role an effective AML/CFT regime can play in Vanuatu's social and economic objectives and strengthen support for the legal reforms and resource allocation that is required.

c. An inter-agency NRA working group should be established to finalise the NRA and develop a sector-based communication strategy and implementation plan to inform stakeholders and relevant sections of civil society of the information in the NRA and the requirements for mitigating strategies. The NRA working group should also be tasked to develop a strategy for collecting the information and statistics required for Vanuatu to develop a more thorough NRA.

d. An over-arching national AML/CFT strategy and sector-specific policies should be developed as soon as possible (based on the identified risks); and these need to cascade into the internal policies, priorities and guidelines of relevant key agencies. The national strategy and policies should be developed in consultation with the private sector and other domestic and regional stakeholders.

e. Operational coordination and cooperation mechanisms need to be established as a matter of urgency to share information and intelligence and prioritise ML/TF investigations and prosecutions.

f. A task force/coordination group on TF involving all the relevant agencies should be formed to facilitate a concerted effort in combating TF, and enhance understanding of TF risk, and strengthen local cooperation and coordination, particularly with respect to sharing information.

Financial Intelligence, money laundering and confiscation

a. As a matter of priority Vanuatu must amend the POCA to rectify the deficiency in the definition of 'serious offence'.

b. The resources available to the VFIU should be increased in order to augment its operational capacity as both a financial analytical unit and an AML/CFT supervisory body.

c. Remove the *ad hoc* barrier imposed by the VPF, which requires the VFIU's financial intelligence disseminations to be submitted in the form of a criminal complaint.

d. The VFIU needs to conduct outreach and training activities with Vanuatu LEAs and other relevant agencies (such as the Office of the Ombudsman) to increase the understanding of the role and functions of the FIU and the use of financial intelligence and other information VFIU has access to.

e. The VFIU needs to extend outreach and guidance to the wider financial and DNFBP sectors to increase the number and quality of STRs and other financial intelligence it receives. The VFIU should also increase the collection of comprehensive statistics to strengthen its ability to identify emerging ML/TF trends and threats.

f. Tax offences (as appropriate for the country), illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for money laundering should be criminalised.

g. Vanuatu should urgently address the lack of policy and operational commitment to prioritise ML/TF investigations and confiscation of criminal proceeds; and strengthen the institutional framework required to support an effective system that addresses the ML/TF risks in the country. This includes developing internal procedures and mechanisms for more effective resource allocation, cooperation and coordination.

h. Procedures and mechanisms need to be established for managing and disposing of restrained, seized or confiscated property.

i. Targeted AML/CFT training must be provided to staff at VPF, TCU, Customs, Public Prosecutor's Office (PPO) and State Law Office (SLO) to enhance understanding of AML/CFT issues and awareness of Vanuatu's system generally, as well as to increase the technical skills required to perform operational functions effectively. This is a high priority and authorities should develop a multi-disciplinary technical assistance and training strategy to ensure a comprehensive and coordinated approach.

j. Competent authorities (VPF, TCU and SLO) need to recruit additional staff to perform critical AML functions. A current staffing level of four investigators in both the TCU and the Fraud Unit is inadequate. Resources need to be allocated based on a clear understanding of the high risk areas for ML/TF in Vanuatu, including re-assignment of staff to specialist units to address the high risk areas.

Terrorism financing and proliferation financing

a. A comprehensive review of the NPO sector should be conducted and legislation should be amended to facilitate better monitoring of NPOs to minimize any misuse for TF.

b. A system should be developed to record the types of TF activity identified, investigated, prosecuted and convicted. A policy for prioritising TF should be developed and adopted to promote prompt investigation.

c. Targeted CFT-related outreach to the private sector should be carried out and local and overseas training and guidance sought to enhance understanding of TF.

d. Laws, regulations and other measures should be adopted immediately for timely freezing of terrorist property pursuant to UNSCR 1267/1989 and UNSCR 1373. Expeditious, systematic and regular dissemination of the relevant UN sanctions lists is required to the public and private sectors.

e. Guidance should be issued to the private sector on implementation of measures relevant to freezing terrorist property.

Preventive measures and supervision

a. Vanuatu should implement policies and procedures to assess, measure and maintain a credible ML/TF risk rating of all reporting entities. Such policies and procedures should be supported by reliable information, evidence and statistics to support the ratings given.

b. A sector-specific risk analysis exercise should be conducted to identify the high risk areas that require enhanced due diligence measures to be imposed by reporting entities and targeted regulatory supervision from the competent authorities.

c. Vanuatu should ensure there are sufficient resources to support a comprehensive and complete on-site supervision programme. The supervision framework should be extended to cover all financial institutions and DNFBPs. The intensity, duration and frequency of off/on-site supervision should be commensurate with the risk rating identified.

d. Clear policies and procedures should be established to ensure expeditious circulation of internationally issued sanction notices to all reporting entities. The policy and procedures should include measures to ensure that the sanction lists are actioned by the reporting entities and that they are aware of their obligations to immediately freeze and report any such connected funds to the appropriate authorities.

e. Vanuatu should consider requiring a ML/TF risk assessment from each reporting entity to enable it to understand the drivers of risk in its business; and require it to be provided to the VFIU and reviewed and updated regularly by the reporting entity.

f. Vanuatu should ensure that international banks, MVTS, money changers, casinos, and all other categories of DNFBP implement effective AML/CFT controls and preventive measures in line with the FATF standards. The effectiveness of the controls and measures established should be subject to sufficient monitoring and supervision to ensure compliance.

g. The VFIU should undertake further efforts to engage with MVTS and money changers not yet registered under the AML/CTF Act and ensure the sector's full compliance with AML/CFT regulatory obligations.

h. AML/CFT audits should be required to be independent; and the VFIU should provide guidance on, or set risk-based expectations on, the frequency of audits.

i. Vanuatu should provide legislative powers to require reporting entities to apply countermeasures proportionate to risks, both as called upon by FATF and independently, and designate a responsible agency, and develop procedures, for advising reporting entities of FATF lists of countries of concern.

j. Guidance to non-bank reporting entities on ML/TF risk identification and the scope of their AML/CFT obligations should be improved and more detailed feedback provided on the quality and volumes of STRs reported.

Transparency and beneficial ownership

a. Vanuatu should assess the specific risks relating to the misuse of all types of legal persons (domestic, international, foreign) and arrangements (domestic and foreign) for ML/TF in Vanuatu and address those risks promptly and appropriately.

b. The secrecy provisions of s.125 of the ICA should be removed.

c. Measures to address the risks associated with bearer shares and bearer share warrants need to be implemented for all types of companies in Vanuatu, not just international companies.

d. Vanuatu should legislate to adequately mitigate the risks of ML/TF relating to trusts, including specific requirements to identify settlors, trustees, protectors, and beneficiaries.

International cooperation

a. Given the ML/TF risk profile, Vanuatu should prioritise the use of international cooperation, including responding to requests promptly and efficiently and making requests related to market entry controls.

b. The secrecy provisions under s.125 ICA should be deleted to facilitate more efficient and effective international cooperation.

c. A more efficient case management system for MLA and extradition needs to be developed to ensure timely responses to foreign requests.

d. The SLO should develop a policy and guidelines to prioritise and track requests from high-risk countries and for high-risk ML/TF offences.

e. A formal interagency coordination mechanism should be established to share information on MLA requests and on domestic ML/TF investigations when the evidence trail goes overseas.

f. Vanuatu authorities need to raise awareness on mechanisms for formal and informal cooperation across the relevant LEAs and sufficient resources and specialist training should be provided to key agencies (VPF, TCU, PPO and SLO).

g. The SLO needs to assign dedicated officers within SLO, with an adequate level of training, to handle international cooperation matters, including overseeing the case management system.

h. Dedicated officers in SLO must regularly liaise with supervisory authorities such as RBV and VFSC to capture and address requests from foreign supervisory authorities that go directly to these authorities.

i. Dedicated officers in SLO must regularly liaise with LEAs regarding investigations with transnational dimensions to ensure that domestic investigations do not come to an end when the evidence trail goes abroad.

1. Table of Effective Implementation of Immediate Outcomes

Effectiveness
1. Risk, Policy and Coordination – *low level of effectiveness*
The preconditions for an effective AML/CFT system are not present in Vanuatu, including a consistent and informed understanding of ML/TF risk; high level political commitment; a national AML/CFT strategy and policy framework; adequate financial and human resources, including capability and technical skills in the law enforcement and regulatory/supervisory authorities; and a formal and dedicated domestic cooperation/coordination structure. There is little or no understanding by government authorities of the principal ML and TF risks for Vanuatu, including those identified in the draft NRA, which has yet to be adopted by the Vanuatu government as a "national" assessment. Nor does an informed understanding of ML/TF risk exist in the private sector, as the NRA process did not effectively engage the private sector and the results have not been disseminated. There is no focus in the draft NRA on specific TF risks and vulnerabilities, or the risks associated with all types of legal persons. Given the profile of the reporting entities and the high risks associated with the international sector, TCSPs and the remittance and currency exchange sector, in particular, the lack of risk information on legal persons is a material deficiency that contributes to undermining the effectiveness of Vanuatu's AML/CFT system. While the draft NRA draws reasonable conclusions with respect to Vanuatu's ML risks (based on the assessment team's review of the draft NRA and other available material), the analysis does not consider national statistics as Vanuatu does not collect or maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of its AML/CFT system. Vanuatu does not have a national AML/CFT strategy or policy (or series of policies) or any dedicated strategic framework to coordinate actions to combat ML, TF and PF. There is no designated authority or mechanism to coordinate actions to assess risks, or any plan for keeping the risk assessment up-to-date or for providing the results to competent authorities and other private sector stakeholders. As a result, the identified risks are not addressed in the objectives and activities of the competent authorities and Self-Regulatory Bodies (SRBs) and Vanuatu has not implemented a comprehensive, risk-based approach to allocating resources and implementing policy measures to prevent or mitigate ML/TF, nor has there been any exemptions or justifications for the application of enhanced measures made based on the assessed risks. There is little evidence of effective national co-operation and co-ordination amongst the operational agencies in relation to sharing information and resources, conducting joint investigations, or developing and implementing policies and activities to combat ML, TF and PF issues. There is an immediate need for more effective AML/CFT engagement between government agencies and between government authorities and private sector stakeholders. This would facilitate more effective communication and information sharing on the ML and TF risks in Vanuatu and what needs to be in place to mitigate those risks, enable more efficient use of available education and technical assistance and training resources, enhance the understanding of, and compliance with, Vanuatu's AML/CFT system and promote more effective operational coordination. This need was frequently emphasised by government authorities and private sector representatives.
2. International Cooperation – *low level of effectiveness*
While Vanuatu has legal mechanisms for MLA and extradition, and has established some bilateral and multilateral arrangements with key partners, the level of effectiveness in relation to international

cooperation is low.

Of nine MLA requests received since 2010, only one has been answered and assistance provided, and that took five months. Vanuatu has not made any outgoing MLA requests since 2010, despite the risk profile of crimes involving foreign elements. The lack of a systematic case management system, and inadequate records, and the fact that eight of the nine recent MLA requests have not been answered, means that Vanuatu is unable to demonstrate that requests can be processed without delay. In addition, the recent amendment to the definition of 'serious offence' in the POCAA No. 27 of 2014 has seriously hindered the ability of Vanuatu to provide the widest possible range of MLA. For example, Vanuatu cannot assist a foreign jurisdiction to apply for a forfeiture order, which must be based on a conviction for a serious offence. This impedes the effectiveness of Vanuatu's MLA framework.

Vanuatu has a legal framework to provide extradition relating to ML and TF and there are no unreasonable and unduly restrictive conditions against extradition. The deficiency in the ML offence does not affect Vanuatu's ability to extradite relating to predicate offences and ML offences, as 'serious offence' is not a requirement for extradition. Vanuatu has not received, or made, any extradition requests; and in the absence of a case management system and processes for prioritisation and timely execution of requests, the authorities were unable to demonstrate that Vanuatu is able to execute extradition requests without undue delay.

Vanuatu is a member of regional and international law enforcement bodies, including the Egmont Group of FIUs, the Pacific Association of FIUs and the Pacific Transnational Crime Units. There is, however, no evidence of procedures for cooperation, or any clear and secure gateways, mechanisms, or channels for prioritisation and timely execution of requests. There is also no clear process for safeguarding information received, or for providing timely feedback to foreign LEAs. There is no mechanism for LEAs to exchange information or intelligence for joint investigations and there is no provision for the exchange of information indirectly with non-counterparts.

With respect to informal cooperation on information sharing, despite the lack of procedures during the on-site meetings Vanuatu LEAs informed the assessment team that they have cooperated with foreign LEAs in some investigations with transnational dimensions. This was supported by information received from other APG jurisdictions. Vanuatu has not, however, established that resources are targeted on the international cooperation front in accordance with its ML and TF risks, or in relation to the higher risk countries, and no details were provided on the timeliness of the responses provided by Vanuatu LEAs to foreign requests for information and assistance.

3. Supervision – *low level of effectiveness*

Vanuatu does not have an effective AML/CFT supervisory system in place. Any supervision that has taken place has not been directed by any risk profiling procedures and has not been uniformly applied across all sectors.

At the time of the on-site evaluation some reporting entities, including most of the DNFBP sector, had not been subject to supervision visits of any kind. There is a complete lack of any meaningful supervision for TF purposes across all sectors and the knowledge amongst government officials and the business community of the risks associated with TF in Vanuatu is minimal. The competent authorities have not monitored or supervised reporting entities with regards to their obligations to identify and freeze assets identified as terrorist assets, or assets relevant to PF, under any international sanctioning regime. Consequently the level of knowledge as to a reporting entity's obligations to monitor relevant sanctions lists, and what action to take if their customers are identified on such lists, is very low.

There have been no efforts to assess associated risk in the selection of on-site visits and identification of where supervisory resources would be best targeted and directed. This applies to sectoral risk as well as individual reporting entity risk. This has resulted in wide differences in opinion as to what the possible AML/CFT risks are in Vanuatu and application of the appropriate mitigating supervisory policy and

procedures. Few on-site inspections are taking place and they are not targeted according to any identified risks.

There is a broadly adequate legislative framework in place regarding supervisory powers, with the AML/CTF Act at its core, though a number of technical deficiencies need to be addressed. There has, however, been limited engagement between the supervisory bodies and the financial entities subject to their supervision. Little outreach or guidance has been provided since the last mutual evaluation in 2006 and what has been provided has not been uniformly spread across, or within, all sectors. Limited follow-up action has been taken when problems have been identified during the on-site visits that have been undertaken; and most reporting entities spoken to by the evaluation team reported little engagement with the appropriate authorities.

The VFIU in particular is under-resourced for the level of supervisory functions it is tasked to perform under the law. Under the AML/CTF Act all reporting entities are required to register with the VFIU. The VFIU has only three staff members, who, besides performing the normal functions of an FIU, are also required to act as the primary AML/CFT supervisory agency. As a result, the VFIU has no capacity to carry out rigorous due diligence checks at the time of registration, or to undertake outreach and monitoring exercises to ensure all relevant entities that should be registered are. Neither does the AML/CTF Act give the VFIU the power to exclude entities from registering or remaining on the register.

The RBV is responsible for the further licensing of the banking and insurance sectors and it too has resourcing challenges.

Overall, the supervisory authorities were unable to demonstrate that their actions are improving AML/CFT compliance by regulated entities, or that they are discouraging criminal abuse of the financial and DNFBP sectors.

4. Preventive Measures – *low level of effectiveness*

Vanuatu's preventive measures for financial institutions exhibit some of the characteristics of an effective system, but overall effectiveness is low. Vanuatu's legal framework for preventive measures is generally adequate, though a significant number of technical deficiencies need to be addressed.

The AML/CTF Act and Regulations introduced revised requirements on reporting entities from mid-2014. The AML/CFT requirements apply consistently to all categories of financial institutions and DNFBPs. Despite the revision of the requirements in 2014, material shortcomings have been identified in Vanuatu's preventive measures in respect of a number of FATF Recommendations; in particular, wire transfers, MVTS, reliance on third parties, and internal controls. Some banks, and most non-bank reporting entities, have yet to complete revision of their AML/CFT procedures to comply with the 2014 Act and Regulations, leading to a varied level of implementation of the new requirements. At the time of the on-site visit, there had been only limited compliance monitoring by the RBV and VFIU of financial institutions and DNFBPs.

Preventive measures applied by reporting entities are strongest in respect of the three domestic commercial banks, which also have group requirements imposed by their overseas parent banks. These banks have a good understanding of their risks and adopt risk-based procedures as appropriate. Other domestic banks and a small number of international banks and TCSPs have a reasonable understanding of their AML/CFT risks, but most non-bank reporting entities are not well informed about the risks in their business. Vanuatu's offshore banking entities are inherently more risky than the domestic banking sector, reflecting the preponderance of cross-border transactions with non-resident customers, and in most cases, less robust CDD and other preventive measures than the domestic commercial banks. Although the offshore banking sector's significance has been declining, some new international banks have recently been licensed.

The RBV's Prudential Guidelines No.9 (PG9) for banks has been updated in 2015 to be consistent with the AML/CTF Act, but the only guidance provided to other reporting entities, by the VFIU, is still based

on the superseded FTRA requirements.

A high proportion of the wire transfer transactions through MVTS appear to be for small amounts, conducted by Vanuatu residents. The three largest MVTS are generally following international wire transfer practices to a greater extent than required by law (the law does not comply with R.16), but some gaps remain in the adequacy of the procedures in place.

Within the DNFBP sector, the activities of TCSPs in creating and providing services to international companies and trusts are of greatest concern for AML/CFT risk purposes. Some TCSPs have already established measures consistent with the AML/CTF Act and Regulations but overall effectiveness of implementation varies. The casino sector, while currently small in number and scope of business, is also a potential risk in view of the recent granting of new licenses. More generally, given the absence of monitoring or supervision to ensure compliance with AML/CFT requirements by casinos and the two active on-line gaming (sports betting) entities, there is no information regarding the effectiveness of implementation of preventive measures in that sector, which is therefore assessed as low effectiveness. Similar concerns arise in respect of other categories of DNFBP.

5. Legal Persons and Arrangements – *low level of effectiveness*

Overall there is a real risk of criminals misusing legal persons and arrangements in Vanuatu and there is some evidence that these avenues have actually been used by a number of foreign money laundering enterprises in the past. Given that little is being done to mitigate these risks, Vanuatu's level of effectiveness with respect to legal persons and arrangements is low.

Legal persons and arrangements, especially international companies, were identified as high risk for ML during many of the interviews conducted by the assessment team. International companies account for the highest number of registrations with the VFSC in Vanuatu. Under the ICA it is, however, unlawful for anyone, including the Vanuatu authorities, to divulge information on the shareholding; beneficial ownership; the management of such a company; or provide any of the business, financial or transactional details of such a company. No person may access such information unless by way of a court order. It is therefore difficult even for law enforcement to obtain relevant information from the VFSC or the international companies themselves.

The VFSC collects only limited basic shareholder and beneficial ownership information on domestic companies and none on most domestic trusts. The authorities do not know the actual number of trusts formed and operating in Vanuatu, or the number of NPOs. Indeed, it is apparent that there is no law applicable to trusts in Vanuatu. Charities are not obliged to register with the VFSC and if they choose to register, they are not required to renew registration or provide any further information to the authorities.

Overall the company register system maintained by the VFSC is passive and reactive, with little proactive monitoring and involving few sanctioning powers. The VFSC appears to be under-resourced. It only collects limited information and has never issued any guidance to industry, although it has the legal power to do so. The authorities did not provide any evidence that they apply effective sanctions against persons who do not comply with the legislative information requirements.

6. Financial Intelligence – *low level of effectiveness*

Vanuatu has a functioning FIU that develops and disseminates good quality financial intelligence reports based on STRs and other related financial information received from reporting institutions. However the VFIU's operational capability, including for conducting strategic analysis, is severely undermined by the lack of resources, and weaknesses in the quality and quantity of reporting to the FIU by reporting entities. This, in turn, significantly undermines effectiveness.

Vanuatu's use of financial intelligence and other financial information for ML/TF and other predicate offence investigations demonstrates some of the characteristics of an effective system to a limited degree,

but fundamental improvements are needed.

A significant barrier affecting the effectiveness of STR dissemination is the VPF's requirement that the VFIU frame disseminated reports as actual criminal complaints. This limits the ability of the VFIU to make justified disseminations, particularly where it is difficult to specifically identify the underlying crime. It also creates a weakness in the VFIU's ability to proactively address specific risks, substantially driving down the number of financial crime investigations commenced by the VPF.

Vanuatu LEAs underutilize financial intelligence. LEAs, as well as the Office of the Ombudsman, seem to work separately rather than utilizing the services of the VFIU to access financial intelligence information to assist general investigations and, in particular, criminal investigations. This demonstrates a lack of understanding, communication and collaboration with respect to identifying and investigating financial crimes which seriously undermines the effectiveness of Vanuatu's AML/CFT regime.

There is also a general lack of expertise among the LEAs with respect to how to actually source and use financial intelligence effectively. The VFIU needs to conduct more outreach and training activities with Vanuatu's LEAs and associated competent authorities.

7. ML Investigation and Prosecution – *low level of effectiveness*

Vanuatu's level of effectiveness in relation to ML investigations is low. There have been no ML investigations and prosecutions in Vanuatu, despite ML having been criminalised since 2002.

The VPF and PPO interact during the investigation and prosecution of criminal cases; however they only investigate and prosecute predicate offences. Money laundering is never considered along with the predicate offences. The LEAs and prosecutors do not have internal policy guidelines and procedures on AML/CFT to prioritise financial investigations, including for ML.

The LEAs do not clearly understand the main ML risks and threats in Vanuatu and investigations and prosecutions are not targeted at the country's threats and risk profile or the identified major predicate offences and ML. The LEAs generally understand that Vanuatu faces risks of ML arising from domestic corruption, fraud (including VAT fraud), drug trafficking and foreign tax crimes.

At an operational level, high risk areas for ML are not being adequately addressed by LEAs. The TCU in VPF is responsible for investigating all ML cases and is staffed by four police officers. The TCU is also responsible for investigating drug offences with transnational dimensions, surveillance, and other sensitive investigations referred by the Police Commissioner. The TCU lacks financial analytical skills and there are weaknesses with the understanding of Vanuatu's AML/CFT laws, both by investigators and prosecutors.

The TCU advised that VPF has a national database of crime statistics. However the statistics are not comprehensive or informative for AML/CFT purposes, nor is the database updated regularly with detailed information. The TCU was unable to provide statistics on drug investigations, or any estimates of proceeds from drug offences, which is a high risk area given Vanuatu's porous borders and the significant number of cruise ships and yachts that passes through annually.

As conviction for ML is dependent on a prior conviction for a serious offence, the shortcoming in the definition of serious offence, which now excludes most of the predicate offences for ML, is a critical impediment to the effectiveness of IO7.

8. Confiscation – *low level of effectiveness*

Vanuatu's level of effectiveness for confiscation is low. Competent authorities (VPF, PPO and the Solicitor General's Office) have not undertaken a single successful confiscation action since the enactment of the first proceeds of crime legislation in 2002. There was one attempt at confiscation in the case of *Public Prosecutor v Robb Evans and Benford Limited* (Civil Appeal Case No.32/2014) but it was

not successful.

The lack of confiscation is attributable to the absence of policy direction and operational commitment by authorities at the highest levels to investigate and confiscate proceeds of crime, including an emphasis on the high risk areas for ML. There is also a serious lack of coordination across competent authorities, a low level of awareness amongst senior officials and a general lack of understanding of the main high risk areas for ML.

The operational agencies responsible for confiscation also lack this awareness, as well as specialist skills in financial investigation. The TCU confirmed that they often seek assistance from VFIU on complex matters. The TCU was not aware if other units within VPF, such as the Fraud Unit, understood that they could also conduct proceeds of crime investigations arising from their investigations.

As confiscation is dependent on a prior conviction for a serious offence, the shortcoming in the definition of 'serious offence', which has now excluded most predicate offences for confiscation, is a critical impediment to the effectiveness of IO8.

9. TF Investigation and Prosecution – *low level of effectiveness*

Vanuatu's level of effectiveness in relation to TF investigation and prosecution is low. Technical shortcomings with the TF offence have a critical impact on the powers and of the authorities for TF investigation and prosecution. Given the absence of a comprehensive risk assessment that identifies areas of TF concern in Vanuatu, and the complete lack of any investigation, prosecution and conviction for TF, the effectiveness of the CFT system, including sanctions, has not been demonstrated.

At an operational level, the VPF has no policy to prioritise TF, or any procedures and mechanisms for identifying and handling TF cases. There is also no system in place for recording investigations, prosecutions and convictions and the types of offences involved. This lack of data and statistics undermines Vanuatu's ability to identify emerging TF trends and threats and implement appropriate responses.

The VPF lacks experience in the identification and investigation of TF. There is no designated team for handling ML/TF cases and the VPF is not equipped with the necessary specialized knowledge and skills to detect, identify and investigate TF. No guidance or specialist training has been provided, in spite of the lack of human resources (financial analysts) being identified as an on-going issue.

10. TF Preventive Measures and Financial Sanctions – *low level of effectiveness*

Vanuatu's level of effectiveness in relation to TF preventive measures and financial sanctions is low.

Vanuatu has developed a legal framework to implement targeted financial sanctions, largely in accordance with UNSCR 1267/1989 and UNSCR 1373. However there are no procedures and mechanisms for the update and dissemination of the UN sanctions lists to the private sector and other reporting entities. The lack of a timely legal freezing mechanism for terrorist property is a significant shortcoming.

Vanuatu does not have a clear procedure and mechanisms for domestic designations.

Guidance, outreach and supervision of targeted financial sanctions have been weak. There has been no freezing and confiscation case of terrorist property. The effectiveness of the implementation of the related UNSCRs was not demonstrated.

Vanuatu has not implemented effective measures to prevent the abuse of NPOs by terrorists and their financiers and the supervisory framework for NPOs contains deficiencies and is not being implemented.

NPOs do not have a sound understanding of their vulnerability to TF and there is no evidence of effective communication or targeted outreach to the NPO sector, (or to the financial and non-financial sectors), on

mitigating TF risks associated with NPOs.
11. PF Financial sanctions – l*ow level of effectiveness*
Vanuatu has a low level of effectiveness for Immediate Outcome 11. There are no measures in place to address proliferation financing, nor any plans to deal with the obligations under Recommendation 7.

2. Table of Compliance with FATF Recommendations

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	NC	• The 2014 draft NRA seen by the evaluation team does not identify all key risks, including risks and vulnerabilities associated with TF and all form of legal persons. • Given the deficiencies in domestic statistical information, the analysis was not able to be based on national statistics. • Consultation with the private and non-government sector was limited and no process or mechanisms have been identified to provide information on the results to either the government or non-government stakeholders. • No designated authority or mechanism to coordinate ongoing actions to assess and respond to risk; nor any identified plan for implementing the risk assessment and keeping it up to date. • Vanuatu has not yet implemented a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of the assessed risks. • Vanuatu authorities have not, as yet, required reporting entities to take enhanced measures to manage and mitigate the identified risks, or ensure the NRA outcomes are incorporated into their risk assessments. • As the draft NRA has not been adopted, supervisors are not able to ensure reporting entities are implementing their obligations under R1. • As Vanuatu has not met the requirements of criteria 1.9 – 1.11 it is not at a stage to permit reporting entities to take simplified measures to manage and mitigate risks.
2. National cooperation and coordination	NC	• Vanuatu is yet to develop a national AML/CFT policy, or policies, informed by ML/TF risks. • No central body is designated with a national AML/CFT policy coordination function. • No coordination mechanisms at the operational level to enable policy makers, VFIU, LEAs, supervisors and other relevant competent authorities to coordinate and cooperate concerning implementation of AML/CFT policies and activities. • No information provided to confirm a national coordination mechanism to combat the financing of proliferation of weapons of mass destruction.
3. Money laundering offence	NC	• The ML offence in s.11 of the POCA is inconsistent with FATF standards. It applies to a 'serious offence', but there is a major shortcoming in the definition of 'serious offence' which excludes most of the predicate offences for ML. • The ML penalty for natural and legal persons is not proportionate or dissuasive.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		• Ancillary offences to ML (conspiracy to commit, attempt, counselling, etc.) have not been criminalised. • Non-criminalisation of tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for ML.
4. Confiscation and provisional measures	PC	• Confiscation of proceeds and instrumentalities of crime is dependent on conviction for a serious offence, and the shortcoming in the definition of 'serious offence' renders it impossible to take confiscation action following conviction for most predicate offences. • Confiscation action is not available for tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation due to non-criminalisation of these offences. • Seizure and confiscation of terrorist property is, however, not affected by the deficiency in the definition of serious offence.
5. Terrorist financing offence	PC	• TF offence is linked with a specific terrorist act. • Amended definition of 'serious offence' in POCAA No. 27 of 2014 renders TF no longer designated as a ML predicate offence.
6. Targeted financial sanctions related to terrorism & TF	PC	• The freezing obligations are not in force in Vanuatu. • No provision that clearly sets out the mechanism, procedure, and standard of proof for domestic designation. • The Minister lacks the power to freeze terrorist property that belongs to non-proscribed specified entities. • No provision clearly sets out the procedure and mechanism for the Minister's authorisation and access to funds for basic and extraordinary expenses as approved by UNSC. • No procedure to delist and unfreeze funds and assets of those who are no longer designated under UNSC.
7. Targeted financial sanctions related to proliferation	NC	• No statutory provisions in place in Vanuatu to give effect to targeted financial sanctions related to proliferation.
8. Non-profit organisations	NC	• The draft 2014 NRA does not cover the risks and vulnerabilities of TF with respect to NPOs. • Vanuatu has not undertaken any domestic reviews or assessments of the NPO sector and no targeted outreach or training has been conducted. • Charitable associations *may* register with the VFSC, but this is not required. If they do register there is no requirement for further reporting or renewals. • Vanuatu does not have the capacity to obtain timely information on the NPO sector's activities, size and other features to identify NPOs that are particularly at risk of being misused for TF.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		• No information was provided on the different types of charitable associations and foundations, the donations to and financial resources of each type of NPO or whether any domestic NPOs also have international operations. • VFSC administers the laws regulating NPOs but current legislation does not provide powers for the VFSC Registrar to monitor compliance of NPOs and apply sanctions for violations of the requirements on them. • No domestic mechanisms, or laws, enabling the VFSC to investigate and gather information on NPOs through domestic cooperation and information sharing amongst authorities. • No NPO-specific policies or strategies in place to promote transparency, integrity and public confidence in the administration and management of NPOs. • No requirement for charitable associations in Vanuatu to submit annual financial statements that provide a breakdown of income and expenditure or obligations to ensure that all funds are properly accounted for and spent in a manner that is consistent with the NPO's purpose and objectives. • No legislative provisions for charitable associations and foundations to 'know your beneficiaries and associated NPOs' under the AML/CTF Act and Regulations. • No supervision of the NPO sector in relation to TF issues and no evidence regarding NPO compliance monitoring or sanctions.
9. Financial institution secrecy laws	LC	• Section125 of ICA prevents VFSC from obtaining or passing on CDD information on international companies to other regulators or supervisors.
10. Customer due diligence	PC	• No requirement for CDD when a series of occasional transactions appear to be linked but individually are below the CDD threshold. • No requirement for verification that persons purporting to act on behalf of legal arrangements are authorised to do so. • No requirement permitting delayed verification of occasional customers only where the ML/TF risks are effectively managed. • Absence of criteria/justification for reporting entities to adopt simplified CDD measures or delayed verification where lower risks exist. • No requirement that if a reporting entity is unable to comply with relevant CDD measures, that it must not open the account or must terminate the business relationship.
11. Record keeping	LC	• There is no explicit obligation on reporting entities to

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		make CDD information swiftly available to the VFIU on request, except where an STR has been made.
12. Politically exposed persons	LC	• Reporting entities are not required to apply PEP requirements to family members or close associates of PEPs.
13. Correspondent banking	LC	• No requirement for reporting entities to establish whether the responding correspondent banking entity has been subject to AML/CFT investigation or regulatory action.
14. Money or value transfer services	PC	• Limited action has been taken by the VFIU to identify and sanction unregistered MVTS. • Limited AML/CFT compliance monitoring of MVTS has been conducted by VFIU to date. • No provisions in legislation or regulations to require a MVTS to include its agents within its AML/CFT programmes and monitor them for compliance with ML/TF policies and procedures.
15. New technologies	LC	• The AML/CTF Regulations do not specifically require reporting entities to undertake risk assessments prior to the launch or use of new products, practices and technologies.
16. Wire transfers	NC	• There are no requirements with respect to beneficiary information. • The minimum required originator information is not set out in law or regulation. • No requirement for an ordering institution not to proceed with a wire transfer if it does not comply with criteria 16.1 to 16.7. • No obligations imposed on intermediary and beneficiary institutions and MVTS operators in respect of criteria 16.9 to 16.17 (as appropriate).
17. Reliance on third parties	NC	• No requirement in law or regulation that responsibility for CDD measures must remain with the reporting entity relying on a third party. • No specific requirement for a risk appraisal to be conducted regarding the country of location of a third party provider.
18. Internal controls and foreign branches and subsidiaries	NC	• No requirement that the AML/CFT Compliance Officer must be appointed at the management level. • No requirements to have screening procedures in place to ensure high standards when hiring employees. • No requirements for the AML/CFT audit function to be independent. • No legislative requirements regarding implementing group wide programmes and ensuring consistent AML/CFT standards are applied by foreign branches and

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		subsidiaries.
19. Higher-risk countries	PC	• No legal powers or procedures in place to apply countermeasures when called upon to do so by the FATF, or when acting independently. • No formalised processes for ensuring financial institutions are advised of concerns about weaknesses in the AML/CFT systems of foreign jurisdictions.
20. Reporting of suspicious transaction	LC	• No definition of 'proceeds of crime' and 'terrorist financing' for reportable transactions under STR obligations on reporting entities.
21. Tipping-off and confidentiality	LC	• The legislation does not specify that tipping-off protections apply, regardless of whether the person knew precisely what the underlying criminal activity was or whether illegal activity actually occurred.
22. DNFBPs: Customer due diligence	PC	• Shortcomings identified with respect to CDD requirements (R.10) and reliance on third parties (R.17) also apply for DNFBPs.
23. DNFBPs: Other measures	PC	• Shortcoming identified with respect to requirements for internal controls, audit, and foreign branches and subsidiaries (R.18), and for higher risk countries (R.19) also apply for DNFBPs.
24. Transparency and beneficial ownership of legal persons	NC	• It is an offence for the competent authorities to obtain beneficial ownership details for international companies without first obtaining a court order. • International companies are not required to timely update their registers of members. • No requirements for international companies to maintain up-to-date beneficial ownership details. • Bearer share warrants are not immobilised under the ICA. • Nominee directors do not have to disclose their nominator.
25. Transparency and beneficial ownership of legal arrangements	NC	• No obligation on trustees to hold and maintain relevant information about any constituent members of a trust. • No requirement for trust service providers to maintain records for at least five years after their involvement with a trust ceases. • Trustees are not required to identify their status as such when dealing with financial institutions or DNFBPs. • Competent authorities have no powers to obtain beneficial ownership and control information regarding trusts.
26. Regulation and supervision of financial institutions	PC	• Regulatory supervision and monitoring is not undertaken with regards to identified sector risks. • Not all sectors are subject to regulation and supervision.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
27. Powers of supervisors	PC	• No power for the VFIU to remove any reporting entity from registration under the AML/CTF Act. • Competent authorities lack an appropriate range of sanctioning powers. • The administrative sanctioning powers of the RBV can only be applied in limited circumstances.
28. Regulation and supervision of DNFBPs	PC	• Inadequate arrangements in place to prevent criminals or their associates becoming beneficial owners or controllers of casinos and most other categories of DNFBP. • No fit and proper requirements in place at registration or licensing for DNFBPs other than casinos. • Inadequate AML/CFT compliance monitoring and supervision of casinos and most other categories of DNFBP. • No sanctions powers available, other than criminal prosecutions.
29. Financial intelligence units	LC	• VFIU does not conduct strategic analysis. • Legislative weaknesses allow SLO intrusion into matters related to international cooperation.
30. Responsibilities of law enforcement/ investigative authorities	C	• The recommendation is fully met.
31. Powers of law enforcement and investigative authorities	PC	• LEAs cannot legally conduct investigations utilizing a range of investigative techniques. • The provision that supports controlled deliveries to aid investigations applies does not apply to predicate offences involving ML or ML offences.
32. Cash couriers	LC	• Lack of a central coordinating mechanism or any overarching operational coordination among domestic institutions. • Inadequate coordination among Customs, Immigration and other related authorities.
33. Statistics	NC	• Comprehensive and relevant statistics are not maintained.
34. Guidance and feedback	PC	• Lack of feedback to reporting entities from the VFIU. • Other than to banks, there is a lack of guidance regarding CDD requirements, record keeping obligations and other AML/CFT procedures to other financial institutions and DNFBPs.
35. Sanctions	PC	• Criminal sanction powers under the AML/CTF Act lack proportionality, with no administrative fine or penalty framework for less serious breaches. • RBV powers to apply administrative sanctions to banks and insurance entities can only be used for AML/CFT

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		purposes in limited circumstances.
36. International instruments	PC	• Domestic legislation does not fully addresses various requirements under international conventions such as: (a) ML offence; (b) effective, proportionate and dissuasive sanctions for ML; (c) ancillary offences for ML; (d) criminalising tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for ML; and (e) effective, proportionate and dissuasive civil and administrative sanctions against legal persons for TF.
37. Mutual legal assistance	PC	• Improvements are required to address the dual criminality requirement to allow MLA on conduct basis. • More investigative techniques are required for competent authorities to facilitate MLA requests.
38. Mutual legal assistance: freezing and confiscation	NC	• Major shortcoming in definition of 'serious offence' in POCA affects ability to confiscate following MLA request. • MLA request for enforcement of purely civil confiscation orders is not possible due to requirement of conviction for a serious offence in foreign jurisdiction. • No arrangements for co-ordinating seizure and confiscation actions with other countries. • No mechanisms for managing and disposing of property frozen, seized or confiscated. • No legal framework or mechanism to share confiscated assets with other countries.
39. Extradition	PC	• No clear process for prioritisation and timely execution of requests. • No case management system. • Vanuatu is unable to extradite for illicit arms trafficking, piracy of products, insider-trading and market manipulation as these have not been criminalised.
40. Other forms of international cooperation	NC	• The process for international cooperation is not clearly set out in legislation. • No clear and secure gateways, mechanism or channels in place for prioritisation and timely execution of requests, safeguarding of information received, or timely provision of feedback to counterparts. • No clear mechanisms for LEAs to exchange information for intelligence, or investigative purpose, or for joint investigations. • No provision on exchange of information indirectly with non-counterparts. • There is no power to authorise or facilitate foreign counterparts to conduct inquiries themselves, in Vanuatu.

VANUATU MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in Vanuatu as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vanuatu's AML/CFT system and recommends how the system could be strengthened.

The evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Vanuatu, and information obtained by the evaluation team during its on-site visit to Vanuatu from 26 January – 6 February 2015.

The evaluation was conducted by an evaluation team consisting of:

- Ms Denise Chan, Senior Public Prosecutor, Deputy Head of Proceeds of Crimes Section, Prosecutions Division, Department of Justice, Hong Kong, China (legal expert).
- Mr. Raphael Luman, Prosecutor in Charge, Proceeds of Crime & International Crime Cooperation Unit, Office of the Public Prosecutor, Papua New Guinea (legal expert).
- Mr. Peter Dench, Adviser Banking Oversight, Prudential Supervision Department, Reserve Bank of New Zealand (financial expert).
- Mr. Paul Heckles, Group of International Financial Centre Supervisors (GIFCS) (financial expert).
- Ms Heather Moye, Senior Global Liaison Specialist, SE Asia/Pacific, Office of Global Liaison, International Programs Division, Financial Crimes Enforcement Network (FinCEN), US Department of Treasury (law enforcement/financial intelligence unit expert).
- Mr. Gordon Hook, Executive Secretary, APG Secretariat.
- Ms Bronwyn Somerville, Principal Executive Officer, APG Secretariat.

The report was reviewed by:

- Mr. Ram Sharan Pokharel, Assistant Director, Financial Information Unit, Nepal Rastra Bank (Nepal)
- Ms Lia Umans, Policy Analyst, AML/CFT, Financial Action Task Force (FATF)
- Atty. Roland C. Villaluz, Legal Officer IV, Legal Services Group of the AMLC Secretariat (Philippines)

Vanuatu previously underwent an APG mutual evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation has been published on the APG website.

Vanuatu's 2006 mutual evaluation report concluded that the country was compliant with 2 Recommendations, largely compliant with 9, partially compliant with 25 and non-compliant with 13. Vanuatu was rated compliant or largely compliant with 5 of the 16 core and key Recommendations. In 2014, under the APG 2013 Procedures for Mutual Evaluation, Vanuatu would usually have remained on enhanced follow-up because there had been insufficient progress in relation to 10 of the 11 core/key Recommendations rated NC/PC in the MER and compliance remained at the NC/PC level in relation to 10 of the 16 core/key Recommendations. It was agreed, however, that Vanuatu would not be required to report ahead of the 2015 APG Annual Meeting, as Vanuatu will be subject to an APG mutual evaluation under the 3rd round and the ME report will be adopted at the 2015 Annual Meeting.

Conduct of Evaluation

The evaluation team was concerned about the level of commitment and participation by Vanuatu authorities:

- No written information was provided to the evaluation team addressing the 11 Immediate Outcomes (due September 2014) prior to the on-site visit, as required by APG mutual evaluation procedures. Nor were any written responses provided during the on-site visit, despite requests.

- A number of key government agencies and certain private sector entities did not attend scheduled meetings to discuss effectiveness issues and other areas of primary concern for the evaluation.

In light of this, the evaluation team did not have any written information and, in some cases, no oral information either, on critical areas of the 11 Immediate Outcomes with which to assess effectiveness. Consequently, many of the findings in this report are made on the basis of information exchanged only during the on-site visit. In a number of cases information requested during meetings was not forthcoming.

1. MONEY LAUNDERING/TERRORIST FINANCING (ML/TF) RISKS AND CONTEXT

1. The Republic of Vanuatu is located in the South West of the Pacific region. Vanuatu is a small country with a land area of 12,200 square kilometres and comprises of 83 islands. Vanuatu's population is around 270,000. The population of Vanuatu is 98% ni-Vanuatu; the remainder are foreign residents or naturalized citizens. The majority of the population inhabits the four main (larger) islands of Espiritu Santo, Malekula, Tanna, and Efate. The population is about 25% urban and 75% rural. About 47,000 people live in the capital, Port Vila, on the island of Efate. Another 15,000 live in Luganville on Espiritu Santo. Bislama, English and French are the official languages of Vanuatu.

2. Vanuatu rates highest on the UNU-EHS World Risk Index of vulnerabilities for natural hazards such as earthquakes, storms, floods and sea level rise. Most recently, in March 2015 (subsequent to the mutual evaluation on-site visit) a severe tropical cyclone devastated Vanuatu causing extensive damage across the capital city, Port Vila, and other parts of the country.

3. Vanuatu's GDP was approximately VT85 billion (approx. USD850 million) in 2012, with real growth of about 2.6%. GDP per capita was approximately VT300,000 (approx. USD3000). Vanuatu's GDP is dominated by the services sector (68%), with the agricultural sector contributing 21% and industries 11%. Of the services sector, a large component is derived from the wholesale and retail trade and hotels and restaurants driven by tourism.

4. Vanuatu gained independence from joint French and British rule (since 1906) in 1980. The government has maintained Vanuatu's pre-independence status as a tax haven and international off-shore financial centre, established in 1971. A range of offshore banking, investment, legal, accounting, and insurance and trust-company services are offered. Vanuatu also maintains an international shipping registry in New York City. Cross-border financial transactions and company incorporations play an important role, given the offshore centre in Vanuatu. This also contributes to the high ratio of foreign currency deposits to total deposits in the banking system, including the deposits of institutions in the offshore sector, as well as the assets of Vanuatu residents, particularly the expatriate segment and tourism industry.[1] Vanuatu does not levy any income tax, capital gains tax and withholding tax or estate duties for companies, trusts, and/ or individuals, however indirect taxes are levied through various means including value added taxes and import levies.

5. Vanuatu is a republic with a non-executive presidency and a parliamentary democracy. The president is elected by parliament together with six presidents of the provincial councils and serves a five-year term. The single-chamber parliament has 52 members, directly elected every four years by universal adult suffrage. Parliament appoints the prime minister from among its members, and the prime minister appoints a 12-member council of ministers (COM) from among the MPs.

6. Vanuatu continues to experience a degree of political instability and associated vulnerability to problems relating to poor governance, with frequent government leadership changes due to unstable coalitions within the parliament and within the major parties. Often coalition governments fail in parliament through frequent votes of non-confidence. It has been rare since 1980 that a government has lasted more than two years (of its four year terms).[1] Consequently, successive governments are reluctant to convene parliament, and, as a result, advance legislative reforms, due to concerns about possible non-confidence votes.

[1] Condensed draft *Vanuatu Money Laundering and Financing of Terrorism National Risk Assessment 2014*

1 http://www.islandsbusiness.com/2015/1/politics/vanuatu-seeks-political-stability/

1.1 ML/TF Risks

7. This section of the mutual evaluation report presents an overview of the evaluation team's understanding of the ML/TF risks in Vanuatu. The evaluation team reviewed Vanuatu's draft national risk assessment (NRA), other regional and international open source and confidential risk assessments, responses received from other APG and FSRB members and held discussions with competent authorities and the private sector during the on-site visit. The assessment of Vanuatu's understanding of the risk is outlined in Chapter 2.

8. The most significant ML threat for Vanuatu arises from the laundering of foreign proceeds of crime, especially tax crimes (both domestic and international aspects), including illicit transnational flows of capital to and through Vanuatu and evidence of tax evaders exploiting Vanuatu's offshore sector. This occurs in the context of Vanuatu, as a tax haven, streamlining company registration in concert with the Capital Investment and Immigration Program (CIIP) arrangements. The evaluation team identified that no ML/TF risk profiling of the offshore sector has been carried out and risk-based supervision activity is not evident.

9. Confidential information from APG jurisdictions, and risk assessments conducted by regional bodies, clearly identify infiltration by transnational organised crime groups as a significant ML/TF threat, with reports that Vanuatu has been used for weapons smuggling, as well as for the transhipment of illicit drugs and pre-cursor chemicals using small craft, cruise ships and air passenger and cargo environments. In addition, Vanuatu operates a Flags of Convenience (FOC) register (approx. 94 % of Vanuatu's registered fleet is foreign owned), which is largely unregulated and could be used to facilitate illegal foreign fishing and movement of prohibited goods across borders.

10. The draft NRA is generally consistent with the assessment team's view of the risk situation, identifying Vanuatu's money laundering threats as arising primarily from foreign predicate offences (including foreign tax crimes), illicit cross border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences. The high risk sectors are identified as the international sector (including international banks and companies), the remittance sector, trust and company service providers, currency exchange businesses, casinos, and interactive gaming businesses and of less, but still significant, risk are lawyers and accountants, real estate and high value asset dealers.

11. Some limited evidence exists of Vanuatu-based companies being linked to arms trafficking; however Vanuatu does not have a national policy to discourage PF, nor is any agency, or mechanism, assigned to address this issue.

12. Vanuatu does not have specific data available to estimate the country's exposure to cross-border illicit flows (related to crimes in other countries) and there is little information on the techniques used or the degree to which foreign proceeds are being laundered in Vanuatu. Vanuatu was not able to supply the evaluation team with assessments or aggregated data to set out a clear picture of the nature or level of proceeds-generating crime in Vanuatu; and discussion with investigative authorities and the FIU did not provide relevant information regarding the source, nature and scope of the threat from cross-border illicit flows.

13. The main money laundering techniques used in Vanuatu appear to be cash deposits and withdrawals, the use of professional facilitators such as lawyers and accountants, the buying and selling of high value assets, use of the offshore sector and the use of cash couriers or money or value transfer systems to move funds out of the country. In addition, the MVTS sector poses ML/TF risks in Vanuatu due to the nature of the activity, combined with limited supervision of the sector.

1.2 Materiality

14. The banking sector in Vanuatu is relatively small by global standards. It comprises five domestic banks and eight international banks licensed by the RBV. In June 2014, the total assets of four domestic commercial banks were approximately VT84 billion (approx. USD840m), slightly greater than annual national GDP. International (offshore) banks are not permitted to conduct banking activities for their customers in Vanuatu, but one 'domestic' bank is a hybrid that also conducts offshore business. The assets of the offshore banking sector have reduced significantly from around USD700m in June 2009 to around USD47m in June 2014. In the course of the on-site visit, the assessment team was not made aware of any overseas branches or subsidiaries of Vanuatu-incorporated domestic or international banks.

15. None of the 34 licensed insurance entities conduct underwriting or placement of life or investment-related insurance, but they are reporting entities for the purposes of the AML/CTF Act.

16. Other categories of financial institutions present in Vanuatu include financial leasing; MVTS providers and money changers; and licensed securities dealers and administrators or managers of mutual funds. Securities dealers, mutual funds and fund managers/administrators are licensed by VFSC. As there is no stock market in Vanuatu, these entities are only operating in overseas markets - apparently on a relatively small scale at present.

17. Vanuatu has a small number of licensed casinos and gaming machine operators and two active licensed sports betting businesses (conducting business primarily with non-residents. The three casino businesses are currently relatively small operations and do not have any material 'junket' tour business from high risk jurisdictions. Additional casino licences have been granted recently by the Minister of Finance and could potentially increase the materiality of the sector.

18. Other categories of DNFBP include TCSPs and lawyers and accountants (many of which are licensed as, or have affiliates licensed as TCSPs). There are also 11 trust companies licensed by VFSC under the Company and Trust Service Providers Act No. 8 of 2010. There is no information on aggregate trust company assets, and likewise, the materiality of the business conducted by the approximately 3800 international companies is unknown.

19. Real estate agents, dealers in high value property (greater than VT1million or approx. USD10,000) and several categories of non-profit organisations (NPOs) are also reporting entities under the AML/CTF Act but appear to be significantly less material than other types of DNFBP.

20. With respect to financial inclusion issues, financial services are concentrated in two urban areas and dominated by commercial banks. In early 2013, there were more than 3,104 regulated deposit accounts per 10,000 adults, however there is also evidence of growth in micro finance activities at the village level, such as cooperatives, as well as increasing use of person to person money transfers using two mobile phone providers and Vanuatu Post's own money transfer system. In the context of discussing new technologies, the RBV indicated that the internet network had recently been upgraded and expanded, which is facilitating wider access to e-banking and mobile financial services, including in rural areas. The domestic banks are expanding products and outlets via agencies in rural areas and ATMs and the use of credit cards is spreading. The RBV confirmed that in rural areas there is a problem of people not having passports or similar forms of identification, so in the interests of financial inclusion a lower standard of KYC is accepted such as a pastor or village chief endorsing who the customer is.

21. Since 2007 Vanuatu has been working with the Pacific Financial Inclusion Programme (PFIP) and the Alliance for Financial Inclusion (AFI) to further enhance financial inclusion efforts designed to extend financial services to low income and rural population groups. Amongst other things, this has included the RBV committing to get the COM to endorse a National Financial Inclusion Strategy and National Financial Inclusion Task Force; conduct a survey on financial access and demand for financial services;

review legislation and regulation to strengthen client protection and empowerment and market conduct in relation to use and delivery of financial services; begin the process of incorporating financial education in the core school curriculum and collaborate with stakeholders to advance financial inclusion in the region. Progress on these initiatives was not specifically covered during the evaluation; however open source information from the PFIP indicates that since 2007, the number of people accessing financial services in Vanuatu has been increasing by an average of 19% a year from a very low base.

1.3 Structural Elements

22. The preconditions for an effective AML/CFT system are generally not present in Vanuatu. As noted above, Vanuatu underwent a national risk assessment exercise during 2014; however the resulting draft report has not been adopted by the government, nor was it prepared in consultation with the private sector. As a result there is not a consistent and informed understanding of ML/TF risk amongst government authorities and other stakeholders, including the private sector.

23. Political instability, with frequent government leadership changes, has an impact on high level political commitment to establish and maintain an efficient and effective AML/CFT system, including allocating adequate financial and human resources and supporting the development of technical expertise and capacity building in the law enforcement and regulatory/supervisory authorities.

24. Vanuatu lacks an overarching national AML/CFT strategy and dedicated policies and coordination mechanisms. Furthermore, there is a lack of reliable and relevant statistical information and no interagency processes to promote and support coordination and cooperation between the operational agencies.

25. The lack of these essential pre-conditions poses significant obstacles to effective implementation of Vanuatu's existing system and will pose challenges for further development and implementation, unless they are urgently addressed.

1.4 Other Contextual Factors

26. Various forms of proceeds-generating domestic corruption (including high level political corruption) have been reported, including fraudulent sale of passports and citizenship by government and political officials, and corrupt practices used to facilitate ML. It is likely, therefore, that a relatively large amount of proceeds is available for laundering locally.

27. Whilst Vanuatu has an Ombudsman's Office, there is no dedicated anti-corruption agency. Vanuatu has not criminalised bribery of foreign public officials and officials of public international organizations; bribery in the private sector; and illicit enrichment. Nor are there plans to develop specific witness or whistle-blower protection measures in regard to reporting allegations of corruption. There have been no prosecutions under the Leadership Code (LC) and POCA, nor any in response to the conflict of interest and abuse of power matters investigated by the Ombudsman's Office.

1.5 Scoping of Higher-Risk Issues

28. During the on-site visit, the evaluation team gave increased focused to the areas below. The issues listed represent not only areas of higher ML/FT risk (threats and vulnerabilities), but also contain issues of significant interest or concern to the evaluation team based on the material provided before and during the on-site visit:

- ***National risk assessment and risk-based approach,*** including whether the key AML/CFT agencies agree with the findings of the draft NRA and if any agencies conducted sector risk assessments in the past, including in association with other regional entities, which have been endorsed and implemented.

- ***Lack of coordination, resources, skills and capacity in relevant authorities,*** including the difficulties in eliciting responses to the TC Update Questionnaire, and in obtaining effectiveness information, that indicate a lack of national policy and coordination and staff in key agencies who, whilst long serving in their own field, lack knowledge and experience in AML/CFT.
- ***Financial institutions and DNFBP sectors that might propose higher risks,*** including the size and nature of the business carried out by the international (offshore) banking, securities and funds management sectors, and TCSPs; size and nature of the business carried out by casinos, on-line gambling and gaming entities; nature of the business carried out by real estate agents, high value goods dealers in precious metals and stones; size and nature of the business carried out by non-bank deposit takers and other non-bank lenders and the ML/TF risks associated with these sectors/entities and the size and nature of the business carried out by gate keepers namely lawyers, notaries, auditors, accountants.
- ***Cash economy,*** including the ML/TF implications of a high reliance on cash intensive businesses and cash courier activity and whether the main cash intensive businesses are subjected to reporting obligations (both CTR and STR), are regulated and monitored.
- ***Banking sector (both international and domestic),*** including the RBV, VFSC and VFIU's outreach to the banking sector to ensure they are aware of their obligations and are adequately identifying and addressing ML/TF risks, the lack of requirements for beneficial ownership information and how the banking sector in Vanuatu conducts customer identification and verification when there is a lack of requirements for beneficial ownership
- ***Offshore Sector***, including the risks posed by the offshore sector, in particular through international companies, along with the extent to which those risks are being effectively mitigated through beneficial ownership requirements, controls on the use of introduced business, requirements for monitoring the customer, and the regulation and risk-based supervision of TCSPs.
- ***Misuse of corporate vehicles and professional facilitators***, including the threat posed by professional facilitators, including lawyers and TCSPs and the level of compliance with AML/CFT obligations and supervision.
- ***Money and Value Transfer Services (MVTSs),*** including the findings of the draft NRA and the coverage and effectiveness of the AML/CFT regime for MVTSs.
- ***Supervision,*** including the framework for, and evidence of, the risk-based approach to AML/CFT supervision adopted by RBV and VFIU; and the nature of risk-based AML/CFT systems and controls being adopted by financial institutions and DNFBPs.
- ***Casinos and gaming,*** including proposals to develop further casinos in Vanuatu and what controls are in place to mitigate ML/TF risks.
- ***PEPs regime,*** including requirements for PEPs as high risk customers.
- ***NPOs,*** including the nature and effectiveness of the AML/CFT regime covering NPOs.
- ***Corruption,*** including why there have been no prosecutions under the Leadership Code (LC) and Proceeds of Crime Act (POCA), nor any in response to the conflict of interest and abuse of power matters investigated by the Ombudsman's Office; when Vanuatu plans to criminalize bribery of foreign public officials and officials of public international organizations; bribery in the private sector; and illicit enrichment and develop specific witness or whistle-blower protection measures;

and whether relevant agencies work in coordination with VFIU to prevent money laundering and combat terrorism financing as sought by UNCAC.

- ***Statistics,*** including how AML/CFT-related statistics are being gathered to support an effective risk-based AML/CFT regime and whether VFIU has appropriate access to all financial, law enforcement and administrative information.
- ***ML/ TF Investigation,*** including Vanuatu Police Force (VPF) policies for investigating financial crimes and pursuing ML charges and the extent that law enforcement agencies are able to utilise specialised investigative techniques for ML investigations.
- ***Tactical and Strategic Analysis,*** including whether the VFIU (and the State Law Office) have adequately trained staff and resources to perform functions such as tactical and strategic analysis and if financial intelligence is being used.
- ***Prosecution Policy,*** including whether prosecuting ML is identified as a priority and the policies and programs in place to enhance the capacity of prosecutors.
- ***International Cooperation***, including underpinning issues contributing to Vanuatu's ability to exchange information with its foreign counterparts.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings

- There is little or no understanding by government authorities of the principal ML and TF risks for Vanuatu, including those identified in the draft NRA. Neither is there an informed understanding in the private sector.
- Vanuatu conducted its first "Money Laundering and Financing of Terrorism National Risk Assessment" (NRA) during 2014, however the NRA has yet to be adopted by the Vanuatu government as a "national" assessment.
- There is no focus in the draft report on specific TF risks and vulnerabilities, or the risks associated with all types of legal persons; and while the draft NRA draws reasonable conclusions with respect to Vanuatu's ML risks, the analysis is not based on objective national statistics and there was only limited consultation with key private sector entities.
- Vanuatu does not have a national AML/CFT policy (or series of policies) informed by ML/TF risks or any dedicated strategic framework to coordinate actions to combat ML, TF and PF.
- While some initial steps have been taken, Vanuatu has not yet implemented a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of the assessed risks.
- There is no effective national cooperation and coordination amongst the operational agencies in relation to sharing information and resources and developing and implementing policies and activities to combat ML, TF and PF issues.
- Vanuatu does not collect or maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of its AML/CFT system. To some extent this undermined the integrity of the NRA process.
- There is a need for more effective AML/CFT engagement between government agencies and between government authorities and private sector stakeholders to facilitate communication and information sharing, enable more efficient use of education and training opportunities and more effective operational coordination. This was reinforced by all government authorities and private sector representatives.
- The preconditions for an effective AML/CFT system are not present in Vanuatu, including a consistent and informed understanding of ML/TF risk; high level political commitment; adequate financial and human resources, including capability and technical skills in law enforcement and regulatory/supervisory authorities; and a formal and dedicated domestic cooperation/coordination structure.

2.1 Background and Context

(a) Overview of AML/CFT Strategy

29. Vanuatu does not have a national AML/CFT policy (or series of policies) or any dedicated strategic mechanism to coordinate actions to combat ML, TF and PF. Vanuatu advised the evaluation team that a national AML/CFT policy will be drafted after the draft 2014 NRA has been finalised and adopted by the government.

(b) The Institutional Framework

30. Section 5 of the AML/CTF Act lists the functions and powers of the VFIU including that the VFIU will conduct research into money laundering and terrorism financing trends and developments and recommend on detecting and deterring measures against money laundering and terrorism financing. The legislation does not specify a national AML/CFT policy coordination function for the VFIU or any other agency; however since the establishment of the VFIU in 2000 it has been responsible for briefing relevant ministers and the Council of Ministers (COM) on strategic AML and CFT outcomes/deficiencies and ensuring AML/CTF policies are developed and approved.

31. The Vanuatu Financial Sector Advisory Group (VFSAG) was appointed by the COM as an advisory group in 2005. The VFSAG is chaired by the Director General of the Prime Minister's Office and consists of the following key ministries and institutions: Prime Minister's Office, Governor and Deputy Governor of the Reserve Bank (Secretary), Attorney General, Director General of Finance, Director General of Foreign Affairs, Director of VFIU, Police Commissioner, and the Commissioner of the Vanuatu Financial Services Commission (VFSC). The VFIU and VFSAG oversee the development of AML/CFT policies and activities, which are presented to the COM by the Minister of Finance.

(c) Coordination and Cooperation Arrangements

32. Whilst the VFSAG is the overall (undesignated) advisory mechanism for AML/CFT activities, legislative proposals are reviewed by the VFSAG and presented to the Departmental Committee of Officials (DCO) by the relevant institution and then to the COM. The DCO is comprised of the 12 Director Generals from the 13 government ministries (two ministries share one Director General due to their small size) and the 13 1st Political Advisors to the 13 ministers. The DCO acts as a 'check and balance' to political decisions undertaken by COM. The 13 government ministries are the Prime Minister's Office, Ministry of Finance, Ministry of Commerce, Ministry of Infrastructure, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Health, Ministry of Justice, Ministry of Agriculture, Ministry of Climate Change, Ministry of Lands, Ministry of Sports and Ministry of Education. The DCO is set up by the COM to provide a technical review of policies submitted to COM for its approval. All government policies are required to be reviewed and approved by DCO prior to discussion and approval by the COM.

33. At the operational level, the Vanuatu authorities did not provide evidence of specific mechanisms that enable policy makers, VFIU, LEAs, supervisors and other relevant competent authorities to coordinate and cooperate with each other concerning the implementation of AML/CFT policies and activities. Some MOUs exist between VFIU and Vanuatu Police Force (VPF), Department of Customs and Inland Revenue and the Reserve Bank of Vanuatu and separate MOUs with Vanuatu Financial Services Commission and Immigration Department are under negotiation. Vanuatu confirmed the Combined Law Agency Group (CLAG) arrangements referred to in the 2006 mutual evaluation report (MER) are no longer in existence. No other operational cooperation mechanisms or arrangements were detailed.

34. Vanuatu authorities advised that the VFSAG provides national coordination to combat the financing of proliferation of weapons of mass destruction, however no evidence was provided to confirm this. Moreover, no information was provided on operational cooperation with respect to combating the financing of proliferation of weapons of mass destruction.

(d) Country's assessment of Risk

35. Vanuatu conducted its first "*Money Laundering and Financing of Terrorism National Risk Assessment*" (NRA) exercise during 2014, with technical assistance provided by Asian Development Bank (ADB) and New Zealand consultants. A draft NRA document was circulated to government authorities for comment in December 2014; however the NRA has yet to be considered by relevant government authorities and adopted by the Vanuatu government as a 'national' assessment. As of the date of the on-site

visit the report was in draft form only and had received some consideration from VFIU and RBV, but little, or none, by other agencies.

36. The draft NRA is described as a preliminary overview that provides a foundation for the development of a more adequate assessment of the ML/TF risk over the next few years. The draft NRA draws on data from workshops and interviews, government agencies, financial sector data, public information sources and media reports. The draft NRA does not quantify or estimate the size of the criminal economy in Vanuatu (both domestic and foreign proceeds of crime). It attempts to put a range on the extent of ML in Vanuatu at between USD16.6m – USD41.7m, in the first instance, or approximately USD14.2m in the second instance, but these figures are not based on national crime statistics and associated analysis. The evaluation team was able to confirm that there was only limited consultation with key private sector stakeholders in the preparation of the NRA.

37. The draft NRA identifies Vanuatu's ML threats as arising primarily from foreign predicate offences (including foreign tax crimes), illicit cross-border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences. The high risk sectors are identified as the international sector (including international banks and companies), the remittance sector, trust and company service providers, currency exchange businesses, casinos, and interactive gaming businesses. Of less, but still significant risk are lawyers and accountants, real estate and high value asset dealers.

38. While the draft NRA intends to focus on ML and TF risks, the primary focus of the report is on ML and predicate crimes due primarily to the limited information provided to the independent consultants (refer para. 47 below). There is no specific focus in the draft report on TF risks and vulnerabilities. In addition, while the draft NRA draws reasonable preliminary conclusions on the main ML risks, the ML/TF risks associated with all types of legal persons created in the country have not been assessed as required under Recommendation 24. Taking materiality into account, these are significant omissions.

2.2 Technical Compliance (R.1, R.2, R.33)

39. See the technical compliance annex for the full narrative on these Recommendations.

Recommendation 1 – Assessing Risks and Applying a Risk-Based Approach

40. **Vanuatu is non-compliant with R.1.** The focus of Vanuatu's 2014 draft NRA is primarily on ML and associated predicate crimes. It does not consider and assess the risks and vulnerabilities for TF in any detail although it does mention TF risks in very general terms. Nor does the draft assessment mention the specific risks of ML and TF associated with all forms of legal persons (including public, foreign, domestic and international banks) registered in the country. The draft NRA draws reasonable conclusions with respect to Vanuatu's ML risks however the analysis is not based on objective national statistics and there was only limited consultation with key private sector entities. These are significant shortcomings as the draft NRA is unable to fully identify and assess the ML/TF risks for the country. There is still no designated authority or mechanism to coordinate actions to assess risks, nor any plan for keeping the risk assessment up-to-date or for providing the results to competent authorities and other stakeholders. In addition, while some initial steps have been taken, Vanuatu has not yet implemented a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of the assessed risks.

Recommendation 2 – National Cooperation and Coordination

41. **Vanuatu is non-compliant with R.2.** Vanuatu does not have a national AML/CFT policy, or policies, informed by ML/TF risks. There are major shortcomings in national AML/CFT cooperation and national coordination, in particular at the operational level, where no coordination mechanisms exist and

where even the previous coordination mechanisms referred to in the 2006 MER are no longer in existence. The same situation exists in relation to operational cooperation for PF issues.

Recommendation 33 – Statistics

42. **Vanuatu is non-compliant with R.33**. Vanuatu does not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of its AML/CFT system. Vanuatu authorities were not able to provide comprehensive statistics regarding: property frozen, seized and confiscated; and MLA and extradition requests or other international requests for cooperation made and received. The VFIU does not maintain comprehensive statistics and the statistics that are collected are limited in scope and insufficient to assist in any sort of proactive analytical endeavours. The lack of available statistics is also referred to in the 2014 draft NRA.

2.3 Effectiveness: Immediate Outcome 1 (Risk, Policy and Coordination)

(a) Country understands its ML/TF risks

43. There is little or no understanding by government authorities across all agencies of the principal ML and TF risks for Vanuatu including those identified in the draft NRA. The draft NRA was completed in December 2014 and while it is yet to be adopted by the government, many agencies seemed to be unaware of its existence or the process leading to its completion. Even those agencies that were aware of the existence of the draft document were unfamiliar with its actual content and its policy and operational implications. Moreover, there was a disjointed and uninformed view by most private sector agencies of the principal ML and TF risks in Vanuatu, ranging from some private sector entities denying that there were any risks at all because of Vanuatu's relative remoteness in the Pacific Ocean and its small financial sector, to other entities expressing a view on risks that were based on misunderstandings of the nature of ML and of TF. For instance, some of the international banks denied that there were any risks because they had a limited number of depositors, while at the same time agreeing that the same depositors were the owners of the bank in which the deposits were made and were of "relative high net worth". Other private sector agencies (including some banks), while recognising that ML predicate crimes occurred in Vanuatu, stated that the risk of ML was low because no one has been convicted of ML. In addition, other private sector agencies argued that TF was not a risk in Vanuatu on the assumption that there are no terrorists in Vanuatu.

44. The draft NRA lacks many of the essential elements for a thorough assessment of ML and TF risks as it has been based on very limited data and statistical information. This is due mainly to the fact that the consultant who prepared the assessment report was not provided access to that essential information, or, in some cases, the necessary information had not been collected and maintained in Vanuatu in a comprehensive manner. The information and statistics that are required for a thorough assessment will need to be identified and collected as a matter of priority in order for Vanuatu to give the draft document in-depth consideration prior to adoption and, subsequent to that, develop a more thorough NRA.

45. While the NRA is a preliminary assessment, government agencies agreed that the principal high ML risks in Vanuatu are associated with domestic corruption (including high level political corruption), corporate fraud, drug offences, domestic VAT fraud and foreign tax crimes. The systemic risks include the international sector (including international banks and international companies), the remittance sector and the general lack of resources across all agencies in government to effectively supervise or monitor compliance with AML/CFT measures.

46. Authorities acknowledged that the NPO sector could be vulnerable to TF, as it remains unsupervised, but were unclear as to where the risks in that sector lie.

(b) National AML/CFT policies and activities to address the ML/TF risks

47. The draft NRA indicates that the findings will be used to guide decision making and resource allocation. Given the deficiencies in the NRA mentioned above, even if it is adopted it would not allow for a robust risk-based approach. At the time of the on-site visit the evaluation team found that Vanuatu has not implemented a comprehensive, risk-based approach to allocating resources and implementing policy measures to prevent or mitigate ML/TF on the basis of assessed risks.

(c) Exemptions and application of enhanced measures

48. The draft 2014 NRA has not been finalised and adopted by the government. However even if it were adopted, given the deficiencies it is unlikely that it would provide sufficient basis for exemptions or justifications for the application of enhanced measures made based on the results of the assessment.

(d) Objectives and Activities Consistent

49. Vanuatu does not have a national AML/CFT policy framework or any formal and dedicated AML/CFT structure to prioritise and coordinate actions to combat ML, TF and PF. As a result, the identified risks are not being addressed in any policies, or in the objectives and activities of the competent authorities and SRBs.

(e) Cooperation and coordination

50. There is no effective national cooperation and coordination amongst the operational agencies in relation to information sharing and developing and implementing policies and activities to combat money laundering, terrorist financing and proliferation financing issues. Some MOUs exist between VFIU and Police, Customs and RBV, and some *ad hoc* cooperation takes place, but on the whole coordination is ineffective. The need for more effective communication and coordination was reinforced by all the government authorities and private sector representatives.

(f) Awareness of risk in the private sector

51. There was limited consultation with private sector stakeholders in the preparation of the NRA (authorities do not appear to have arranged consultation meetings with most of the private sector entities) and most of the reporting entities interviewed during the assessment were unaware of the existence of the NRA. For the small number who said they had been consulted during the NRA exercise, none had any knowledge of the results of the risk assessment, or an understanding of the real purpose. Government authorities did not provide information on any plans for ensuring the reporting entities are made aware of the relevant results of the results of the NRA. (See also *2.1 (d)* above.)

Overall conclusions on Immediate Outcome 1

52. The draft NRA is generally consistent with the assessment team's view of the risk situation, identifying Vanuatu's money laundering threats as arising primarily from foreign predicate offences (including foreign tax crimes), illicit cross-border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences, with the high risk sectors identified as the international sector (including international banks and companies), the remittance sector, trust and company service providers, currency exchange businesses, casinos, and interactive gaming businesses.

53. The draft NRA lacks many of the essential elements for a thorough assessment of ML and TF risks as it has been based on very limited data and statistical information and does not cover the specific ML and TF risks associated with all forms of legal persons (including public, foreign, domestic and international banks) registered in the country.

54. Both the public sector and the private sector lack an informed understanding of the ML and TF risks in the country. As the draft 2014 NRA has not been finalised and adopted by the government, Vanuatu does not have a national AML/CFT policy framework that addresses ML, TF and PF risks, nor are the identified risks addressed in the objectives and activities of the competent authorities and SRBs.

55. There is no designated authority or mechanism to coordinate actions to assess risks, nor any plan for keeping the risk assessment up-to-date, or for providing the results to competent authorities and other stakeholders. There is no evidence that the competent authorities and SRBs cooperate and coordinate in information sharing and the development and implementation of activities to combat ML/TF and, where appropriate, PF. There have been no exemptions or justifications for the application of enhanced measures made based on the results and Vanuatu has not implemented a comprehensive, risk-based approach to allocating resources and implementing policy measures to prevent or mitigate ML/TF on the basis of assessed risks.

56. **Vanuatu has a low level of effectiveness for Immediate Outcome 1.**

2.4 Recommendations on National AML/CFT Policies and Coordination

57. A dedicated national AML/CFT co-ordinating body (e.g. an 'anti-money laundering council') should be established as a matter of priority. The body should have documented terms of reference and should meet regularly to receive reports and update information on Vanuatu's threats and risks of ML, TF and PF and to monitor the performance of key agencies against the strategic priorities. This would assist in early identification of the key issues and more effective allocation of resources to address the areas for improvement. The body should consist of senior government officials, but could include some private sector representatives or, at least, have a private and civil sector stakeholder 'sub-group'.

58. In conjunction with establishing a dedicated national AML/CFT coordination body, Vanuatu needs to conduct comprehensive awareness training for legislators and top senior government officials on the ML/TF/PF risks for the country and the importance of having an effective AML/CFT regime (including a national strategy) that is consistent with FATF standards. This would increase the understanding of the important role an effective AML/CFT regime can play in benefitting Vanuatu's social and economic objectives and strengthen support for the legal reforms and resource allocations that are required.

59. Vanuatu should establish an inter-agency NRA working group (with documented terms of reference) to finalise the NRA and develop a sector-based communication strategy and implementation plan to inform stakeholders (and relevant sections of civil society/community) of the information in the NRA and the requirements for mitigating strategies.

60. The NRA working group should also be tasked to develop a strategy for collecting and maintaining the information and statistics required for Vanuatu to develop a more thorough NRA, which should be conducted as soon as possible. If required, technical assistance and advice should be sought to set up the data collection framework

61. An over-arching national AML/CFT strategy and sector-specific policies should be developed, (based on the identified risks), that cascade into the internal policies, priorities and guidelines of relevant key agencies. The national strategy and policies should be developed in consultation with the private sector and other domestic and regional stakeholders.

62. Vanuatu needs to implement a comprehensive risk-based approach to prioritising capacity building and training, and allocating resources, in order to develop and implement measures to prevent and mitigate ML/TF on the basis of the assessed risks. This includes developing policies and prioritising operational resources to address the higher risk areas.

63. National coordination and cooperation needs to be significantly strengthened by educating all agencies and stakeholders on ML/TF, what the risks are, the role of each agency in the AML/CFT system and how the agencies and stakeholders can work together to strengthen the regime and maximise the efficient use of limited resources.

64. Operational coordination and cooperation mechanisms need to be established as a matter of urgency and these mechanisms need to meet on a regular basis to share information and intelligence and prioritise ML/TF investigations and prosecutions.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

- Section 11 of the Proceeds of Crime Act 2005 (POCA) criminalises money laundering. The POCA was amended in 2012 to extend the definition of property to include property outside Vanuatu, criminalise self-laundering and expressly provide for prosecution of ML as a standalone offence.
- The Proceeds of Crime Amendment Act No. 27 of 2014 (POCAA), however, amended the definition of 'serious offence' to exclude offences attracting more than 12 months imprisonment. This has rendered the ML offence inconsistent with the FATF standards as it now excludes the majority of the FATF designated categories of predicate offences.
- Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products, insider- trading and market manipulation as predicate offences for ML and has a threshold of VT3 million (USD30,000) property value for ML.
- Vanuatu has not criminalised ancillary offences to ML.
- Criminal sanctions for ML are not proportionate and dissuasive. The penalty for natural persons is the same with no consideration of the gravity of individual cases. Corporate entities also face the same penalty regardless of the circumstances of individual cases.
- Vanuatu's LEAs have not investigated any cases of ML, despite it being a criminal offence since 2002. As a result, there have been no ML prosecutions and convictions.
- The legal framework for confiscation of proceeds and instrumentalities of crime is not comprehensive and has never been successfully utilised since the enactment of Vanuatu's first POCA in 2002. The lack of confiscation arises from deficiencies in national policy and priorities, as well as a lack of resources and technical capacity. This is compounded by the recent amendment to the definition of serious offence, which cascades into the confiscation framework by preventing confiscation following conviction for most predicate offences for ML.
- Vanuatu does not have any mechanisms for managing and disposing of restrained, seized or confiscated property.
- Vanuatu has adequate legal provisions governing the power, functions and operations of the financial intelligence unit, however shortcomings remain, namely the VFIU's lack of strategic analysis and the ability to operate independently of the State Law Office.
- Vanuatu authorities charged with protecting the financial system do not have adequate powers, resources and technical skills to perform all of their AML/CFT functions. The law enforcement agencies (VPF and Customs) and VFIU require additional investigative powers and human resources, as well as technical training in skills such as financial and strategic analysis.
- Lack of consistent outreach to the financial and DNFBP sectors limits the numbers of STRs and other financial intelligence received by the VFIU. The VFIU has not received information from, nor conducted analysis of, all reporting entities. Nor does it maintain comprehensive statistics, which undermines its ability to identify emerging ML/TF trends and threats.
- The LEAs and prosecutors lack coordination mechanisms and operational strategies to effectively combat and respond to ML and TF. There is no overarching policy and operational coordination at the national level with respect to responding to ML and TF and no internal procedures and guidelines for LEAs and prosecutors. There is also a lack of awareness of the ML offence among domestic institutions with respect to predicate offences associated with money laundering and terrorist financing.

- Low value placed on financial intelligence. Vanuatu authorities do not understand the role of the VFIU and the value of financial intelligence. As a result authorities beyond the VPF do not utilize the VFIU to any extent. Vanuatu authorities rarely request information and reports from the VFIU that could assist them in their duties, nor does VFIU spontaneously provide them.
- Vanuatu LEAs do not have the ability to conduct investigations using the range of investigative techniques. LEAs do not have the legislative mandate to conduct undercover operations and communication intercepts, nor permit access to computer systems for the investigation of money laundering and terrorist financing.
- Money Laundering has never been actively pursued by LEAs and prosecutors in Vanuatu. The VPF and PPO often liaise on criminal cases going before the courts, however ML is never considered in addition to predicate offences. This is largely due to a lack of awareness of ML/TF issues on the part of VPF and the prosecutors. Following the amendment to the POCA in December 2014, it is now impossible to charge ML, as most predicate offences are omitted from the new definition of 'serious offence' – a critical element of the ML offence.

3.1 Background and Context

(a) Legal System and Offences

65. Section 11 of the Proceeds of Crime Act 2005 (POCA) criminalises money laundering. The POCA was amended in 2012 to extend the definition of property to include property outside Vanuatu, criminalise self-laundering and expressly provide for prosecution of ML as a standalone offence.

66. Vanuatu has adopted a monetary and imprisonment threshold approach to the criminalization of money laundering. However, as detailed in the technical compliance Annex, and below, the Proceeds of Crime Amendment Act No. 27 of 2014, (POCAA) amended the definition of 'serious offence' to exclude offences attracting *inter alia* more than 12 months imprisonment. Under the new definition of 'serious offence', most of the FATF designated categories of predicate offences do not qualify as serious offences.

67. The POCA also provides for confiscation of proceeds and instrumentalities of crime. Confiscation is dependent on conviction for a serious offence and so the major shortcoming relating to the definition of 'serious offence' cascades into the confiscation scheme, limiting the ability of authorities to take confiscation action.

3.2 Technical Compliance (R.3, R.4, R.29-32)

68. See the technical compliance annex for the full narrative on these Recommendations.

Money Laundering and Confiscation:

Recommendation 3 – Money laundering offence

69. **Vanuatu is rated non-compliant with R.3.** Vanuatu's ML offence is criminalised under s.11 of the POCA. It is dependent on engagement in property that is 'proceeds of crime'. The penalty is – for a natural person – a fine of VT10 million (approx. USD100,000) or imprisonment for 10 years or both. The penalty for a body corporate is a fine of VT50 million (approx. USD500,000).

70. 'Proceeds of crime' is defined in s.5(1) of the POCA as property derived directly or indirectly from a serious offence including its conversion, transformation and income, capital or economic gains derived from the property since the offence. It is a critical element that the ML offence is dependent on

engagement in proceeds of a serious offence, which the POCAA No.27 of 2014 defines as an offence against "(a) law of Vanuatu for which the penalty is a fine not less than VT40,000 (approx. USD4,000) or imprisonment for a term of not more than 12 months; or (b) law of Vanuatu or another country that, if the conduct had occurred in Vanuatu, would constitute an offence under Vanuatu law for which the proceeds, property or benefit of that offence is VT3 million (approx. USD30,000) or more or its equivalent in foreign currency".

71. The definition of 'serious offence' affects the ML offence and renders Vanuatu's AML system incapable of implementation given that it excludes a majority of the FATF designated categories of predicate offences. This is a major shortcoming. In addition, the penalty for both natural and legal persons is not proportionate or dissuasive, and there are no ancillary offences (conspiracy to commit, attempt, counselling, etc.) to ML. Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products, insider trading and market manipulation as predicate offences for ML and has a threshold of VT3 million property value for ML.

Recommendation 4 – Confiscation and provisional measures

72. **Vanuatu is rated partially compliant with R.4.** Parts 3 and 4 of the POCA provide for restraint and confiscation of property laundered, proceeds including income and other benefits derived from such proceeds, or instrumentalities used or intended to be used in ML or predicate offences, including property of corresponding value. The definition of 'proceeds of crime' under s.5 of the POCA is not consistent with FATF standards as it only applies to serious offences. Furthermore, confiscation is dependent on conviction for a serious offence.

73. The major shortcoming in the definition of 'serious offence' cascades into the confiscation framework by limiting confiscation action. Authorities are also unable to take confiscation action relating to tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation due to non-criminalisation of these offences.

74. Vanuatu has adequate powers in place to trace, seize and confiscate terrorist property and the definition of terrorist property meets international standards. Confiscation of terrorist property is not dependent on the 'serious offence' requirement and is not affected by the deficiency in its definition (s. 50(1)(c), (4) of the POCA and s. 19 of the Counter Terrorism and Transnational Organized Crime Act (CTTOCA). Terrorist property defined in s.2 of the CTTOCA is consistent with the FATF standards. Part 3 of the CTTOCA (ss.12 to 25) provides for the management and forfeiture of terrorist property. It has measures to enable confiscation of property that is used in, or is likely to be used for financing of terrorism, terrorist acts or terrorist organisations. However Vanuatu does not have any mechanisms for managing and disposing of restrained, seized or confiscated property. Terrorist property can be seized along with tainted property under ss.38 and 45 of the POCA. These powers complement powers under Part 3 of the CTTOCA which deals with management and forfeiture of terrorist property.

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

75. **Vanuatu is largely compliant with R.29**. Vanuatu has adequate legal provisions governing the power, functions and operations of the VFIU, however shortcomings remain, namely the VFIU's lack of strategic analysis and ability to operate independently of the SLO as noted in *criteria* 29.7 (b) and (d).

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

76. **Vanuatu is compliant with R.30**. The legal requirements regarding the responsibilities of law enforcement and investigative authorities meet the criteria for R.30.

Recommendation 31 – Powers of law enforcement and investigative authorities

77. **Vanuatu is partially compliant with R.31**. Vanuatu does not have the ability to conduct investigations utilizing the range of investigative techniques. The provision that supports controlled deliveries to aid investigations applies only to offences set out in the Counter Terrorism and Transnational Organized Crime Amendment Act 2014 (CTTOCAA) and does not apply to predicate offences for money laundering or money laundering offences.

Recommendation 32 – Cash couriers

78. **Vanuatu is largely compliant with R.32**. Vanuatu has made significant progress with respect to cash couriers since their last mutual evaluation, including implementing a declaration system for incoming and outgoing cross-border transportation of cash and other bearer negotiable instruments. There is not, however, a central coordinating mechanism or any other overarching operational coordination among domestic institutions. This inadequate coordination among Customs, Immigration and other related authorities remains an obstacle to full compliance on issues related to the implementation of R.32.

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

(a) Types of reports received and requested (information to the FIU).

79. Financial intelligence and other relevant information is not, in general, accessed and used in investigations to develop evidence and trace criminal proceeds related to ML and associated predicate offences in keeping with the key risk areas, ie laundering of foreign proceeds of crime (including with the involvement of transnational organised crime groups), especially tax crimes through Vanuatu's offshore sector.

80. Vanuatu receives a wide range of financial transaction reports. The following table summarizes the report types VFIU receives and disseminates to VPF:

Reports received by VFIU	**2010**	**2011**	**2012**	**2013**	**2014**
STR (suspicious transaction reports)	42	40	50	76	57
SAR (suspicious activity reports)	0	0	0	0	3
CTR (currency transaction reports)	5,142	5,321	6,851	7,251	8,023
BCR (Customs Declarations)	7	26	43	35	59
IFTR (international funds transfer instruction reports)	15,544	13,328	14,184	12,926	11,478
CCR (Cash Courier Reports)	0	3	20	0	0
Disseminations to VPF*	3 (7)	3 (5)	7 (13)	5 (9)	5 (12)
Total Financial Records	20,735	18,718	21,148	20,288	19,620

**number of STRs involved in parenthesis*

81. The VFIU inputs the financial transaction reports into the Financial Intelligence Unit-Management Information System (FIU-MIS). The data storage system software was developed by an independent company and is serviced by an outside contractor. The database is stored on one single server that is located within the Department of Finance. Only the VFIU staff and the software developer have access to FIU-MIS. Data stored in this system can be collated and sorted to assist in analysis, however, the VFIU does not use the system to conduct strategic analysis or other related work. It is strictly used as a data storage system and assists with reactive analytical work.

82. Reporting entities are unable to submit financial reporting data electronically, as the VFIU has no mechanism to automatically transfer data into the FIU-MIS. Reporting institutions must therefore send data in the form of a spreadsheet via email. The VFIU staff enter the information into the storage system manually. According to VFIU, 60% of reporting information is received electronically in the form of

emailed spreadsheets. The entities that submit such reports are financial institutions, casinos, law firms and money remitters. However, 40% of the reports are still received in hard copy from covered institutions such as real estate companies, vehicle dealers, insurance companies, interactive gaming companies, accountants and lending corporations.

83. Generally, the information received from covered reporting institutions is good quality; however, there is a decline in quality when it comes to STRs received from the TCSPs, vehicle dealers, and the real estate industry, which requires frequent follow-up on the part of the VFIU.

(b) Use of financial intelligence and other relevant information

84. The VFIU can request any additional information that it requires from reporting entities through the exercise of its functions as an FIU. The FIU exercises its powers when undertaking analytical work and requesting information from any obliged entity. Reporting entities are legally required to have systems in place enabling them to fully and rapidly respond to enquiries.

85. Section 45 of the AML/CTF Act provides for VFIU to collect a range of financial and other information and records necessary for the FIU analysis process. Outside of financial information housed within the FIU-MIS, VFIU can access information related to: vehicle dealerships; companies reports; criminal records; law enforcement; tax records; public registries; real estate; agriculture (environmental)-related information; foreign affairs; quarantine/immigration and customs and inland revenue. Currently the FIU does not have direct access to these records. However, the VFIU is in the process of negotiating with various government offices for direct access to their records.

86. In lieu of direct access, the VFIU Director may, by notice, require a vehicle dealership, real estate agency or a company to provide necessary information and records on its customers and its financial reports; and require law enforcement agencies to provide information and records of criminal records and relevant criminal cases. This sharing of information with law enforcement agencies is further emphasised by the signed MOUs (e.g. with Police, Customs and soon with Immigration); and requirements for registrars (e.g. company, trust, cooperative society) to provide information and records on its registers; the Department of Foreign Affairs and External Trade to provide information and records on external trades; and the Department of Agriculture and Department of Environment and Conservation to provide information or records on breaches of their respective governing legislations. Requests for information are usually answered within a week.

87. The quality and quantity of STRs and other financial intelligence received by the VFIU is variable, reflecting a lack of awareness in the reporting sectors.

88. The VFIU lacks the ability to identify emerging ML/TF trends and threats. VFIU lacks comprehensive statistics and has not undertaken proactive strategic analysis of financial records currently held within FIU-MIS and therefore cannot draw any intelligence/leads from the information received.

89. The VFIU's intelligence products are generally only disseminated to the VPF; however there has been some dissemination to Department of Customs and Inland Revenue and the Immigration Department. There is no evidence from VPF that the financial intelligence from VFIU's reports is being effectively used as a key input into investigations of ML and predicate crimes. The VPF does, however, work directly with VFIU in more reactive scenarios with respect to pursuing search warrants etc.

90. Outside of VPF, other Vanuatu LEAs stressed that if they encounter financial crime issues within their jurisdiction they will not pursue them. They leave any follow up to the VPF or VFIU without further input. One such authority stated that their lack of interface with the VFIU can be reduced to the fact that they do not share responsibilities, roles, or common areas of interests. The lack of training, work practices and operational procedures, along with a lack of understanding of the benefits that engagement with the

VFIU can provide to augment their investigations, speaks to the general disconnect in the importance of financial intelligence and law enforcement work. There is no forensic accountant support within the VPF to analyse fund flows of accounts. The VPF therefore has to resort to, and make specific request for, assistance from the VFIU on forensic analysis. Insufficient specialist human resources (financial analysts) remains an issue for predicate offences and ML to be targeted promptly and effectively.

91. It is not clear if LEAs ever use financial intelligence generated by VFIU, or derived in the course of their own investigations, to start an investigation. Vanuatu authorities outside of the VPF do not use financial intelligence and other relevant information for intelligence or evidentiary purposes to identify and trace proceeds and support investigations and prosecutions of ML, TF and associated predicate offences, or to assist them to perform their duties. Initiating and developing a financial investigation purely on the basis of financial intelligence and other relevant financial information does not occur in Vanuatu.

(c) FIU analysis and dissemination

92. The VFIU's operational capability is severely undermined by the lack of resources.

93. The VFIU's financial intelligence products are limited to operational (reactive) cases based on incoming STRs. There appears to be a general lack of understanding of strategic analysis. The VFIU produced five financial intelligence reports based on STRs received in 2014. The VFIU has the ability to obtain additional information from reporting entities, as well as from a range of sources, including the RBV, public and commercial databases, other government agencies and law enforcement. The VFIU does not conduct proactive tactical or strategic analysis of its financial reports for the benefit of the VPF and other competent authorities. The VFIU is, however, in the midst of a review of STRs for the past two years and has since extended the review to currency transaction reports (CTRs) and international funds transfer instruction reports (IFTRs).

94. Dissemination of STRs to VPF must be done in a criminal complaint format. The VPF will not accept disseminations from VFIU unless they are framed as criminal complaints which identify a specific crime and the applicable section of the Penal Code outlining the specific offence (even though this is not a requirement of the law). This VPF requirement prevents the VFIU from disseminating financial intelligence to VPF even where it has clear suspicions of ML. This restriction on disseminations limits the ability of VFIU to make justified disseminations, particularly where it is difficult to specifically identify the underlying crime, which seems to be contributing to a low level of operational analysis and the effectiveness of the VFIU.

(d) Cooperation and exchange of information

95. Vanuatu's AML/CTF Act 2014 is structured in a way that allows for executive interference with the FIU in the area of international cooperation. The VFIU is unable to independently enter an agreement or arrangement (such as an MOU) with an assisting entity regarding the exchange of information without the written approval of the Prime Minister under Part 2, s.6 (1) of the AML/CTF Act. Absent an agreement, however, s.6 (4) allows the VFIU Director to exchange information with an assisting entity whose functions and duties are similar to those of the Unit, but in limited circumstances. The VFIU has signed agreements with five other FIUs, as well as the Association of Pacific FIUs, and has four other MOUs/MOAs proposed for signing.

96. The VFIU and other competent authorities reported that they cooperate and exchange information to identify and trace proceeds and support investigations, to a limited extent. The VFIU has MOUs with VPF, Customs, the RBV, and is currently in negotiations with the Immigration Department. The VFIU and its partner agencies use secure channels for exchanging information, and protect the confidentiality of information exchanged or used within those networks. International information exchange with counterpart FIUs is done through the use of the Egmont Secure Web.

97. With respect to covered reporting entities, there is a general lack of coordination with and feedback to/from competent authorities and reporting institutions to enhance financial intelligence reporting and information sharing.

Overall conclusions on Immediate Outcome 6

98. The VFIU's operating capability is severely undermined by the lack of resources available to assist in its day-to-day operations, which includes both operational analysis and AML/CFT supervisory functions.

99. Vanuatu has a functioning FIU that develops and disseminates good quality financial intelligence reports based on STRs and other related financial information from reporting institutions. Some of these reports are consistent with the risk profile, however there are no priorities to develop and use financial intelligence to target the key predicate ML and TF risks, in particular the laundering of foreign proceeds of crime (including with the involvement of transnational organised crime groups).

100. The most significant barrier to effective implementation through STR dissemination is the VPF's requirement to frame disseminated reports as actual criminal complaints, which effectively blocks the FIU from making justified disseminations, particularly where it is difficult to specifically identify the underlying crime. It also creates a weakness in the VFIU's ability to proactively address specific risks, thus driving down the number of financial crime investigations by the VPF substantially.

101. Vanuatu LEAs do not use financial intelligence in Vanuatu to target predicate crimes, ML or TF. The LEAs, as well as the Office of the Ombudsman, seem to continue to work separately rather than possibly utilizing the services of the VFIU to access financial intelligence information to assist general investigations and criminal investigations, in particular. The lack of understanding, communication and collaboration with respect to financial crimes undermines the effectiveness of Vanuatu's AML/CFT regime. There is also a general lack of expertise among the LEAs with respect to how to use financial intelligence effectively. The VFIU needs to conduct more outreach and training activities with Vanuatu LEAs.

102. There is a lack of awareness in, and consistent outreach to, the wider financial and DNFBP sectors. Lack of outreach limits the private sector's understanding of ML and TF issues and ultimately limits the number, and quality, of STRs and other financial intelligence received by the VFIU. The absence of this analysis by the reporting sector with respect to financial records hinders the VFIU from drawing much-needed intelligence/leads from the information received.

103. The VFIU does not maintain comprehensive statistics, which undermines its ability to identify emerging ML/TF threats and trends. The statistics held are limited in scope and are insufficient with respect to conducting effective strategic analysis, including data mining of available financial data and the creation of new leads or methodologies/typologies.

104. **Vanuatu has a low level of effectiveness for Immediate Outcome 6.**

3.4. Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)

105. Vanuatu's LEAs have not investigated any cases of ML, despite it being a criminal offence since 2002. As a result, there have been no ML prosecutions and convictions.

(a) Circumstances in which potential ML cases are being identified and investigated (including through parallel financial investigations)

106. Vanuatu is an international financial centre and offers a range of financial products, including the creation of legal persons and arrangements such as international companies (with secrecy provisions

prohibiting the disclosure of any information on these companies to third parties), trusts and foundations. Vanuatu also offers a favourable "no income tax" regime and actively seeks and encourages foreign investors and investments. The draft NRA, consistent with the assessment team's conclusions, identified the most significant ML threat for Vanuatu as arising from the laundering of foreign proceeds of crime, including with the involvement of transnational organised crime groups, both the domestic and international aspects, including illicit transnational flows of capital to and through Vanuatu and evidence of tax evaders exploiting Vanuatu's offshore sector.

107. The VPF TCU is responsible for investigating ML and TF cases and is staffed by four police officers. The TCU is also responsible for investigating drug offences with transnational dimensions, surveillance, and other sensitive investigations referred by the Police Commissioner. The four officers are dedicated to attending to drug investigations and surveillance and pay little attention to ML/TF investigations. The TCU confirms that lack of ML investigations by the TCU occurs as a result of the investigators and prosecutors lacking financial analysis skills and an understanding of the AML/CFT laws. As mentioned below, the TCU was not aware if other units in VPF such as the Fraud Unit understood that they also could conduct proceeds of crime investigations arising from their investigations, or if they were actually conducting investigations.

108. Vanuatu Police Force TCU has a good working relationship with the VFIU and regularly seeks and receives guidance from the VFIU in a timely manner. The VPF can adequately access financial records across all sectors of the financial industry, including trusts, charities and DNFPBs through their MOU with VFIU. The VPF and VFIU often work together to ensure VPF secure enough evidence before the execution of a search warrant. As mentioned above, there is no forensic accountant support within the VPF to analyse fund flows of accounts and the VPF has to resort to and make specific request for assistance from the VFIU on forensic analysis. Insufficient specialised human resources (financial analysis skills) remains an issue in identifying and investigating ML promptly and effectively.

109. The VPF and PPO cooperate during investigation and prosecution of criminal cases, however they do not prioritise ML cases and the VPF tends to approach the PPO once the investigation is near completion. The LEAs and prosecutors lack internal policy guidelines on investigating and prosecuting ML and TF cases. This is largely due to the lack of human resources and technical capacity but also to a lack of understanding of the importance of pursuing ML and TF cases as discreet criminal offences.

110. The TCU advised that VPF has a national database of crime statistics, however a list of common predicate offences provided to the evaluation team during the on-site visit did not include a break down specific to the different types of predicate offences investigated by VPF since 2010. This suggested that the database is not regularly updated with this vital information. The TCU does not keep statistics on drug investigations and was unable to provide even an estimate of the proceeds from drug offences. This is a high risk area domestically and internationally, given Vanuatu's porous borders, local production and sale of marijuana and the significant number of cargo ships, recreational craft and cruise ships that passes through annually. It is clear that this high risk area for ML is not being adequately addressed by LEAs at an operational level.

(b) Consistency with Vanuatu's threat and risk profile, and national AML/CFT policies

111. As indicated in Chapter 2 above, Vanuatu does not have a national AML/CFT policy (or series of policies) informed by ML/TF risks and while a draft NRA has been prepared, the Vanuatu LEAs do not have an informed understanding of the main ML risks and threats in the country and there is no evidence that investigations and prosecutions are focused on the (major) predicate offences, including ML, identified in the draft NRA. Moreover, LEAs do not target the most significant ML threat Vanuatu faces from the laundering of foreign proceeds of crime (including with the involvement of transnational organised crime groups), especially tax crimes.

112. The LEAs understand in general terms that Vanuatu faces risks of ML arising from domestic corruption, fraud (including VAT fraud), drug trafficking and foreign tax crimes, however as indicated above, the list of common predicate offences provided to the assessment team during the on-site visit had no break down specific to the different types of predicate offences investigated by VPF since 2010, nor did it reflect the priority areas identified in the draft NRA. It would appear that there has never been any financial investigation of predicate crimes in keeping with the risk profile. The private sector indicated that corruption is a major predicate offence for ML in Vanuatu; however the VPF (TCU) disagreed.

(c) Different types of ML cases pursued

113. The VPF does not investigate foreign tax offences as Vanuatu has no relevant tax laws. Vanuatu has a number of offshore financial centres (international companies) which is a very high risk area for ML. Currently there are very limited mitigating measures in place to address this vulnerable area and there have been no ML investigations or prosecutions. At a practical level, the number of potential predicate offences for ML cases is further reduced by the shortcoming in the definition of 'serious offence'.

(d) Extent to which sanctions are applied, and are effective, proportionate and dissuasive:

114. As there have been no ML investigations or prosecutions of natural or legal persons there have been no sanctions applied with respect to money laundering and/or terrorist financing cases in Vanuatu. However it is apparent from the penalty provisions that they are not proportionate and dissuasive.

(e) Extent to which other criminal justice measures are applied where conviction is not possible

115. As no ML investigations have been pursued, Vanuatu has not had occasion to apply other criminal justice measures where it was not possible, for justifiable reasons, to secure a ML conviction.

Overall conclusions on Immediate Outcome 7

116. Whilst the current definition of 'serious offence' seriously impedes implementation of the ML offence, as detailed above the amendment to the POCA was not made until late 2014. Even prior to that Vanuatu's LEAs had not investigated any cases of ML, despite it being a criminal offence since 2002. There is clearly a lack of political will and high level policy commitment to prioritise ML/TF investigations. Some of this may arise from political instability; however the institutional framework and resources dedicated to the investigation of ML and TF are very weak. LEAs do not understand the ML/TF threats and risks in the country and tend to operate in isolation of each other with no central coordination mechanism.

117. Whilst financial investigations are being undertaken for predicate offences such as fraud, the investigation of ML is not being prioritized and in some cases is passed from officer to officer. It was frequently stated that the lack of ML investigations is a result of a lack of understanding of ML and the absence of specialist expertise and resources. There have been no investigations or prosecutions to date and therefore no sanctions have been applied that could be considered effective, proportionate and dissuasive.

118. **Vanuatu has a low level of effectiveness for Immediate Outcome 7**.

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

Information on confiscation

119. The Vanuatu competent authorities (VPF, PPO and Solicitor General's Office) have not undertaken a single successful confiscation action since the enactment of the first proceeds of crime

legislation in 2002. There was one attempt at confiscation in the case of Public Prosecutor & Ors v Robb Evans and Benford Limited (Civil Appeal Case No.32/2014) but it was not successful:

- *Benford Ltd pleaded guilty to a charge under s.20(1) of the Serious Offences (Confiscation of Proceeds) Act 1989 of receiving and bringing into Vanuatu a sum of USD7,500,000 reasonably suspected of being proceeds of crime, namely credit card fraud committed in the Unites States of America. Dr. Taves, the perpetrator of the fraud, incorporated Benford Ltd and defrauded a number of American citizens through a scam. Benford Ltd had gone into receivership in the United States and the sum of USD7,500,000 was transferred by Dr. Taves through an associate to a bank in Vanuatu in the name of Benford (Vanuatu) Ltd. Robb Evans, the receiver in the United States filed proceedings in Vanuatu to be appointed receiver of the funds. Vanuatu authorities however filed an appeal in Vanuatu's Court of Appeal following Benford's conviction and sentence, and sought to have the funds forfeited to the State of Vanuatu as being proceeds of crime. The Court of Appeal dismissed the appeal and confirmed the appointment of Robb Evans as receiver of the funds. The Court was also concerned about the victims of the fraud missing out on their funds and was satisfied that US Courts will have oversight of the funds in the custody of the receiver.*

120. There have been no freezing and confiscation cases of terrorist property. Vanuatu has not demonstrated any aspect of the investigative, prosecutorial or judicial process that would promote the identification, tracing and deprivation of assets of instrumentalities to terrorists, terrorist groups or terrorist financers.

121. There has not been any TF cases identified and investigated in Vanuatu and the VPF does not have any policies and procedures for asset tracing related to TF. No MLA request for freezing terrorist property has ever been received or made by Vanuatu. There have been no incoming or outgoing requests for confiscation of terrorist property either.

(a) Confiscation as a policy objective

122. Confiscation of criminal proceeds, property related to TF, instrumentalities and property of equivalent value is not being pursued as a policy objective in Vanuatu.

123. There is no overarching AML/CFT framework or policies promoting confiscation, nor any operational commitment by authorities at the highest levels to investigate and confiscate proceeds of crime, including an emphasis on the high risk areas for ML. This policy vacuum is compounded by the serious lack of coordination amongst the competent authorities at the national level, the limited awareness of some senior officials of AML/CFT issues and an associated lack of understanding of the high risk areas for ML in the country.

(b) How well are the competent authorities confiscating proceeds

124. As indicated above, the Vanuatu competent authorities have not undertaken any successful confiscation actions since the enactment of the first proceeds of crime legislation in 2002. This includes any confiscations relating to falsely/not declared or disclosed cross-border movements of currency and bearer negotiable instruments.

125. The main reason given by the TCU for the lack of confiscation action is a lack of awareness and specialist financial investigation skills. The TCU confirmed that they lack these skills and often seek assistance from VFIU (or Australian and New Zealand law enforcement agencies) on complex matters. The VPF has about six hundred officers; however the TCU, which is responsible for investigating ML cases, is staffed by four police officers.

126. The TCU is also responsible for investigating drug offences with transnational dimensions, surveillance, and other sensitive investigations referred by the Police Commissioner. The TCU confirms

that lack of ML investigations and confiscations is also attributable to lack of financial analytical skills and understanding of the AML/CFT laws by other VPF and LEA investigators and prosecutors. As mentioned above, the TCU was not aware if other units in VPF, such as the Fraud Unit, understood that they also could conduct proceeds of crime investigations, or if they were actually conducting any such investigations.

(c) Confiscation and ML/TF risk

127. The confiscation results are inconsistent with the identified ML/TF risks and reflect the deficiencies in the national policy and coordination framework, as well as in the allocation of operational priorities and resources.

(d) Other impediments to confiscation

128. The shortcoming in definition of 'serious offence', which has excluded most predicate offences for confiscation, is a major impediment as confiscation is dependent on conviction for a serious offence.

129. **Vanuatu has a low level of effectiveness for Immediate Outcome 8.**

3.6 Recommendations on legal system and operational issues

130. As a matter of priority Vanuatu must amend the POCA to rectify the deficiency in the definition of 'serious offence'.

131. Vanuatu should criminalise tax offences (as appropriate for the country), illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for money laundering.

132. Criminal penalties for money laundering should be revised to provide proportionate and dissuasive sanctions.

133. The VFIU needs to recruit more staff and be allocated additional resources to enhance its analytical capability in order to adequately carry out the VFIU's legislatively mandated functions.

134. The VFIU needs to conduct outreach and training activities with Vanuatu LEAs and other relevant agencies (such as the Office of the Ombudsman) to increase the understanding of the role and functions of the FIU and the use of financial intelligence and other information VFIU has access to.

135. The VFIU needs to extend outreach and guidance to the wider financial and DNFBP sectors to increase the number, and quality, of STRs and other financial intelligence it receives. The VFIU should also increase collection of comprehensive statistics to strengthen its ability to identify emerging ML/TF trends and threats

136. The *ad hoc* requirement should be removed for VFIU disseminations to be submitted to the VPF in a criminal complaint format.

137. Vanuatu should urgently address the lack of policy and operational commitment to prioritise ML/TF investigations and confiscation of criminal proceeds; and strengthen the institutional framework required to support an effective system that addresses the ML/TF risks in the country. This includes developing internal procedures and mechanisms for more effective resource allocation, cooperation and coordination.

138. Vanuatu should establish procedures and mechanisms for managing and disposing of restrained, seized or confiscated property.

139. Targeted AML/CFT training must be provided to staff at VPF, TCU, Customs, PPO and SLO to enhance understanding of AML/CFT issues and awareness of Vanuatu's system generally, as well as to increase the technical skills required to perform operational functions effectively. This is a high priority and authorities should develop a multi-disciplinary technical assistance and training strategy to ensure a comprehensive and coordinated approach. Where required, Vanuatu should seek donor, and other, assistance to support implementation and delivery.

140. Competent authorities (VPF, TCU and SLO) need to recruit additional staff to perform critical AML functions. A current staffing level of four investigators in both the TCU and the Fraud Unit is inadequate. Resources need to be allocated based on a clear understanding of the high risk areas for ML/TF in Vanuatu, including re-assignment of staff to specialist units to address the high risk areas.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings

- Vanuatu's legislative framework for criminalising TF is generally consistent with the international standards. However the offence is linked with a requirement in sub-section (b) CTTOCA that the person providing funds knows that they will be used by a person/group to carry out one or more terrorist acts, which remains a deficiency.
- The amendment to the definition of 'serious offence' by the POCAA No. 27 of 2014 means TF is no longer designated as a predicate offence. This is a significant shortcoming.
- The TF section does not require both imprisonment and a fine. Judicial discretion would allow a fine only and in that case, the penalty would not be sufficiently dissuasive.
- There are no statutory provisions in place in Vanuatu to give effect to PF sanctions under R.7.
- In the absence of any TF investigations or prosecutions, the effectiveness of the implementation of the legal framework is yet to be demonstrated. A real risk of terrorism financing remains due primarily to the existence of, and substantial risks associated with, the international financial sector and associated statutory framework, in particular, the secrecy provision applying in this sector.
- The VPF has no prioritising policy, procedure or mechanism for identifying and handling TF cases. There is no system for recording investigations, prosecutions, convictions and the types of offences involved. The lack of comprehensive statistics undermines Vanuatu's ability to identify emerging TF trends and threats.
- The VPF has no experience in the identification and investigation of TF and no in-country guidance or training exists to assist in this regard. A lack of specialised human resources (financial analysts) remains a significant issue.
- Vanuatu has a basic legal framework to implement targeted financial sanctions in accordance with UNSCR 1267/1989 and UNSCR 1373. The lack of a timely legal freezing mechanism of terrorist property is a major deficiency. No procedure and mechanisms exist for the update and dissemination of the UN sanction list to private sector reporting entities.
- There is no clear procedure and mechanism for domestic designations.
- Communication and outreach to financial and non-financial sectors on implementing targeted financial sanctions against terrorism is lacking.
- No steps have been taken to implement targeted financial sanctions against PF.

4.1 Background and Context

Terrorist financing (criminal justice measure)

141. Terrorist financing offences are contained in s.6 of the Counter Terrorism and Transnational Organised Crime Act, (CTTOCA). In 2014, s.6 of the CTTOCA was amended to the extent that it now captures the financing of an individual terrorist. With the enactment of s.6 (2A), it is not necessary for the prosecution to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.

Targeted financial sanction for terrorist financing and proliferation financing

142. Targeted financial sanctions for terrorist financing are contained in ss.12, 12A, 18A of the CTTOCA and s.42 of the POCA. It should be noted that with the POCAA No. 27 of 2014, the definition of 'serious offence' (which is the threshold for ML predicate offences) was amended to offences which carry a maximum of not more than 12 months' imprisonment

143. Vanuatu has not taken steps to implement targeted financial sanctions on proliferation financing.

Non-profit organisations

144. The VFSC is responsible for administering the Charitable Associations (Incorporation) Act and Foundation Act No.38 of 2009, which form the legal basis of NPO regulation in Vanuatu. Since 2003 NPOs have been subject to the AML/CFT regime. Under ss.2(g) and 2(h) of the AML/CTF Act No. 13 of 2014, charitable associations and foundations are deemed reporting entities and are subject to all the requirements under the Act. VFIU is the agency responsible for AML/CFT supervision of NPOs.

145. The VFSC has no knowledge of the actual number or status of charitable organisations in Vanuatu. The legislation states that charitable associations may register (not required to) with the VFSC. Of those registered over the period 1 January 2014 – 26 January 2015, 496 are charitable organizations and two are foundations.

4.2 Technical Compliance (R.5-8)

146. See the technical compliance annex for the full narrative on these Recommendations.

Recommendation 5 – Terrorist financing offence

147. **Vanuatu is partially compliant with R.5**. Section 6 of the CTTOCA covers TF for an individual terrorist and terrorist group. However the offence is linked with a requirement under sub-section (b) that the person providing the funds knows that they will be used by a person/group to carry out one or more terrorist acts. In addition, the amendment to the definition of 'serious offence' means TF, which carries a maximum sentence of 25 years' imprisonment, is not a serious offence and therefore not a predicate offence for ML. This is a significant shortcoming.

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

148. **Vanuatu is partially compliant with R.6**. The Minister of Justice lacks the power to freeze terrorist property that belongs to non-proscribed specified entities. There is no legislative provision which sets out the procedures, standard of proof and operation for (i) the designation of specified entity under s.4 of the CTTOCA; (ii) the protection of *bona fide* third parties for court relief; (iii) the delisting and unfreezing of funds and assets of entity which is no longer designated under the UNSC; and (iii) the Minister's authorisation and access to funds for basic and extraordinary expenses. The amendment to the definition of 'serious offence' restricts the making of a restraint order against property used for a terrorist act.

Recommendation 7 – Targeted financial sanctions related to proliferation

149. **Vanuatu is non-compliant with R.7**. During the on-site visit, it was determined that there are no statutory provisions in place in Vanuatu to give effect to PF sanctions under R.7.

Recommendation 8 – Non-profit organisations

150. **Vanuatu is non-compliant with R.8.** Whilst the risk of TF and terrorist-related activities in Vanuatu is generally considered to be low, the draft NRA does not specifically cover TF (including for NPOs) and Vanuatu has not undertaken any domestic reviews or assessments of the NPO sector in order to identify the features and types of NPOs that are at risk of being misused for TF. There is no requirement for charitable associations in Vanuatu to submit annual financial statements providing a breakdown of income and expenditure and there are no legislative requirements for NPOs to have controls in place to ensure that all funds are properly accounted for and spent in a manner consistent with the NPO's purpose and objectives. The record keeping requirements do not cover the information required in criteria 8.4 (a) and (b) and whilst the VFSC administers the laws covering NPOs, current legislation does not provide powers for the VFSC Registrar to monitor compliance of NPOs and apply sanctions for violations of the requirements on them. Neither are there domestic mechanisms, or laws, that enable the VFSC to investigate and gather information on NPOs through domestic cooperation and information sharing amongst authorities. Customer due diligence is not required on beneficiaries of NPOs or associated NPOs under the AML/CTF Act and regulations. No evidence has been provided regarding AML/CFT compliance monitoring or sanctions in relation to NPOs.

4.3 Effectiveness: Immediate Outcome 9 (TF investigation and prosecution)

(a) Extent to which terrorist financing is pursued, consistent with the country's risk profile

151. There is no specific focus in the draft NRA on risks and vulnerabilities relating to TF. Moreover, the NRA does not address the specific risk of ML and TF associated with all forms of legal persons.

152. Vanuatu is an international financial centre and offers a range of financial products, including the creation of legal persons and arrangements such as international companies (with strict secrecy provisions prohibiting the disclosure of any information on these companies to third parties), trusts and foundations. Vanuatu also offers a favourable "no income tax" regime and actively seeks and encourages foreign investors and investments.

153. While no evidence of terrorist financing occurring in Vanuatu is available, no investigations, prosecutions, and convictions have been undertaken, and TF risk has not yet been comprehensively assessed. Some agencies agree that there remains a real risk of TF primarily due to the existence of, and substantial risk associated with, the international financial sector. However, others argue that there is no TF risk. The secrecy provision at s.125 of the ICA prohibits any person, in the absence of a court order, from any disclosure of information concerning the shareholding in, beneficial owner of any share, the management of, or business, financial or other affairs of an international company. On this basis, some agencies agreed with the assessment team's views that international companies could easily be used as a vehicle for TF.

154. Vanuatu has a legislative framework for criminalising TF but not entirely consistent with the international standards. Section 6 of the CTTOCA criminalizes TF, and it covers financing of an individual terrorist and terrorist group. However, there is a deficiency in the section that the offence is linked with a requirement under sub-section (b) that the person providing the funds knows that they will be used by a person/group to carry out one or more terrorist acts. Such requirement would hinder the effective implementation of TF offence. A person who wilfully provides funds with the intention or knowledge that the funds would be used for the benefit of an individual terrorist or a terrorist group, who is not involved in carrying out one or more terrorist act, would not be covered by s.6 of the CTTOCA. At present, in the absence of any investigation and prosecution of TF, the effectiveness of the implementation of the legal framework for combating TF is yet to be demonstrated.

(b) Extent to which terrorist financing can be identified and investigated

155. The VPF consists of around 600 officers. However, there is no designated team in the VPF for handling ML/TF cases. The TCU, consisting of four officers, is responsible for the investigation of international ML/TF cases. However, officers of TCU also have to carry out their normal duties on investigation of drug cases, intelligence, and surveillance work on other general crime. On 28 January 2015, a designated officer, who used to be with FIU, was appointed to be responsible for ML/TF matters.

156. The VPF has no experience in TF identification and relies on the disseminations from the VFIU. The VFIU's financial intelligence products are limited to operational (reactive) cases based on incoming STRs. As mentioned above, the VPF will not accept disseminations from the VFIU unless they are framed as a criminal complaint format, which identifies a specific crime and applicable section of the legislation outlining the specific offence. This restrictive action limits the ability of the VFIU to make warranted disseminations. Furthermore, the VFIU does not conduct proactive tactical or strategic analysis of its financial reports for the benefit of VPF and other competent authorities and there seems to be a low level of operational analysis. At the time of the on-site visit no STRs in relation to TF had been received, no TF cases had been disseminated to the VPF by the VFIU and no TF investigations had been undertaken.

157. The VPF lacks experience in TF investigation. The TCU is not equipped with the necessary specialised skill and knowledge in TF identification and investigation. No guidance exists to assist in this regard. The TCU mainly relies on their general experience to identify, detect and investigate possible ML/TF offences. No, or insufficient, targeted outreach, training and guidance on TF has been provided to the VPF. The TCU officers previously used to attend overseas AML workshops to build knowledge and skills for investigation; however such training has recently been reduced to only one to two times a year.

158. The VFIU does not conduct proactive tactical or strategic analysis of its financial reports for the benefit of the VPF. As for ML, the absence of forensic accounting support within the VPF to analyse fund flows of accounts means the VPF has to resort to and make specific request for assistance from the VFIU on forensic analysis. Insufficient specialised human resources (financial analysts) remains an impediment to tackling TF promptly and effectively.

159. To date there has been no TF cases detected and investigated in Vanuatu, however the VPF has no policy, procedure or mechanism in place to identify and handle TF cases.

160. Even for general crimes, there is no mechanism and system to assist in recording the number of investigations undertaken, the number of prosecutions conducted, the number of convictions secured and the types of offences involved.

161. Whilst, based on scoping information from the region, and interviews conducted as part of the on-site visit, the risk of TF could be assessed as low, the lack of a system to maintain comprehensive statistics undermines the ability of VFIU and VPF to accurately identity and understand any TF activity that might exist, or any emerging ML/TF trends.

(c) Extent to which terrorist financing investigations support national strategies

162. Vanuatu does not have any national counter-terrorism strategies. There is no track record of financial investigations being used to support CT investigations or investigations towards possible domestic designation of terrorists under targeted financial sanctions.

(d) Sanctions

163. Section 6 of the CTTOCA provides that the maximum penalty for TF is 25 years' imprisonment or a fine of not more than VT125 million (approx. USD1.25 million), or both. Criminal liability and

sanctions are applicable to legal persons. However, the criminal sanction may not be dissuasive enough if the court exercises judicial discretion to impose a fine only against a natural person.

164. As no prosecution of and conviction for TF has ever been conducted, the effectiveness, proportionality and dissuasiveness of the sanctions and measures have not yet been tested.

(e) Other criminal justice measures to disrupt terrorist financing activities

165. Vanuatu has not taken steps to achieve the objective of IO 9 by employing other criminal justice, regulatory or other measures to disrupt TF activities where it is not practicable to secure a TF conviction.

Overall conclusion on Immediate Outcome 9

166. Vanuatu has not assessed its risks for TF, but it does have some of the technical elements (legal and institutional) required under the FATF standards to combat TF. However, given the lack of policy priorities to consider and respond to TF risks, and capacity to do so, it is not clear if the complete absence of TF investigations or CT activities reflects very low risks or, more likely, failings in the system of targeting and investigation of TF. Altogether, Vanuatu could not demonstrate an effective system to address and mitigate the TF risks, as required by IO9.

167. **Vanuatu has a low level of effectiveness for Immediate Outcome 9.**

4.4 Effectiveness: Immediate Outcome 10 (TF preventive measures and financial sanctions)

(a) *Implementation of targeted financial sanctions (TFS)*

168. Vanuatu is not actively using the TFS framework and does not demonstrate any of the characteristics of an effective system. Vanuatu has only a basic legal framework in place to implement targeted financial sanctions in accordance with UNSCR 1267/1989 and UNSCR 1373. However, major deficiencies include the lack of a timely freezing mechanism for terrorist property and clear procedures and mechanisms for domestic designation.

169. The tools under both UNSCR 1267 and UNSCR 1373 are not resulting in any assets being identified and frozen. As there has been no case of freezing terrorist property, Vanuatu cannot demonstrate effective implementation of UNSCR 1267 and UNSCR 1373.

170. The VFIU is responsible for updating and disseminating of the UN sanctions lists to the private sector. There is, however, no clear policy and procedures for any Vanuatu authority to first receive the sanctions lists and then circulate them to government and private sector agencies and provide information on what to do with the lists and how to act and report to in cases of positive identification. No dissemination of the UN sanctions lists has been made by VFIU or by the RBV since 2008. The last evidenced communication in 2008 only contained the UN web link. There are no procedures or mechanisms in the VFIU for prompt and meaningful dissemination and update of UN sanctions lists.

171. There was no evidence submitted that showed that the VFIU and/or the RBV monitors any reporting entities with regards to their obligations to freeze assets related to TF. No guidelines had been provided by the VFIU to the financial and non-financial sectors.

172. There are no procedures and mechanisms in place for delisting and unfreezing the funds and other assets of persons or entities which do not, or no longer, meet the criteria for designation. Sections 4A and 4B of the CTTOCAA only make general reference to the power of the Minister to revoke, or vary a proscribed entity proscribed under s.4(1), and the right of the person or group to apply for judicial review. Section 14(3) only provides that a direction made under s.12 of the CTTOCA expires if a person or group

ceases to be listed by the UNSC under resolutions relating to terrorism. Similarly, there seems to be no system or procedure and mechanism set out in s.12 of the CTTOCA for granting exemption for use of frozen funds for authorised purposes set out in the relevant UNSCRs.

(b) *Targeted approach to outreach and oversight of NPOs at risk from TF*

173. Vanuatu has not implemented effective measures to prevent the abuse of NPOs by terrorists and their financiers.

174. The Charitable Associations (Incorporation) Act and Foundation Act No. 39 of 2009 form the legal basis of NPO regulation in Vanuatu. NPOs have been subject to the AML/CFT regime since 2003. Under ss.2(g) and 2(h) of the AML/CTF Act No. 13 of 2014, charitable associations and foundations are deemed reporting entities and subject to all the requirements of a reporting entity. The VFIU is responsible for AML/CFT supervision of charitable associations and foundations.

175. In Vanuatu, the VFSC maintains a registry of all NPOs registered. Registration for NPOs is not mandatory, other than in the case of foundations. For an NPO to apply for registration at the time of establishment, a constitution or charter, a list of members, a statement of assets and liabilities of the NPO have to be filed. Information on NPOs is maintained by the Registrar in a registry at the VFSC and is readily available for inspection. However, charities are not required to file subsequent reports with the VFSC. There is also no requirement for charities to annually renew their registration or update the provided details. The VFSC has not conducted any programmes to ensure full registration is being undertaken.

176. Part 3 s.9 (1) of the AML/CTF Act requires that a reporting entity must enter the register of a reporting entity before it provides business. However, the Director of the VFIU has not undertaken any checking or monitoring on the registration of an NPO as a reporting entity. As a result, neither the VFIU nor the VFSC know exactly how many NPOs exist and are operating in Vanuatu. There is only an estimate based on about 500 charities and 2 foundations registered with VFSC from January 2014 to January 2015.

177. There are legislative provisions which require foundations to keep proper accounts that provide a breakdown of income and expenditure, sales and purchases and the assets. However, there is no legislative requirement for NPOs in Vanuatu to have controls to ensure all funds are properly accounted for and spent in a manner consistent with their purposes and objectives. Once a NPO is registered, it may operate without supervisory oversight.

178. Sections 12 to 18 of Part 4 of the AML/CTF Act and Regulations of 2015 provides customer due diligence requirements for reporting entities. There are no provisions in Charitable Associations (Incorporation) Act and Foundation Act imposing obligations on NPOs to identify and know their beneficial owners. No NPOs have been subject to on-site inspections for AML/CTF purposes.

179. Under current legislation, the registrar and the VFSC do not have full access to information on the administration and management of NPOs. The VFSC does not even have power to verify the information provided by the NPO at the time when it is set up. They do not have authority to supervise and monitor compliance of NPOs. In other words, once a NPO is registered, it operates without any scrutiny.

180. The VFSC does not have any legislative power to apply proportionate and dissuasive sanctions for violation of the requirements on NPOs, though AML/CTF Act provides sanctions for certain non-compliance. There is no evidence that the VFIU has taken any enforcement action for any non-compliance by charities or foundations.

181. The intended legislative amendments for stronger measures in NPOs will enable Vanuatu to better mitigate the misuse of them by terrorists.

182. Vanuatu failed to demonstrate any effective measures had been adopted to protect NPOs from the threat of terrorist abuse. NPOs do not have a sound understanding of their vulnerability to TF, nor were NPOs consulted during the NRA exercise or informed of the draft NRA. Vanuatu authorities have not adopted a risk-sensitive approach and have not undertaken targeted outreach on UN sanctions issues with NPOs. No UN sanctions lists have been disseminated to NPOs. No training workshop or awareness-raising on AML/CFT has been undertaken by the VFSC, or any other competent authority.

(c) *Terrorist assets seizure and confiscation (criminal justice measures)*

183. The effectiveness of freezing and confiscation in the context of criminal investigations and prosecutions of TF is considered at IO8.

(d) *Extent to which measures are consistent with the country's overall risk profile*

184. The extent to which the TFS against terrorism and controls on NPOs to protect them from abuse for TF are consistent with the overall TF risk profile is considered within each sub-section and not repeated here.

Overall conclusions on Immediate Outcome 10

185. Notwithstanding the lack of evidence of TF occurring in Vanuatu, and the fact that no investigations, prosecutions and convictions have been undertaken, the weaknesses mentioned above could represent a real vulnerability for TF. Vanuatu has no effective tools in place for combating TF.

186. Vanuatu cannot demonstrate an effective system for preventing and combating TF. There are no clear procedures and mechanisms for effective implementation of targeted financial sanctions. There is a lack of an effective supervisory framework for NPOs.

187. Vanuatu has a **low level of effectiveness** for Immediate Outcome 10.

4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions)

188. Some limited evidence exists of Vanuatu-based companies being exposed to trade with DPRK and Iran.

189. Vanuatu has no measures in place to address proliferation financing, nor any plans to develop a legal and institutional framework to implement the targeted financial sanctions related to proliferation of WMD as required under Recommendation 7.

190. **Vanuatu has a low level of effectiveness for Immediate Outcome 11.**

4.6 Recommendations on Terrorist Financing and Financing of Proliferation

191. A task force/coordination group on TF involving the relevant agencies should be formed to facilitate a concerted effort in combating TF. That could assist the heads of the different agencies to have a better understanding of TF risk and strengthen local cooperation and coordination, particularly with respect to sharing information.

192. A system should be developed to record the types of TF activity identified, investigated, prosecuted and convicted. A policy for prioritising TF should be developed and adopted so that prompt investigation on TF is ensured.

193. Targeted outreach, local and overseas training and guidance on TF (on forensic analysis in particular) should be given to the TCU and the newly appointed designated officer. More local workshops

and training should be arranged for the TCU in order to share experience on AML/CTF matters and threat assessments with other officers of the VPF.

194. Measures should be adopted for timely freezing of terrorist property. These should include comprehensive procedures and mechanisms in the VFIU for the receipt of the UN sanctions lists and the appropriate dissemination and update of the UN sanctions lists, as well as the provision of clear directions to the private sector agencies on their reporting responsibilities.

195. Expeditious, systematic and regular dissemination of the UN sanctions lists is required.

196. Legislation should be amended to include mandatory registration of the NPOs which (i) account for a significant portion of the financial resources under the control of the sector; and (ii) a substantial share of the sector's international activities, along with more stringent reporting requirements. A risk-sensitive approach should be adopted to monitor and supervise all NPOs to avoid their misuse for TF.

197. Effective, proportionate and dissuasive sanction powers should be given to the body responsible for supervision of NPOs.

198. Domestic coordination mechanisms should be strengthened to support formal cooperation, data gathering and information sharing to enable a more effective assessment of TF risk.

5. PREVENTIVE MEASURES

Key Findings

- Vanuatu's legal framework for preventive measures as recently amended does not cover all relevant FATF Recommendations in a sufficiently comprehensive manner. Only limited legal requirements are in place with respect to obligations in relation to MVTS, wire transfers, reliance on third parties, internal controls and higher risk countries.
- Most financial institutions and some DNFBPs understand their obligations to identify and verify their customers (including beneficial owners) and comply with record-keeping and reporting requirements.
- Commercial banks and some international banks demonstrated an adequate understanding of their ML/TF risks and awareness of their duties and responsibilities to mitigate these risks and have mostly implemented a risk-based approach including for CDD (on-boarding and ongoing). However, other international banks and financial institutions and the DNFBP sectors did not consistently display a similar level of application of risk-based procedures.
- The banking sector is aware of their AML/CFT obligations with regard to enhanced CDD in high risk circumstances, although ongoing transaction monitoring and CDD processes are not fully implemented yet in some banks. Other reporting entities generally have less-well developed procedures. Risk-based procedures are required for both domestic and foreign PEPs but not all entities have applied appropriate measures, particularly in respect of domestic PEPs.
- Except for the commercial banks, AML/CFT compliance procedures, internal audit and training do not appear to be well-embedded and most reporting entities have not yet updated their procedures to reflect the 2014 AML/CFT requirements. The supervisory authorities have adequate powers to obtain relevant information and are not constrained by secrecy provisions.
- Guidance issued from the RBV for domestic and international banks (as updated in February 2015) is comprehensive and consistent with the AML/CTF Act**.** Earlier guidance issued from the VFIU in respect of FTRA obligations is generally observed by non-bank financial institutions and DNFBPs, but does not provide an adequate basis for compliance with the AML/CTF Act and Regulations.
- Based on the limited information available, other than from commercial banks and MVTS, the level of reporting of suspicious transaction reporting appears to be inadequate**.** No information is available to determine whether the issues generating STR reports are consistent with the broader ML or TF risks in Vanuatu.

5.1 Background and Context

(a) Financial Sector and DNFBPs

199. The banking sector in Vanuatu is relatively small by global standards. It comprises five domestic banks licensed under the Financial Institutions Act 1999 (FIA) and eight international banks licensed under the International Banking Act 2002 (IBA) by the Reserve Bank of Vanuatu (RBV). Total assets of the four domestic commercial banks in the banking system were approx. VT84 billion in June 2014, of (approx. US840million), slightly greater than annual national GDP. One commercial bank is 70 percent owned by the Vanuatu government with the remaining shares held in two equal parts by the Vanuatu National Provident Fund and the IMF-based International Finance Company respectively. The other three commercial banks are all operations of large well-regulated foreign banking groups, two being local subsidiaries and one as a foreign branch bank.

200. The fifth and smallest domestic bank is locally-owned and more of a hybrid in character, including offshore private banking-type activities and clients and is incorporated in a form that will allow it to become an international company (but retaining its domestic banking licence) by the end of 2015.

201. The eight licensed international banks as at January 2015 are not permitted to conduct banking activities for their customers in Vanuatu. The number of such banks had declined through attrition and RBV's enforcement of prudential standards (including physical presence requirements for mind and management in Vanuatu and some aspects of AML/CFT requirements) to only five international banks by early in 2014. Several new International bank licenses have been issued recently, but attrition continues through closures arising from RBV action and voluntarily-withdrawn licenses as a result of declining business viability, including challenges in securing correspondent banking relationships. The assets of the offshore banking sector have reduced significantly from around USD700million in June 2009 to around USD47million in June 2014. There is no evidence of any foreign-operating branches and subsidiaries of banks incorporated in Vanuatu.

202. The banking sector is vulnerable to money laundering. The draft NRA concludes that for the commercial banks, the risks are associated with the relative size of the banking industry in the domestic economy, the number and types of customers including potentially high risk customers (including local currency cheque accounts provided by one bank to some international companies) and the cash-intensive nature of their business. For the internationally-focused banks, the vulnerability is potentially very high, taking into account the mostly low volume but high value of cross-border transactions creating a vulnerability to foreign illicit funds transfers; the preponderance of offshore persons and entities as customers, including high net worth individuals and corporates; and the risk that the local representatives of some international banks may find it increasingly difficult to fully comply with AMLCFT preventive measures because of the degree of control or influence exercised by senior management and directors/owner overseas. However, the RBV requires copies of CDD information and transaction records to be held in the local office as part of the physical presence requirements.

203. The RBV conducts compliance monitoring and supervision of banks and insurance entities for AML/CFT purposes, supported by a Memorandum of Agreement with the VFIU. Insurance entities are licensed by the RBV under the Insurance Act 2005 (IA) and supervised by RBV for AML/CFT purposes. There are currently 34 licensees covering general insurance, brokers, insurance managers, re-insurers and captive insurers. None of the insurance entities conduct underwriting or placement of life or investment-related insurance and therefore they do not constitute financial institutions for the purposes of the FATF recommendations, but they are reporting entities for the purposes of the AML/CTF Act. The size and nature of the insurance entities' business appears to present a medium to low level vulnerability to AML/CFT risk, primarily in relation to those entities conducting offshore business and captive insurers.

204. The RBV also supervises one non-bank lender (credit institution), one credit union, one provident fund and the Vanuatu Agricultural Development Bank under the FIA, and for AML/CFT purposes. The RBV-supervised non-bank lending businesses appear to present a low vulnerability to AML/CFT risk, which is consistent with the conclusions in the draft NRA.

205. Other categories of entities present in Vanuatu defined as financial institutions by FATF include financial leasing; MVTS providers and money changers; and licensed securities dealers and administrators or managers of mutual funds. The VFIU is responsible for monitoring and supervising compliance of these entities with AML/CFT regulatory requirements.

206. Some of the five MVTS identified by VFIU as reporting entities to date are all also conducting money changing business to some extent. Two of the MVTS are Western Union franchises. Two of the MVTS are telecommunications providers and rely on mobile phone technology to provide an alternative means for access to cash transfers outside the formal banking sector. While predominantly low-value, high volume transactions are involved; the extent of domestic and cross borders transfers involving conversion

to or from cash creates a high vulnerability to money laundering for MVTS operators. There are at least six other entities operating as money changers including several conducted as part of a trading store business. The relatively high volume of cruise ship visitors converting foreign currency and the absence of effective compliance monitoring or AML/CFT supervision of these entities reinforces the relatively high vulnerability from this cash intensive business. Furthermore, anecdotal information indicates that may be a number of 'informal' MVTS and money changing providers that have not yet been registered with the VFIU or captured within the list of identified reporting entities under the AML/CFT Act, adding to the sector's vulnerability.

207. Securities dealers are licensed by VFSC under the Prevention of Fraud (Investment) Act and VFIU is the responsible agency of AML/CFT purposes. There is no stock market in Vanuatu and licensed dealers are therefore only operating in overseas markets. Mutual funds and funds managers/administrators are licensed by VFSC under the Mutual Funds Act. There does not appear to be any effective monitoring or supervision of these entities either in respect of securities regulation or AML/CFT compliance. Vulnerability to money laundering is assessed as medium for securities dealers, and low for mutual funds/funds managers under the draft NRA.

208. The VFIU is responsible for compliance monitoring and supervision with respect to AML/CFT requirements for all categories of Casinos and DNFBP, and for those other categories of non-financial business defined as reporting entities for the purposes of the AML/CTF Act. A summary of these entity types and approximate numbers of entities is contained in the Technical Compliance Annex.

209. Within the FATF definition of casinos, Vanuatu has three casinos licensed by the Minister of Finance under the Casino Control Act which also operate gaming machines, two gaming machine operators licensed under the Gaming (Control) Act, two active sports betting businesses licensed under the Interactive Gaming Act and one local lottery funding sports clubs, etc. It appears that while the three casino businesses are relatively small operators and currently do not have any material 'junket' tour business from high risk jurisdictions, the sector is vulnerable to potential expansion in its size, scope and nature. Additional licences have been granted recently. There is no effective oversight of the casino operations by the Department of Customs and Inland Revenue, and AML/CFT supervision by the VFIU has also been minimal to date (apart from reviewing the condensed AML/CFT procedures provided to the VFIU before the 2014 regulatory requirements took effect). The casino sector is regarded as a potentially very high vulnerability for money laundering in the draft NRA.

210. Interactive gaming is the other high-vulnerability activity under the 'casinos' umbrella. It is understood that there are currently two licensed operators based in Vanuatu conducting sports betting with offshore patrons. There are also at least 11 licences that have been granted previously but for which there is no evidence of whether they are carrying on business outside Vanuatu - but no licence fees are currently being paid. There has been limited oversight of the two Vanuatu- based providers to date but a new monitoring and compliance framework is being established with the assistance of a third-party consultancy. The VFIU has made initial contact with only one of these entities to date but AML/CFT compliance monitoring and supervision was not evident.

211. Real estate agents are reporting entities for AML/CFT purposes but there is no industry licensing or oversight function. Sixteen businesses have been identified by the VFIU but reportedly there may be others carrying the same business. Purchase and sale of leasehold only over land is permitted by law. There is some evidence of earlier incidents where customary land holders were duped into accepting below-market prices for the leases, and of persons fraudulently purporting to represent customary land owners. The draft NRA suggests that the structure of the real estate market in Vanuatu makes it vulnerable to exploitation by people moving funds through Vanuatu, and the lack of adequate supervision is a contributing factor to that vulnerability.

212. There are no entities currently identified by the Vanuatu authorities as dealers in precious metals or stones, but if present, they would be reporting entities. Dealers in high value property (greater than VT1million or approx. USD10,000) other than real estate are also reporting entities, the most obvious examples being motor vehicle dealers and sellers of yachts, etc. Such business could be misused for money laundering. Reportedly there are very few sales of yachts at present. The lack of AML/CFT compliance monitoring and supervision of these entities to date by the VFIU increases the potential vulnerability.

213. Lawyers and Accountants are reporting entities when they perform designated services consistent with FATF definitions. There are no industry self-regulatory organisations or licensing requirements in place for these sectors. Many such firms are licensed as TCSPs, or also incorporate affiliates as TCSPs, which are licensed under the Company and Trust Services Provider Act 2010. VFSC is the licensing authority and issues four categories of licences: Full license including Trust services; General company service provider (not trusts); Directors licence; or Special trust licence (administering customary land). There are also 11 Trust companies licensed by VFSC under the Trust Companies Act. The VFSC conducts compliance checks on licensing requirements but does not monitor or supervise TCSPs or Trust companies' activities. The VFIU is responsible for compliance monitoring and supervision of AML/CFT requirements for these entities. To the extent that their activities involve creation of, and services provided to, international companies and trusts (and the degree of anonymity provided to these entities and their operations), collectively the activities of licensed TCSPs and Trust companies are considered by the ME team as representing a very high vulnerability to money laundering and financing of terrorism, consistent with the conclusions of the draft NRA.

214. A significant number (over 300) of small community-based micro-finance-style co-operative entities are registered under the Co-operative Societies Act and are reporting entities for the purposes of the AML/CFT Act and Regulations.

(b) Preventive Measures

215. Vanuatu's legal framework for preventive measures has been strengthened since the AML/CTF Act and Regulations took effect in June 2014. All categories of financial institution and DNFBP activities as defined by the FATF are covered in the definition of reporting entity in s.2 of the Act and are subject to the full requirements of the Act. No distinction is made between the obligations on (and powers over) financial institutions and other categories of reporting entities (including DNFBPs) under the Act.

216. The AML/CTF Act requires reporting entities to establish an AML and CFT procedure manual covering internal policies processes and procedures on implementing reporting requirements to the VFIU, CDD and record keeping requirements, training for officers and employees, establishment of a compliance officer role and an audit function, and adoption of systems to deal with money laundering and terrorist financing. A copy of the procedure manual is required to be provided to the VFIU on request. The VFIU has requested copies of procedures manuals from a significant number of entities to review their scope. Feedback has been provided in some instances but the limited resources in the VFIU appear to have constrained the effectiveness of this potential mechanism for enhancing the quality of reporting entities' internal procedures and controls.

217. There is no mandatory requirement to a reporting entity to conduct an ML and TF risk assessment, but the VFIU can require a reporting entity to carry out such an assessment, prepare a report on results and provide a copy to the VFIU. This power does not seem to have been exercised to date by the VFIU, and other than the foreign-owned commercial banks, there is little evidence that reporting entities have conducted a substantive assessment of ML and TF risk in their business channels, types of customers and product and transaction categories.

218. The AML/CTF Regulations were revised in January 2015 to clarify, *inter alia*, the requirement for verification of identity requirements in enhanced and ongoing due diligence, strengthened obligations with

respect to PEPs, application of record keeping requirements to account files and business correspondence, and prescribe an annual compliance reporting form.

219. The RBV has issued Prudential Guidelines No. 9 on Customer Due Diligence (PGs 9) for domestic banks and international banks, which were revised and published on 6 February 2015. These Guidelines are enforceable through conditions of banking licences issued by RBV under the Financial Institutions Act 1999 (FIA) and the International Banking Act 2002 (IBA) respectively. The revised guidelines provide information on best practices in CDD and compliance obligations and the requirements of the relevant provisions of the AML/CTF Act and Regulations. In respect of a small subset of the revised FATF requirements (e.g. R.13), the PGs 9 may provide more explicit obligations on banks than the respective provisions of the AML/CTF Act and Regulations. The guidelines can be considered 'enforceable means' as defined in the FATF Methodology.

220. The VFIU has previously issued guidance to reporting entities regarding their obligations under the FTRA, but no revision has been made to date to provide guidance on the more extensive obligations under the AML/CTF Act and Regulations. Under the current legislative framework, guidance from the VFIU would not constitute 'enforceable means'.

221. The legal framework under the AML/CTF Act and Regulations does not cover all relevant FATF recommendations in a sufficiently comprehensive manner. In particular, only limited legal requirements are in place with respect to obligations in relation to MVTS, wire transfers, reliance on third parties, internal controls and higher risk countries.

(c) Risk-Based Exemptions or extensions of preventive measures

222. Vanuatu's prescribed measures for CDD under the 2014 AML/CTF Regulations provides for risk based procedures, systems and controls to be established but the legislative framework and guidance does not identify or provide a rationale for any types of circumstances that might be considered to be a low ML/TF risk.

223. There are however certain prescribed thresholds for CDD to be conducted in respect of occasional cash transactions and cross border wire transfers as per s.12 (1) (d) of AML/CTF Act and clause 12 of the Regulations. Unless otherwise prescribed (see below), the occasional cash transaction threshold for requiring full CDD is VT1 million (approx. USD10,000) which is lower than the R.10 maximum threshold of USD15,000. Full CDD identification and verification measures are prescribed in respect of lower occasional cash transaction thresholds of: VT200,000 (approx. USD2,000) or more carried out through MVTS and money changers; VT300,000 (approx. USD3,000) or more carried out through casinos, gaming and internet gaming entities; and VT500,000 (approx. USD5,000) or more carried out through businesses dealing in the sale or hire of motor vehicles.

224. The occasional cash transaction CDD threshold for casinos (VT300,000) is approximately equal to the requirement under R.22. The domestic casino industry in particular has proposed to officials, prior to the passage of the revised 2014 legislation, that the occasional transactions threshold should be higher than the FATF standard based on their perception of relatively lower risk in that sector. However, the legal requirements have retained the FATF standard threshold.

225. The occasional cash transaction CDD threshold for MVTS and money changers (VT200,000 or approx. USD2,000) and dealers in sale or hire of motor vehicles (VT500,000 or approx. USD5,000) are both lower than the R.10 maximum of USD15,000. However, there is no rationale provided for the more stringent obligations in these sectors.

226. Under s.12 (1) (d) of the AML/CTF Act and clause 13 of the Regulations, CDD identification and verification measures are required to be carried out in respect of occasional transactions that are cross-

border wire transfers of VT1 million (approx. USD10,000) or more carried out through all categories of reporting entities (unless the lower occasional cash transaction thresholds also apply to that transaction and category of reporting entity). There is no evidence of a risk-based justification for this threshold which is significantly higher than the R.10/R.16 *de-minimis* threshold of USD1,000 for required CDD.

227. The AML/CTF Act and Regulations do not provide the VFIU with any powers to grant exemptions from the requirements. Any discretionary actions could only be exercised by the Prime Minister by Regulation where permitted within the legislative framework.

5.2 Technical Compliance (R.9-23)

228. See the technical compliance annex for the full narrative on these Recommendations.

Recommendation 9 – Financial institution secrecy laws

229. **Vanuatu is largely compliant with R.9.** Financial institution secrecy laws applying to reporting entities are overridden by specific provisions in the AML/CTF Act. However, S.125 of ICA prevents VFSC from obtaining or passing on information on international companies to other regulators.

Recommendation 10 – Customer due diligence

230. **Vanuatu is partially compliant with R.10.** There are adequate legal provisions in the AML/CTF Act and Regulations covering many of the core CDD requirements, with several elements strengthened in the January 2015 revision to the Regulations. The RBV PG9 guidelines provide good reinforcement of CDD obligations for banks. A moderate level of shortcomings remain, including absence of requirements for: CDD obligations when a series of occasional transactions appear to be linked but individually are below the CDD threshold; verification that persons purporting to act on behalf of legal arrangements are authorised to do so; permitting delayed verification of occasional customers only where the ML/TF risks are effectively managed; criteria/justification for reporting entities to adopt simplified CDD measures or delayed verification where lower risks exist; and if a reporting entity is unable to comply with relevant CDD measures, that it must not open the account or must terminate the business relationship.

Recommendation 11 – Record-keeping

231. **Vanuatu is largely compliant with R.11.** Comprehensive record keeping requirements are in place, including the addition of requirements for retention of account files, business correspondence, and CDD analysis findings in the January 2015 amendments to the AML/CTF Regulations, meet the requirements of R.11. There is no explicit obligation on reporting entities to make CDD information swiftly available to the VFIU on request, except where an STR has been made.

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

232. **Vanuatu is largely compliant with R.12.** The 2015 amendment to the AML/CTF Regulations strengthened Vanuatu's compliance with R.12 by making risk based systems and controls and enhanced CDD for PEPs mandatory. Shortcomings remain including that reporting entities are not explicitly required to apply PEP requirements to family members or close associates of PEPs.

Recommendation 13 – Correspondent banking

233. **Vanuatu is largely compliant with R.13.** Correspondent banking obligations are in place in the AML/CTF Act to satisfy most of the requirements of R.13.1 and 13.2. RBV PG9s prohibit banks from

dealing with shell banks and from opening correspondent accounts with respondent institutions that deal with shell banks. There is no requirement for reporting entities to establish whether the respondent banking entity has been subject to AML/CFT investigation or regulatory action.

Recommendation 14 – Money or value transfer services

234. **Vanuatu is partially compliant with R.14.** Although requirements exist under the AML/CTF Act for the registration of MVTS businesses with the VFIU, limited action has been taken to identify and sanction unregistered MVTS. The authorities acknowledged MVTS as high risk for ML/TF purposes but have made limited efforts to monitor the sector for compliance.

Recommendation 15 – New technologies

235. **Vanuatu is largely compliant with R.15.** The 2015 amendment to the AML/CTF Regulations requires reporting entities to consider the risk posed by development of new products, business practices and use of new and developing technologies in determining appropriate risk-based systems and controls. However, the Regulations do not specifically require reporting entities to undertake risk assessments prior to the launch or use of new products, practices and technologies.

Recommendation 16 – Wire transfers

236. **Vanuatu is non-compliant with R.16.** The originator information requirements do not specify the nature of information to be contained in a wire transfer. There are no requirements with respect to beneficiary information. There are no obligations consistent with *criteria* 16.9 to 16.17 imposed by law or regulation on intermediary and beneficiary institutions and MVTS operators (as appropriate). There are no mechanisms to ensure the reporting entities take freezing actions or comply with prohibitions from conducting transactions with designated person or entities under targeted financial sanctions.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

237. **Vanuatu is non-compliant with R.17.** Vanuatu's measures regarding use of third parties have major shortcomings. There is no requirement in law or regulation that responsibility for CDD measures must remain with the reporting entity relying on a third party. There is also no requirement for a risk appraisal regarding the country of location of the third party being relied on, or for the CDD documentation to be provided to reporting entity by the intermediary upon request without delay.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

238. **Vanuatu is non-compliant with R.18.** The AML/CTF Act contains requirements regarding internal procedure manuals but is silent on their implementation and does not require the screening of employees. The Act requires the appointment of a Compliance Officer but does not specify that the appointment must be at the management level. The AML/CFT audit function is not required to be independent. There are no legislative requirements regarding implementing group wide programs and ensuring consistent AML/CFT standards are applied by foreign branches and subsidiaries. The prescribed form for the compliance report was made by regulation in January 2015 but is not yet in use.

Recommendation 19 – Higher-risk countries

239. **Vanuatu is partially compliant with R.19**. The AML/CTF Regulations impose a requirement for reporting entities to conduct enhanced CDD in all cases where a transaction involves an entity based in or incorporated in a jurisdiction designated as high risk by FATF. There are no legal powers or procedures for

Vanuatu to apply countermeasures when called upon to do so by the FATF, or when acting independently. There is no formalised process established for ensuring reporting entities are advised of concerns about weaknesses in the AML/CFT systems of foreign jurisdictions.

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transactions

240. **Vanuatu is largely compliant with R.20.** Legal requirements regarding reporting of suspicious transactions and suspicious activity or attempted transactions or activity are consistent with the criteria for R.20. There is no definition of 'proceeds of crime' and 'terrorist financing' for reportable transactions under STR obligations on reporting entities.

Recommendation 21 – Tipping-off and confidentiality

241. **Vanuatu is largely compliant with R.21.** The tipping off and confidentiality provisions meet almost all the R.21 requirements. The legislation should be amended to clarify that tipping-off protections apply regardless of whether the person knew precisely what the underlying criminal activity was or whether illegal activity actually occurred (as required by *criterion* 21.1).

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

242. **Vanuatu is partially compliant with R.22.** The scope of DNFBP reporting entities is consistent with FATF Recommendations. However, shortcomings remain with respect to CDD requirements (R.10) and reliance on third parties (R.17) for DNFBPs.

Recommendation 23 – DNFBPs: Other measures

243. **Vanuatu is partially compliant with R.23.** Significant deficiencies remain with respect to requirements on several aspects of internal controls, audit, and foreign branches and subsidiaries (R.18), and for higher risk countries (R.19) for DNFBPs.

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

244. As part of a risk-based approach to combating ML and TF, R.1 expects that countries should require financial institutions and DNFBPs to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks. Vanuatu's AML/CFT regime contains a number of risk-based elements including requirements for appropriate risk-based systems and controls having regard to the size and nature of business, and in particular risk–based criteria for conducting customer identification and verification, enhanced CDD and ongoing due diligence. The VFIU has powers under s.35 of the AML/CTF Act to require any reporting entity to prepare a risk assessment and provide it to the VFIU, but that power has not been exercised to date.

245. Knowledge of the content of the draft NRA by reporting entities was minimal. Only a few commercial banks had been interviewed by the consultant during the fact-finding stage. Preparation of formal risk assessments by reporting entities in Vanuatu has been limited up to now, other than by the commercial banks. Outside the banking sector institutions, the extent to which reporting entities have given detailed consideration to risks, and put in place measures to mitigate them varied across sectors, and within sectors. Some lawyers and accountancy firms, and their associated TCSPs, showed a reasonable understanding of their risks, but otherwise smaller financial institutions and DNFBPs did not appear to be

appropriately focusing on AML/CFT risks and consistently described their business and sectors as relatively low risk, which differs from the findings for most sectors in the draft NRA.

246. More generally, the evaluation team found that smaller reporting entities (i.e. other than the commercial banks and a very small number of other financial institutions) did not have a detailed understanding of the revised AML/CFT requirements in the 2014 Act and Regulations. Apart from a brief introductory workshop, the absence of recent outreach by the VFIU and lack of explanatory information and guidance on the current requirements was noted by most reporting entities and can be considered as a significant contributing factor to the limited effectiveness of implementation of preventive measures by non-bank entities in particular.

Domestic Commercial Banks

247. Commercial banks have a good understanding of the ML and TF risks in their business and apply measures to mitigate those risks, consistent with the rules in their home jurisdictions. They have adopted procedures consistent with the RBV guidelines PG9 including beneficial ownership requirements. The foreign-owned commercial banks have implemented automated transaction monitoring systems, but other domestic banks have only manual or basic monitoring systems. Resourcing of AML/CFT compliance functions appears adequate in the foreign-owned commercial banks. Substantial enhancements to AML/CFT compliance support systems are due to be implemented shortly by the locally-owned commercial bank, but currently compliance resourcing seems inadequate. Key person risk is evident in AML/CFT compliance roles across the sector.

Internationally-operating banks

248. The internationally-operating banks are relatively small businesses by comparison with the domestic commercial banks, mostly with fewer than 50 customers. None of these banks appear to be members of internationally-recognised banking groups. In several cases a significant proportion of the customers are either related to each other or to interests of the bank's owners or directors. While customer due diligence and compliance principles are reasonably well understood by most of these banks, the effectiveness of implementation varies depending on the extent to which their business model relies on maintaining market credibility. In some cases AML/CFT procedures manuals appear quite limited at present. There are examples where overseas control of business processes has constrained access to full customer beneficial ownership information by the bank's representatives in Vanuatu. The RBV is continuing to address weaknesses in compliance with physical presence requirements, where they are identified.

Money Value Transfer Services and money changers

249. The three most substantial MVTS that have registered with VFIU have a good level of awareness of the obligation to identify and verify customer identity, as well as to obtain full originator and beneficiary information when processing inward and outward remittances. They adopt the required CDD requirements for occasional cash transactions, (although apparently relatively few transactions exceed the VT200,000 occasional transaction threshold) and report CTRs and IFTRs to the VFIU. Some MVTS also provide money changing services. Two Western Union agent businesses operate in Vanuatu, using a shared network of sub-agents in the outer islands, and have multiple layers of AML/CFT controls including at their head office, then routing of transactions through a regional hub for further screening processing. One of the Western Union agents also has a separate domestic-only wire transfer system using the same network of agents.

250. It appears that other than through banks, there are not a large number of cross-border wire transfers carried out in amounts greater than the IFTR reporting threshold of VT1 million (USD10,000) by MVTS. The global and regional risk concerns regarding MVTS have resulted in at least one of the commercial

banks no longer providing bank accounts for MVTS, and another has restricted the access of money changers to bank facilities on the basis of risk. Anecdotal information suggests that there may be additional informal money changing operations in existence both in the capital and in outer islands. It is less clear whether there are also informal MVTS operators that have not yet registered with the FIU.

251. There is little evidence of effective AML/CFT compliance by the money changers that are not also MVTS.

Casinos

252. The three (3) licensed casinos have filed copies of their AML/CFT procedures with the VFIU. The manuals are relatively high-level and they have not yet been updated for the requirements of the 2014 Act and Regulations. Basic AML/CFT procedures appear to be in place but there has been no effective compliance monitoring of implementation to date. There is no evidence of STRs being filed in recent years. The casinos are cash intensive businesses but generally consider their small size and low table limits keep AML/CFT risks relatively low. CDD is carried out in respect of large cash transactions (although there appears to be differing interpretations of the applicable thresholds across the industry) or when a regular local customer has an ongoing relationship with the casino (including for cheque cashing). CFTRs and IFTRs are filed with the VFIU, but in relatively low volumes.

253. The two interactive gaming entities identified as currently active in Vanuatu have also not yet been subject to monitoring of compliance with AML/CFT requirements, although plans are underway to capture these entities within the framework. It is understood that customer identification procedures generally follow the Australian standards, with each customer setting up a facility before commencing transactions. The terms of the licence requires a physical presence in Vanuatu but parts of the operations could be located offshore. There is no evidence of any active on-line gaming operators licensed in Vanuatu (other than the two (2) sports betting operators).

254. Collectively the AML/CFT preventive measures for casinos and similar entities appear to show a relatively low level of effectiveness at present.

Trust and company service providers

255. The activities of TCSPs in creating and providing services to international companies and trusts are of greatest concern for AML/CFT risk purposes. In many cases, reliance is placed on third party introducers at the commencement of this process. Beneficial ownership and source of funds information is reportedly obtained by at least some TCSPs regarding all clients. Sometimes delays can be encountered in obtaining necessary documentation. Some TCSPs have advised that in such instances the international company is not created until full beneficial ownership information is obtained. TCSPs are not necessarily involved in the creation and operation of IBCs' bank accounts and may not even be aware of the existence of such an account. The s.125 prohibition on disclosing beneficial ownership, identity of management and business and financial affairs of any international company does not appear to prevent at least some TCSPs from obtaining beneficial information at the commencement of the relationship or getting it updated annually.

Lawyers and accountants

256. Apart from their activities as licensed TCSPs, accountants advise that they conduct relatively few financial transactions on behalf of customers, but can handle up to VT200,000 (approx. USD2,000) on behalf of customers without a trust account, and may sometimes handles proceeds of settlement of property transactions (but not in cash). Some lawyers do not regularly handle client funds, e.g. where litigation is the main business focus, but may from time to time receive funds through bank accounts (not cash) on behalf of customers as part of a property settlement transaction. AML/CFT procedures appear to be

adequate in the major firms at least. Not all firms appear to have updated their AML/CFT policies and procedures to encompass the 2014 legislative changes. The nature of their non-TCSP business has not warranted STRs to date.

Real estate and dealers in high value property (hiring and selling motor vehicles, etc.)

257. The larger entities in these sectors appear to be aware of their AML/CFT obligations, although there is limited information regarding effectiveness of implementation. It is not clear that smaller entities are as well-informed yet, and reportedly there are a number of entities operating 'below the radar' in the real estate sector. AML/CFT risks highlighted by these sectors were mostly in relation to transactions with foreign investors acquiring assets in Vanuatu. Large cash transactions are not encouraged, with investors being referred to banks. Purchase or sale of marine vessels such as yachts is extremely rare. Overall effectiveness is assessed as moderately low.

Requirements on CDD and PEPs

258. Most financial institutions and some DNFBPs understand their obligations to identify and verify their customers, including beneficial owners (ownership and control). The domestic banking sector and international banks supervised by RBV are more effective in complying with obligations with regard to obtaining information on the ultimate beneficial owners, drawing on RBV guidance (PG9). Some banks have procedures in place to apply CDD on the basis of risk, consistent with the AML/CTF Act and Regulations.

259. Generally the domestic banking sector and international banks supervised by RBV are fully aware of their AML/CFT obligations with regard to obtaining information on the ultimate beneficial owners (including ownership and control).

260. Both domestic and foreign-owned commercial banks and some international banks demonstrated a high level of understanding of their ML/TF risks, as well as an awareness of their duties and responsibilities to mitigate these risks. However, most international banks, other financial institutions and the DNFBP sectors did not consistently display a similar level of awareness. RBV prudential consultations with financial institutions discuss AML/CFT issues, however conducting awareness-raising and more regular on-site examination of compliance with AML/CFT requirements by the supervisory authorities could assist in improving the level of understanding of ML/TF risks.

261. While some banking institutions have implemented a risk-based approach to CDD (customer on-boarding and risk assessment), implementation is limited and variable in this area particularly for the two domestic banks that do not have sophisticated customer database and monitoring systems. Application of simplified and enhanced due diligence for low and high risk customers does not appear to be consistent. Where domestic banks have been unable to obtain full beneficial ownership information in respect of ICs, they are taking action to close non-complying customer accounts.

262. For TCSPs creating international companies, many of which rely on third party introducers, some delays can be encountered in obtaining documentation of beneficial ownership information but in such instances the international company is not created. TCSPs are not necessarily involved in the creation and operation of IBCs' bank accounts and may not even be aware of the existence of such an account.

263. Risk-based procedures are required for both domestic and foreign PEPs but not all entities have applied appropriate measures, particularly in respect of domestic PEPs. The foreign commercial banks also apply PEP requirements to family members and associates, but otherwise the reporting entities do not appear to have adopted that aspect (which requirement only took effect from late January 2015).

Record keeping

264. Record keeping requirements are established under the AML/CTF Act and detailed in the revised Regulations, consistent with R.11. Although the specific obligations with respect to maintaining copies of account files and business correspondence only became mandatory in January 2015, it appears those aspects are already being applied effectively by reporting entities.

Other Measures

Correspondent banking

265. Correspondent banking obligations under the AML/CTF Act are consistent with R.13 requirements for understanding respondent bank's AML/CFT risks, and agreeing roles with respect to payable through accounts. The RBV PG9s prohibit banks from entering into, or continuing, relationships with shell banks and from opening correspondent accounts with banks that deal with shell banks. However, there is no requirement for reporting entities to establish whether the respondent banking entity has been subject to AML/CFT investigation or regulatory action. The APG public statement on Vanuatu in October 2014 has apparently made it increasingly difficult for international banks to maintain correspondent banking relationships with mainstream correspondent banks overseas. The domestic banks and a few international banks have established correspondent banking relationships overseas and are aware of the risks of having relationships with shell banks, leading to a moderate level of effectiveness.

New technologies

266. Banks are expected by RBV to consult on proposals for adopting new products and technologies and obtain supervisory approval prior to implementation. The AML/CTF Regulations as revised in January 2015 added the risk posed by the development of new products, business practices and use of new and developing technologies as matters for consideration when developing appropriate risk-based systems and controls, but there is no evidence that entities other than the commercial banks have been adopting appropriate risk-based measures to date. There is no explicit legislative requirement to take appropriate measures to manage and mitigate those risks. The development of mobile phone networks in Vanuatu to function as MVTS is an example of emerging risks in new types of reporting entities that require urgent attention from the VFIU to ensure effective compliance with AML/CFT requirements. Collectively these weaknesses contribute to a moderately low level of effectiveness.

Wire transfer rules

267. The AML/CTF Act requirements with respect to originator information are inadequate and there are no requirements with respect to beneficiary information. Most other elements of R.16 are not established in law or regulation, and the required CDD threshold for occasional wire transfers is too high (VT1 million or approx. USD10,000). Banks and remittance services using the SWIFT network; and Western Union agents must comply with internationally-imposed standards on originator and beneficiary information. While effectiveness can be shown in practice for these entities with respect to originator and beneficiary information, in most other respects, the R.16 requirements are not met, and some MVTS are not yet adequately captured within the AML/CFT regime. A high proportion of the wire transfer transactions through MVTS appear to be for small amounts, conducted by Vanuatu residents. The three largest MVTS are generally adopting international wire transfer practices to a greater extent than required by law, but some gaps remain in adequacy of procedures in place. Hence only a low level of effectiveness is shown overall.

Targeted financial sanctions (TFS)

268. Apart from banks adopting their group processes, most reporting entities were not familiar with the UN sanctions lists (1267) and had received no communication from Vanuatu authorities in respect of designated entities or targeted financial sanctions. There is no evidence of powers or procedures in place to

implement targeted financial sanctions requirements. A few reporting entities observed that in the event that a terrorist property report was made to the VFIU, following their risk-based procedures, the entity would cease dealing with the funds until clarification was received from the authorities on how to proceed.

Higher risk countries

269. Under the revised AML/CTF Regulations, in developing risk based systems and controls reporting entities are required to consider the risk posed by high risk jurisdictions as identified by FATF. There is no structured procedure for Vanuatu authorities to provide non-bank reporting entities with regularly updated lists of higher risk countries issued by FATF, or of concerns regarding weaknesses in other jurisdictions' AML/CFT systems. Some entities have constructed their own lists by accessing FATF sourced information but apart from the commercial banks, these lists are mostly significantly out of date. There are no legislative powers or procedures in place to require reporting entities to apply countermeasures proportionate to the risks. The current arrangements have limited effectiveness.

Suspicious Transaction Reporting Obligations and Tipping Off

270. Based on information provided for 2014, other than the domestic banks and MVTS, the level of suspicious transaction reporting appears to be inadequate. No information is available to determine whether the issues generating these STR reports are consistent with the broader ML risks in Vanuatu. The VFIU has not provided a detailed breakdown of reporting by category of reporting entity or of the nature of suspicion generating the reports. The legislative requirements for STR and SAR reporting are technically compliant. The evaluation team concluded that reporting entities were generally aware of their reporting requirements, but a significant proportion of them had not made any reports in recent years. Likely reasons for low reporting may be a lack of understanding by smaller entities of the risks generating suspicions, inadequate guidance from the VFIU on indicators and typologies, and in some instances, indications that an additional senior management judgement overlay was being applied that has the effect of reducing the level of reports made by that entity.

271. Limitations on tipping off are consistent with the FATF requirements, and are reinforced for banks through the RBV PG9s. Those entities regularly making suspicious reports appear familiar with the requirements but there is little evidence that awareness is widespread.

Internal AML/CFT Controls

272. All reporting entities are required to establish an AML and CFT compliance manual, and appoint an AML/CFT compliance officer. Although it is not mandatory for the compliance officer to be at management level, almost all reporting entities appear to establish the position at the equivalent of chief financial officer or higher. AML/CFT procedures documents exist in all reporting entities and the VFIU has requested a copy from each entity, with an expectation by many that annual submission will be made. Some entities have received feedback from VFIU noting areas for improvement. For many of the non-bank reporting entities in particular, the procedure manuals are relatively brief and often have not yet been updated for the new obligations under the 2014 legislation.

273. Audit functions to test AML/CFT processes, procedures and systems are required to be established by all reporting entities in conjunction with their procedures manuals under s.33 of the AML/CTF Act, although no specific timeframes are indicated regarding the required frequency of such audits. Commercial banks already have structured AML/CFT audit processes in place but otherwise there is little evidence of such arrangements being established to date by other reporting entities.

274. Apart from the banking sector, internal AML/CFT training does not appear to be consistently comprehensive, regular, or updated to reflect the 2014 AML/CFT requirements across the other sectors.

For several of the non-bank reporting entities, training for staff and senior management appears to be largely reliant on the supervisory authorities providing workshops in the past.

275. Offsite monitoring of reporting entities' compliance arrangements should be assisted by the promulgation in the 2015 revised regulations of an AML/CFT compliance report form, which must be completed when requested by the VFIU but is not yet in use.

Guidance

276. The revised CDD Prudential Guidelines issued by RBV in February 2015 (PG9s) are updated for the 2014 AMLCTF Act and Regulations and are enforceable in respect of domestic and international banks and other credit institutions supervised by RBV. The updated guidelines were not in effect prior to the evaluation team's visit. Previously issued guidance from the RBV, and VFIU guidelines issued in 2008, outlined FTRA obligations and are generally observed by financial institutions and DNFBPs, but do not provide an adequate basis for compliance with the 2014 requirements.

Overall conclusions on Immediate Outcome 4

277. Material shortcomings have been identified in Vanuatu's preventive measures in respect of a number of FATF Recommendations, (including wire transfers, MVTS, reliance on third parties and internal controls in particular). Some banks and most non-bank reporting entities have yet to complete revision of their AML/CFT procedures to comply with the 2014 Act and Regulations leading to varied level of implementation of the new requirements. To date, there has been only limited compliance monitoring by the RBV (including through its prudential consultations) and the VFIU to ensure all financial institutions and DNFBP are complying with preventive measures.

278. Preventive measures applied by reporting entities are strongest in respect of the three domestic commercial banks which also have group requirements imposed by their overseas parent banks. These banks have a good understanding of their risks and adopt risk-based procedures as appropriate. Other domestic banks and some international banks and TCSPs have a reasonable understanding of their AML/CFT risks, but most non-bank reporting entities are not well informed about the risks in their business. Vanuatu's offshore banking entities are inherently more risky than the domestic banking sector, reflecting the preponderance of cross border transactions with a relatively small number of non-resident customers, and in many cases, less robust CDD and other preventive measures than the domestic commercial banks (some international banks deal primarily with related parties). Although the offshore banking sector's significance has been declining, some new international banks have been licensed recently.

279. The RBV's PG9 guidance for banks has been updated in 2015 to be consistent with the AML/CTF, Act but the only guidance provided to other reporting entities, by the VFIU, is still based on the obsolete FTRA requirements. Within the DNFBP sector, the activities of TCSPs in creating and providing services to international companies and trusts are of greatest concern for AML/CFT risk purposes. Some TCSPs have already established measures consistent with the AML/CTF Act and Regulations but overall effectiveness of implementation varies. The casino sector while currently small in number and scope of business is also a potential risk in view of the recent licensees. More generally, given the absence of monitoring or supervision to ensure compliance with AML/CFT requirements by casinos and the two active on-line gaming (sports betting) entities leaves, there is no information regarding the effectiveness of implementation of preventive measures in that sector, which is therefore assessed as low effectiveness. Similar concerns arise in respect of other categories of DNFBP.

280. The overall conclusion is that there was a relatively low level of effectiveness at the time of the evaluation team's visit.

281. **Vanuatu has a low level of effectiveness for Immediate Outcome 4**.

5.4 Recommendations on Preventive Measures

282. Vanuatu should ensure that reporting entities are subject to preventive measures in line with the FATF standards. Shortcomings identified with respect to wire transfers, MVTS, reliance on third parties and internal controls in particular should be urgently addressed by amending legislation. Prohibitions on dealing with shell banks should be incorporated into legislation, in addition to the RBV PG9 requirements.

283. Vanuatu authorities should ensure that reporting entities implement as early as possible the revised obligations on enhanced CDD and politically exposed persons, introduced on 30 January 2015.

284. Vanuatu should consider making mandatory requirements for the development of a 'fit for purpose' ML/TF risk assessment by each reporting entity to enable it to understand the drivers of risk in its business. The FIU should require each reporting entity to provide a copy of its AML/CFT risk assessment for review and feedback. Regular reviews of their risk assessments should thereafter be required of the reporting entity to assess the impact of changes in the risk environment, customer types, and products and services offered etc.

285. Vanuatu should ensure that international banks, MVTS, money changers, casinos, and all other categories of DNFBP implement effective AML/CFT controls and preventive measures in line with the FATF standards. The effectiveness of the controls and measures established should be subject to sufficient monitoring and supervision to ensure compliance.

286. The VFIU should undertake further efforts to engage with MVTS and money changers not yet registered under the AML/CTF Act and ensure the sector's full compliance with AML/CFT regulatory obligations.

287. To enhance the effectiveness of reporting entities' AML/CFT compliance management arrangements, internal controls, and audit procedures, the VFIU should make it mandatory for every entity to complete and file a compliance report every year, following the promulgation of the form in January 2015. The authorities should incorporate the results of a structured assessment of each entity's compliance report information into its annual risk-focused supervision processes, and provide written feedback on identified deficiencies. AML/CFT audits should be required to be independent, and the VFIU should provide guidance on, or set risk-based expectations on, the frequency of audits.

288. Vanuatu should provide in legislation for powers to require reporting entities to apply countermeasures proportionate to risks, both as called upon by FATF and independently, and designate an agency responsible for, and develop procedures for, advising reporting entities of FATF lists of countries of concern.

289. Vanuatu should review the application of CDD requirements under s.12 (1) of the AML/CTF Act (and consequential provisions in the Act and Regulations) and make appropriate amendments to ensure CDD obligations are applied effectively in relation to beneficiaries of NPOs.

290. Vanuatu authorities should improve the guidance to non-bank reporting entities (including insurance entities) on ML/TF risk identification and the scope of their AML/CFT obligations, to improve the sector's understanding and implementation of best practices for risk assessment processes; CDD, compliance program requirements; audit testing; and reporting obligations to the VFIU, consistent with the AML/CTF Act requirements.

291. Vanuatu authorities should provide more detailed feedback on the quality and volumes of STRs reported, and on the scope and on the adequacy of the procedures established in AML/CFT compliance manuals provided to supervisors by individual reporting entities.

6. SUPERVISION

Key Findings

- In general terms Vanuatu does not have a strong system of supervision. All reporting entities have to register with the FIU; however VFIU does not have the capacity to adequately supervise the number of entities involved for AML/CFT purposes. Banks and the insurance sector are further licensed and supervised by the RBV.
- Few reporting entities have received any on-site visits/inspections from either body in the last five years, and supervision by the RBV and VFIU has not led to a measurable increase in awareness and levels of AML/CFT compliance in financial institutions and DNFBPs.
- The RBV and the VFIU have sufficient legislative powers to supervise the financial institutions but there is little evidence of those powers being used. One of the most important reasons for the poor record of execution of the powers is the lack of supervisory resources within the RBV and the VFIU.
- There is no formal process for the RBV and the VFIU to regularly identify and assess the ML/TF risks of the financial institutions they supervise. This prevents RBV and VFIU from being able to maintain an up-to-date and in-depth understanding of the ML/TF risks for each institution and sector. Consequently, AML/CFT supervision priorities are not driven by any assessment of ML/TF risk.
- The VFIU has not undertaken any effective and meaningful supervision of the DNFBP sector due primarily to a lack of supervisory resources and direction. The Vanuatu authorities have also failed to undertake any meaningful outreach to DNFBPs to provide reporting entities with guidance, information and assistance in understanding the risks in that sector for ML and TF.
- The competent authorities do not monitor or supervise reporting entities with regards to their obligations to freeze terrorist assets or assets relevant to proliferation financing.
- There is a lack of supervision for TF and of knowledge of its risks amongst FIs and DNFBPs.

6.1 Background and Context

292. The RBV and VFIU have sufficient legislative powers to supervise financial institutions. These include powers to conduct on-site and offsite inspections and powers to compel the production of information and documents for the purpose of assessing financial institutions' compliance with legislation. The AML/CTF Act provides the VFIU with criminal sanction powers but no civil or administrative ones. The RBV has adequate powers to apply administrative sanctions on financial institutions (banks, insurance companies and brokers) for breaches of AML/CFT requirements if required.

293. There is a registration framework and process with the VFIU for financial institutions and DNFBPs. This does not, however, include rigorous due diligence checks on shareholders, directors and controllers of reporting entities. The AML/CTF Act does not give the VFIU the discretion to refuse an entity from registering, nor does it allow for their removal if misdemeanours are later discovered. In addition, the Act does not give the VFIU the power to remove a beneficial owner from an entity under any circumstances. The competent authorities have so far not carried out any rigorous process to enforce registration of reporting entities who do not voluntarily apply.

294. There is also a licensing framework for banks and insurance entities with the RBV. This includes due diligence checks on shareholders, directors and controllers of those financial institutions.

295. The RBV is responsible for the AML/CFT supervision of the banking and insurance sectors. The following chart shows the number of on-site AML/CFT inspections carried out by the RBV since 2010. The figures show that very few on-site inspections have actually taken place since 2010.

Table Showing On-site AML/CFT Inspections Undertaken by the RBV					
Total Licensees	2010	2011	2012	2013	2014
5 x Domestic Banks	4 (includes 1 joint visit with VFIU)	0	0	0	1
3 x Other F.I.s	1	0	0	0	0
3 x Offshore Banks	0	3 (limited scope reviews only)	0	0	1
5 x New Int. Banks (licensed 2013 onwards)	N/A	N/A	N/A	0	0
Insurance Entities	4	4	3 (includes 1 joint visit with VFIU)	3	4
Total	9	4	3	3	6

296. Whilst there have been few AML/CFT on-site inspections carried out, RBV has raised AML/CFT issues and received updates on the respective banks' AML/CFT efforts, through a process of holding annual prudential consultation meetings with some institutions. The following table shows the prudential consultations held since 2010.

Table Showing Prudential Consultations Undertaken by the RBV					
Total Licensees	2010	2011	2012	2013	2014
5 x Domestic Banks	5	4	4	4	5
3 x Offshore Banks	3	3	1	1	3
3 x New Int. Banks (licensed since 2013)	N/A	N/A	N/A	N/A	5

297. The VFIU has some responsibility for the AML/CFT supervision of all FIs and DNFBPs. The following chart shows the number of on-site AML/CFT inspections carried out by the VFIU since 2010. The figures show that very few on-site inspections have taken place since 2010.

Table Showing On-site AML/CFT Inspections Undertaken by the VFIU					
	2010	2011	2012	2013	2014
Domestic Bank	1 (joint visit with RBV)	0	0	0	0
Insurance Company	0	2	2 (includes 1 joint visit with RBV)	0	0
Estate Agent	0	0	0	1	0
MVTS	0	1	0	0	1
Lawyer	0	0	0	0	1
CSP	1	0	0	0	0
Total	2	3	2	1	2

298. Under the AML/CTF Act all reporting entities are required to register with the VFIU. The Act at s.5(1) requires the VFIU to carry out examinations of reporting entities to ensure compliance with the Act. It also requires the VFIU to issue guidelines and provide training on reporting entities obligations regarding CDD, record keeping, identifying and reporting suspicious transactions and provide them with typologies information on TF. The act also requires the VFIU to "screen office bearers of reporting entities…" The VFIU must place an applying entity on the register and can only remove the same if it is at the entity's request. The list of reporting entities as defined by the AML/CTF Act at s.2 is comprehensive and includes all the FIs and DNFBPs as defined by the FATF. The AML/CTF Act requires all reporting entities to submit STRs, SARs reports to the VFIU as well as international funds transfer instruction reports (IFTRs).

299. The VFIU has only four members of staff in total and they are required to also carry-out the normal intelligence functions of a FIU. The VFIU does not have the staff, capacity and resources to adequately perform their supervisory functions for AML/CFT purposes; especially when taking into account how many FIs and DNFBPs are entailed.

300. Section 3 of Reserve Bank of Vanuatu Act sets as a principal objective of the RBV "to regulate and supervise domestic and international (offshore) banks." It was amended in 2009 to include the regulation and supervision of the insurance sector. A MOU was signed between the RBV and VFIU in August 2010. This MOU sets out the planned co-operation between the two parties with regards to the supervision of the banking and insurance sectors. The MOU details that joint on-site examinations can be carried out with reporting entities selected on a risk-based basis. It also provides for the exchange of information between the two bodies. However in practice, no mechanism or process is being utilised between the two bodies to share information that may be useful when conducting a supervisory visit. For example, the VFIU does not provide the RBV with any information concerning the number and quality of reports submitted to VFIU by a FI, prior to the RBV undertaking an on-site inspection.

301. The VFSC has responsibility for maintaining the relevant company registries and for supervising the required filings. Like most such registries around the world they act in a passive manner as a repository

and do not vet the documents filed. In late 2014 a private company was awarded the contract to supervise the vetting and licensing of the gambling industry, which consists of a few small casinos and an interactive gaming sector, the exact size of which is unknown. There are no self-regulatory bodies in Vanuatu.

302. All government entities interviewed stated they had significant lack of capacity issues. Current levels of staffing and expertise are not sufficient to support an adequate and effective AML/CFT supervision regime. There is a lack of co-ordination amongst the competent authorities and very little engagement with the FIs and DNFBPs. There is a lack of understanding of, and agreement on, the AML/CFT risks in Vanuatu both amongst the government bodies and across the financial industry.

6.2 Technical Compliance (R.26-28, R.34, R.35)

303. See the technical compliance annex for the full narrative on these Recommendations.

304. **Vanuatu is partially compliant with R.26.** The RBV is the designated supervisor for the majority of the financial institution sectors with the VFIU responsible for MVTS entities. The RBV licences the entities it is responsible for, while the MVTS entities are required to register with the VFIU. Shell banks are prohibited by the requirement for a physical presence under s.20 of the International Banking Act; however, nothing in legislation, regulations or in local policies and procedures requires the frequency and intensity of on-site and off-site supervision of financial institutions to be undertaken on the basis of identified ML/TF risks.

305. **Vanuatu is partially compliant with R.27.** Between the RBV and VFIU the authorities have adequate powers to supervise and monitor financial institutions for AML/CFT purposes. Neither body, however, on their own, or together, has a comprehensive range of sanctioning powers to fully ensure compliance in accordance with R35. There are deficiencies in the ability to impose financial sanctions and the VFIU has no powers to restrict or withdraw an entity from its AML/CFT register. The VFIU may remove a key person from their position but they cannot remove a shareholder for any reason**.**

306. **Vanuatu is partially compliant with R.28.** A licensing regime for casinos and other forms of gambling activity is in place, with licences issued by the Minister of Finance. The supervision of these entities for AML/CFT purposes falls to the VFIU who, under the registration system imposed by the AML/CTF Act, have no powers to remove any beneficial owner under any circumstances. This same deficiency applies to the other DNFBPs. All DNFBPs under the AML/CTF Act are subject to criminal sanctions but there is a lack of civil or administrative powers to deal with less serious breaches of AML/CFT requirements.

307. **Vanuatu is partially compliant with R.34.** The RBV has issued guidance to the banking sector. Although the VFIU is legally charged with providing similar guidance to the entities it supervises, no current written guidance has been produced by the VFIU and very little training has been held to assist reporting entities with their AML/CFT obligations. All entities interviewed stated they had never received any feedback from the VFIU after having made a STR or been given assistance to help them detect and report suspicious transactions.

308. **Vanuatu is partially compliant with R.35.** The VFIU has adequate sanctioning powers under the AML/CFT Act to bring convictions or impose fines for breaches of obligations under the Act. The Act however, does not convey any powers to use civil penalties or administrative remedies which impacts on the issue of proportionality of sanctions, particularly in respect of lesser offences. The RBV is better equipped to use a wider range of sanctions, although there are still some deficiencies, using powers in the FIA, IBA and the IA, however these can only be applied to the banking and insurance sectors.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

Risk identification

309. The authorities have not taken any measures to understand and assess the ML/TF risks of the sectors and entities they supervise. No procedures have been developed to collect information that is needed for identifying and maintaining an understanding of ML/TF risk other than the prudential consultation meetings conducted by the RBV with banks. Outside of the NRA process, there is no formal process for the supervisors (RBV, VFIU) to risk-classify the reporting entities they supervise. As a result:

a. Supervisors are not able to maintain an up to date and in-depth understanding of the ML/TF risks for every institution and sector; and

b. AML/CFT supervision priorities are not being driven by ML/TF risks.

310. There has been a very low incidence of AML/CFT supervision undertaken and for some sectors none at all. Consequently, supervisors have limited knowledge of ML/TF risks based on their inspections and what limited knowledge they do have has not been shared across peer organisations. Vanuatu's supervisors have therefore not been able to discuss and compare risk factors with their peer organisations and a 'silo' approach has prevailed.

311. As supervision is not risk based, many entities deemed higher risk by the authorities have also never been visited. This has left the authorities with no in-depth knowledge of the compliance levels in each sector, backed by evidence and statistics. The supervisors interviewed had varying opinions on the risk categories of the different sectors but none had any supporting information and/or analysis to support their views.

Mitigating risks through supervision or monitoring compliance

312. There has been no determination, based on ML/TF risk, of the type and level of resources needed to ensure effective risk-based AML/CFT supervision. The resources and capacity to conduct effective AML/CFT supervision are not adequate and specialist knowledge within the relevant authorities' is lacking. This is especially true of the VFIU, where one officer is officially responsible for the whole compliance process across the whole financial industry.

313. While there has been some on-site supervision of domestic and international banks, the frequency and intensity of AML/CFT on-site supervision of these sectors is considered very low in view of the high risk of these sectors. For example, whilst international banks were consistently identified as a very high vulnerability in the interviews undertaken, there has only been one substantive AML/CFT on-site inspection undertaken in this sector since 2010 based on the details that were provided.

314. There has been very little AML/CFT supervision by the VFIU of the TCSPs sector. The few visits have taken place have identified significant deficiencies across the sector in meeting their obligations.

315. The VFIU has not undertaken any meaningful supervision of accountants, casinos, interactive gaming entities, lawyers, NPOs and real estate agents. This has been due to a lack of supervisory resources and capacity. At the time of the on-site visit authorities were unable to confirm how many interactive gaming businesses operated out of Vanuatu.

316. Information has not been exchanged between the competent authorities to direct and support supervisory action. For example, information from the VFIU on the frequency of STRs being submitted by the banks and insurance entities and the quality of their submissions had not been passed to the RBV, to assist in directing the RBV's on-site inspections. Neither has the VFIU formulated and distributed typology information and statistical data.

Remedial actions and sanctions

317. Both the RBV and VFIU have on occasions directed financial institutions to take remedial action on AML deficiencies; however there has been little direct follow-up supervision to ensure that the required remedial action has eventually been successfully applied. Some monitoring of remedial action with banks has been undertaken by the RBV, utilising the annual prudential consultations process. Only one domestic bank has ever been the subject of a second on-site inspection. Many of the reporting entities have not been visited at all including entities in sectors which the authorities identified as being high risk for ML/TF purposes, such as casinos.

318. The RBV and VFIU have not made any use of the sanction powers available to them in legislation and have not demonstrated that they take any proportional and dissuasive remedial action. No statistical data was supplied at all in this regards. Anecdotal evidence was that some entities had been told to correct deficiencies identified on on-site inspections, but no follow-up measures had been pursued to ensure compliance.

319. There has been very little AML/CFT supervision by the VFIU of the TCSPs sector. What visits have taken place have identified significant deficiencies across the sector in meeting their legal obligations, especially in their ongoing recording of beneficial ownership details. Correction of these deficiencies has not been rigorously pursued. The only action being taken was the VFIU writing to the companies instructing them to correct the situation. The VFIU stated that their only follow-up action on these letters was by phone or emails. There was no substantial action taken to ensure compliance or remedial action had taken place.

320. Due to the absence of remedial actions no effective enforcement procedures are being pursued by competent authorities to ensure the financial sectors are complying with their AML/CFT obligations.

Demonstrating effect on compliance

321. The authorities failed to demonstrate that there has been any improvement in compliance, or that they are successfully discouraging criminal abuse of financial institutions and DNFBPs.

322. Supervision by the RBV and VFIU has not led to a measurable increase in awareness and levels of AML/CFT compliance in financial institutions and DNFBPs. The majority of reporting entities have never been subject to an on-site inspection to assess their compliance.

323. This is especially true of the DNFBPs sector were many people interviewed, both in the private sector and government, stated that casinos were likely a high risk for ML in Vanuatu, yet no on-site inspections of casinos have ever been undertaken for AML/CFT purposes.

Promoting a clear understanding of AML/CFT obligations

324. The VFIU's and RBV's supervisory, outreach and feedback procedures have not been sufficient to address industry needs. Many of the reporting entities interviewed had a very poor understanding of the ML/TF risks in Vanuatu and little understanding of their obligations if a customer was found to be on a terrorist sanctions list. Many of the entities claimed that there was little ML and no TF risks in Vanuatu, due to its size and remoteness in the world. The very small number of on-site AML/CFT inspections for the financial institutions, and the absence of any for most of the DNFBPs, has done little to raise the awareness of entities of the related risks and their obligations to mitigate ML/TF.

325. Reporting entities stressed that there is need for increased engagement and interaction with the supervisors, especially the VFIU, both individually and by sector, to raise understanding of the requirements of the AML/CFT legislation and ML/TF risks and trends. The VFIU has not been providing

feedback to the submitters of STRs/SARs or providing any typology information to other government agencies or reporting entities. There has been little training provided by the authorities. What there has been was mostly limited to seminars on new legislation, which was only offered to select reporting entities.

326. Some guidance has previously been provided for banks by the RBV relating to the requirements of the now repealed the FTRA. Little other guidance has been provided across all sectors and no meaningful outreach has been conducted other than offering a workshop on the new AML/CTF Act, just prior to its implementation in 2014. There has been no engagement or consultation with reporting entities when drafting new legislation. Many reporting entities expressed a desire to be included in the drafting process and felt legislation was imposed on them with little or no consideration of their views or the impact on their industries. Combined with the lack of supervision this left many having little or no contact with the relevant authorities regarding AML/CFT matters.

Supervision of asset freezing measures pursuant to UNSCR 1267

327. The last evidenced communication to reporting entities from the VFIU relating to terrorist sanction lists was circulated to reporting entities in January 2008. It contained links to the UNSCR 1267 consolidated list; UK Treasury list of financial sanctions; the FATF NCCT list; the FBI Ten Most Wanted List and a list of designated narcotic traffickers. It did not include the actual lists themselves. There was no evidence submitted that showed that the VFIU or the RBV monitors any reporting entities with regards to their obligations to freeze assets related to TF. Nor is there a clear policy and procedures for any Vanuatu authority to receive sanction lists, circulate them to government and financial entities, and provide information on what to do with the lists and how to act and whom to report to in cases of positive identification.

328. The financial institutions and DNFBPs questioned consistently had a very poor understanding of TF risks and their obligations should they find a client who was included on any terrorist sanctions list. Many entities were not doing anything to ensure they were not offering services to clients who may be on terrorist sanction lists. There was little or no checking of such lists against client databases, except in the banks that are part of international structures and where it was being undertaken as a matter of group policy and procedure. Any exceptions involved a tiny minority of entities which were checking sanction lists of their own volition. Even then, the common course of intended action on discovering a hit on a sanctions list (none had been found) was to report the matter to higher management or group headquarters.

Overall conclusion on Immediate Outcome 3

329. The Vanuatu authorities did not produce evidence that clearly demonstrated the effectiveness of their supervisory regime. AML/CFT supervision is not yet risk-based. The priorities and resourcing of the activities of supervisors is not determined on a risk-sensitive basis. There has been a very low incidence of AML/CFT supervision undertaken and for some sectors none at all. Supervisors have limited knowledge of Vanuatu's ML/TF risks and many entities which the authorities do consider higher risk have never been supervised.

330. **Vanuatu has a low level of effectiveness for Immediate Outcome 3**.

6.4 Recommendations on Supervision

331. Vanuatu should implement policies and procedures to assess, measure and maintain a credible risk rating of all reporting entities. Such policies and procedures should be supported by reliable information, evidence and statistics to support the ratings given.

332. Vanuatu should conduct a sector-specific risk analysis exercise to identify the high risk areas that require enhanced due diligence measures to be imposed by reporting entities and targeted regulatory supervision from the competent authorities.

333. Vanuatu should ensure there are sufficient resources to support a comprehensive and complete on-site supervision programme. The supervision framework should be extended to cover all FIs and DNFBPs. The intensity, duration and frequency of off/on-site supervision should be commensurate with the risk rating identified.

334. The authorities should establish and implement written procedures to support their supervisory efforts.

335. The RBV has an AML/CFT risk based supervision manual in draft form which they should take urgent steps to finalise and implement before the end of 2015.

336. The supervisory authorities should ensure more effective on-going engagement with the private sector, including holding workshops and/or seminars on key AML/CFT topics; providing feedback and typologies information; issuing guidance and/or best practice notes; and involving industry in consultation over the drafting of new legislation, regulations and other AML/CFT material.

337. The competent authorities should initiate a programme of outreach activities with reporting entities with a particular focus on raising awareness of ML and TF risks across all sectors.

338. Formal procedures and coordination mechanisms should be established for relevant government entities to share information which would aid their peers to perform their supervisory functions.

339. Vanuatu should ensure that government officials responsible for undertaking AML/CFT supervision receive relevant training and experience, to the extent that they are able to demonstrate an understanding of the ML/TF risks associated with the different financial entities and products.

340. All reporting entities, including DNFBPs, that have not had on-site inspections, should be visited as a matter of priority, and at least before mid-2016, to better identify the ML/TF risks across all sectors and within Vanuatu, as well as to initiate the formal engagement with the competent authorities.

341. Competent authorities should ensure that when AML/CFT deficiencies are identified during inspections that appropriate sanction action is taken, and documented, that is dissuasive, proportionate and effective.

342. Legislation should be drafted or amended to afford the use of civil, financial and other sanctioning powers across all the relevant competent authorities to ensure that they have a broad range of options available when required to take regulatory action.

343. Competent authorities should take proactive measures to identify, and take sanctioning action against, unlicensed entities especially in the MVTS and interactive gaming sectors.

344. Competent authorities should consider moving the sectors deemed high risk for ML/TF purposes, from the current registration system (which lacks provisions to refuse or remove undesirable entities), to a licensing system with proper vetting and removal powers.

345. The VFIU should provide regular and comprehensive feedback and typologies information relating to the STR/SARs submitted so that the reporting entities can better understand the ML/TF risks and more effectively identify suspicious activity in the future.

346. As a matter of priority the Vanuatu authorities should establish clear policies and procedures to ensure expeditious circulation of internationally issued sanction notices to all reporting entities. The policy and procedures should include measures to ensure that the sanction lists are actioned by the reporting entities and that they are aware of their obligations to immediately freeze and report any such connected funds to the appropriate authorities.

7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

- There is a real risk that criminals misuse legal persons and arrangements in Vanuatu to launder criminal proceeds. Some authorities agreed that there is a high risk of ML and TF through the use of Vanuatu companies, in particular international companies.
- Only basic shareholder and beneficial information on local companies is collected by the VFSC and made publically available. The VFSC does not collect any information on domestic trusts unless the trust is incorporated under the Companies Act as a trust company.
- The company registry system maintained by the VFSC is passive and reactive, with little pro-active monitoring and limited sanctions.
- The risks posed by bearer shares and bearer share warrants for domestic companies are not mitigated by any additional measures or requirements. The competent authorities agree that domestic companies can be used for criminal purposes.
- Although a recent amendment to the International Companies Act (ICA) requires bearer shares for international companies to be immobilised (to mitigate ML risk), there is no oversight to ensure compliance with this requirement. The recent amendment does not apply to bearer share warrants for international companies.
- The VFSC is not aware of the number of bearer shares/warrants issued by Vanuatu companies.
- Vanuatu international companies are particularly attractive to criminals given prohibitions exist in the ICA (punishable by imprisonment) on disclosure of information about the shareholding, beneficial ownership, management, business, affairs, financial affairs or transactions of the company by "any person" except under a court order.
- As a consequence of this prohibition, information about the beneficial ownership of international companies is extremely difficult to obtain. None of the information on such companies is publically available nor is it accessible to law enforcement from the VFSC or international companies except by order of the court.

7.1 Background and Context

Overview of legal persons

347. The types of legal persons that can be established or created in Vanuatu are as follows:

348. Companies: (1) local companies are limited liability companies commonly used by investors to operate a business in Vanuatu and/or own property; (2) exempted local companies - before the end of August 2015 all such companies must apply to become an international company or be wound-up); (3) overseas companies; (4) international companies (for offshore business only and prohibited from carrying on business or owning land in Vanuatu).

349. Foundations: established by the Foundations Act No 38 of 2009.

350. NPOs: No information was provided on the different type or number of charitable organisations operating within Vanuatu.

351. Credit Unions: traditionally used for local activities only and are small in nature and mostly run for co-operative social projects.

352. International Companies: competent authorities and the private sector identified international companies as a high risk of ML/TF in Vanuatu. The International Companies Act (s.10) provides that an international company shall not carry on business in Vanuatu, acquire, or own an interest in immovable property in Vanuatu. Section 22 allows an international company to issue bearer shares. The International Companies (Amendment) Act No. 11 of 2010 now requires that bearer shares must be immobilised by depositing them with a custodian. Any such shares not lodged are deemed disabled by s.26D and holders thereof lose rights and entitlements in those instruments.

353. Under s.58 of the International Companies Act a register of members must be kept by the company detailing who holds registered shares in the company and, if relevant, the number of bearer shares issued. The register is to be kept at the registered office of the company within Vanuatu. Section 125 of the same Act contains secrecy provisions under which anyone divulging information on the shareholding or beneficial ownership or the management of such company, or any of the business, financial or other affairs or transactions of the company is guilty of an offence punishable by a fine not exceeding $100,000 and/or maximum of 5 years in prison.

354. The numbers of entities registered with the VFSC 1 January 2014 to 26 January 2015 was as follows:

Type of Company	Number of registrations
International Company	3,774
Standard Local Company	1,646
Exempted Local Company (transitional international companies)	51
Overseas Company	28
Charitable Organisation	496
Foundation	2
Credit Unions	1

Overview of legal arrangements

355. Vanuatu currently does not have trust legislation but trusts can be created in Vanuatu under an evolving Vanuatu common law of trusts (UK common law of trusts no longer applies). The authorities stated that there is no body of case law established in Vanuatu as yet and that given the size of Vanuatu it may be a lengthy period of time before any such case law is established. Under these circumstances (lack of case law, lack of statute law on trusts), authorities agreed that there is a legal vacuum on trust law at the moment yet trusts are still capable of being created and operated.

356. Trusts may be set-up by TCSPs, including lawyers and accountants. The authorities do not know how many trusts have been formed and operate in Vanuatu.

357. Authorities seemed to be unaware of the ML and TF risks posed by trusts in the country, even in light of the legal vacuum noted above.

International context for legal persons and arrangements

358. Vanuatu is an international financial centre and offers a range of financial products, including the creation of legal persons and arrangements such as international companies, trusts and foundations.

359. Vanuatu also offers a favourable tax regime - no personal or corporate income taxes, no withholding taxes, no capital gains taxes, estate or death duties, no exchange control - and actively seeks and encourages foreign investors and investments.

360. The government has a programme for foreign nationals to purchase Vanuatu citizenship under a business investor category which carries a significantly shortened period of permanent residence (three months) as a condition of citizenship approval. Under the current programme, a business investor is required to invest in Vanuatu the sum of VT26 million (approx. USD260,000) and encourages those taking up such an offer to make use of the financial services provided in Vanuatu.

361. Traditionally, Australia and New Zealand have been a focus for customers but the emerging markets of Asia are now becoming an important source of clients.

362. Legal persons and arrangements established in Vanuatu have been found to have been used in a number of foreign money laundering enterprises. For example some were involved in illegal activity as exposed during the Australian tax evasion investigation, Project Wickenby.

7.2 Technical Compliance (R.24, R.25)

363. See the technical compliance annex for the full narrative on these Recommendations.

364. **Vanuatu is non-compliant with R.24**. The details of beneficial ownership for legal persons are generally maintained and may be made available to the public except for international companies. The secrecy provisions contained within the ICA make it a criminal offence for anyone, including VFSC staff members, to divulge such information without court approval to another party. The Vanuatu authorities view international companies as very high risk for AML/CFT purposes. The number of international companies registered with the VFSC exceeds that of any other type of legal person. Requirements to place bearer shares with a custodian are contained within the International Companies Act, but no such equivalent provision exists in the Companies Act. Both pieces of legislation permit the issuance of bearer share warrants but neither contains measures to mitigate the ML/TF risks associated with those instruments.

365. Charitable associations are not required to register with the VFSC but may do so if they want a certificate of incorporation to operate as a body corporate. Even if they do register, they are not legally obliged to annually renew or update their status. The VFSC are therefore unable to ascertain, with any accuracy, exactly how many charitable organisations are currently operating within Vanuatu. Charitable associations are defined as reporting entities at s.2 (h) of the AML/CTF Act and are required to register as such with the VFIU. However, the VFIU has never undertaken any targeted exercises or outreach with charitable associations and have no knowledge as to the level of compliance with this requirement.

366. **Vanuatu is non-compliant with R.25**. The competent authorities have not taken the option of setting up a central registry of trusts within Vanuatu and there is no legal obligation to maintain accurate and current information on the constituent elements of any such arrangement. Competent authorities do not know how many trusts have been established in Vanuatu and trustees are not obliged to reveal their status as such to other financial institutions and DNFBPs whilst transacting business with them.

7.3 Effectiveness: Immediate Outcome 5 (Legal Persons and Arrangements)

Risk and transparency of legal persons and legal arrangements

367. Vanuatu has not assessed and addressed the ML/TF risks associated with the different types of legal persons and arrangements that can be created in Vanuatu. This is despite the use of international companies in particular being identified by most government authorities and the private sector as high risk for ML/TF.

368. The VFSC has capacity issues which prevent it from adequately carrying out all its statutory functions as a Registrar. It only collects limited information and although it has the legal power to issue guidelines to industry it has not done so. There was no evidence presented which showed that the VFSC fully understood the ML/TF risks of individual legal persons and arrangements and were taking any steps to mitigate those risks. For the most part VFSC operates a filing registry with little verification or monitoring of the details lodged with them.

369. A number of legal provisions prevent information on the creation and types of legal persons and arrangements in Vanuatu from being made available to the public. With regards to information held by the VFSC regarding international companies it is only accessible to the law enforcement and other competent authorities on obtaining a court order. This is due to the secrecy provisions at s.125 of the ICA applying to the VFSC. As an international company can act as a beneficial owner of a domestic company, this secrecy provision would also prevent the VFSC from disclosing such information relating to the domestic company unless served with a relevant court order.

370. There are no provisions for trust companies to make any reports to the VFSC and the authorities are not aware of the details and numbers of trusts that have been established in Vanuatu. The VFIU provided anecdotal evidence that they had recently visited a number of TCSP companies and found that all of them were neglecting to maintain up-to-date beneficial ownership details of legal persons and arrangements.

371. The existing measures and mechanisms in place are not sufficient to ensure that accurate and up-to-date beneficial ownership details are maintained and are accessible by the competent authorities. Deficiencies in legislation such as the absence of filing requirements for charities and secrecy provisions like that contained in the ICA would greatly impede the access to such information by the competent authorities, even if it was maintained.

372. The ICA provides for only limited company information to be available for public search. Each company must lodge with the VFSC its constitution, the location of the registered office and the name of its registered agent. No other returns are required.

373. Section 16 of the ICA allows for bearer shares and bearer share warrants. Section 26, with reference to bearer shares only, requires such shares to be immobilised with a custodian. No such equivalent provision exists for bearer share warrants. There are no requirements to register the issue of bearer shares with the VFSC and no competent authorities have carried out on-site inspections to ascertain if the requirements relating to immobilisation are being complied with. International companies are not required to file annual returns. They also are not subject to any requirement to disclose their place of incorporation on any corporate document or correspondence.

374. Nominee shareholders and directors are permitted in Vanuatu. International companies are required to maintain a register of members at their registered office however the VFSC has not conducted any checks to verify that this requirement is being complied with. The VFIU advised that it recently visited the premises of five TCSPs and reported that all five were failing to maintain proper beneficial ownership

details. No sanctions had been imposed. The VFIU's only remedial action had been to write to the TCSPs involved and instruct them to correct the situation.

375. Domestic companies must have one director who is a resident of Vanuatu but it may be a nominee director. Nominee shareholders are allowed but the details of the beneficial owner has to be disclosed to the VFSC. An annual return detailing the company directors and shareholders has to be filed annually with the VFSC. No evidence was provided to show the level of compliance with these requirements.

376. Charities are required to register with the VFIU. Charities may register with the VFSC if they wish, but only on establishment and there are no requirements to file subsequent reports. There are no requirements on charities to annually renew their registration or update the provided details. No competent authorities have engaged in outreach or carried out on-site inspections for AML/CFT purposes with the NPO sector In addition, neither the VFSC nor the VFIU have conducted any programmes to ensure full registration is been undertaken. As a consequence, it is not known exactly how many charities exist and are operating in Vanuatu. The authorities had little comprehension of the possible ML/TF risks associated with charities.

377. The DNFBP sector has not previously been subject to comprehensive supervisory controls for AML/CFT purposes. For example, only one on-site inspection of a lawyer has ever been carried out for AML/CFT purposes. No evidence was provided to show that there has been any effective regulatory supervision of trusts carried out by the competent authorities.

Basic information

378. The VFSC like many other Registrars throughout the world operates an essentially passive filing registry with little analysis or monitoring and no verification of details provided to them. The authorities did not provide any evidence that they apply effective sanctions against persons who do not comply with their filing requirements.

379. Due to the deficiencies in legislation and the lack of policies and procedures, there is a lack of maintenance of the basic required beneficial ownership information in Vanuatu relating to legal persons and arrangements. International companies and charitable associations are not required to provide substantive information to the VFSC or VFIU whilst trusts are not required to file any such details. Under s.3 of TCSP Act anyone providing services to less than six companies is exempt from registering with the authorities. There is a serious lack of available information regarding legal persons and arrangements in Vanuatu.

Beneficial ownership information

380. Due to the lack of beneficial ownership details held by the VFSC or any other authority and the inability to supply details concerning international companies, such information is not available or easily accessible by law enforcement agencies or the public.

381. There is no public registry of beneficial owners of trusts in Vanuatu. Nor is there any system whereby the authorities can identify the location of such arrangements.

382. Mechanisms which rely on reporting entities obtaining CDD to ensure that information on the beneficial ownership of a company or trust is available to LEAs are not well supported by implementation and supervision of CDD obligations (see IOs 3 and 4). This mechanism is further undermined by the lack of an obligation on trustees to reveal their status to financial institutions and DNFBPs whilst transacting business with them.

383. The secrecy provisions for international companies also prohibit such information from being made readily available without a judicial order. Little information on beneficial ownership details is available in Vanuatu.

Information exchange and co-operation

384. The existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information is available in a timely manner. Vanuatu's ability to provide informal information assistance in relation to international companies is prohibited by s.125 of the ICA which requires a court order/warrant. As a consequence, information about the beneficial ownership of international companies is extremely difficult to obtain and none of the information on such companies is available to the public. None of the information is available to law enforcement from the VFSC except by court order.

385. No evidence was submitted by the LEAs to show that they can access beneficial ownership details when required.

386. **Vanuatu has a low level of effectiveness for Immediate Outcome 5.**

7.4 Recommendations on Legal Persons and Arrangements

387. Vanuatu should assess the risks relating to the misuse of legal persons and arrangements (domestic and foreign) for ML/TF in Vanuatu and address those risks appropriately.

388. The secrecy provisions of s.125 of the International Companies Act should be removed.

389. Companies should be required to record and maintain an up-to-date and accurate register of their beneficial owners. This information should be maintained in a way that allows timely access by the relevant authorities without legal restriction or hindrance.

390. Vanuatu should enhance the system for monitoring and enforcing company law requirements, through inspections and/or automatic monitoring. A corresponding review of sanctioning powers should be undertaken to determine whether more serious sanctions are required to ensure compliance with company legislation.

391. Vanuatu should legislate to adequately mitigate the risks of ML/TF relating to trusts, including specific requirements to identify settlors, trustees, protectors, and beneficiaries.

392. Vanuatu should legislate to ensure that trustees disclose their status to financial institutions when forming a business relationship or carrying out an occasional transaction above the threshold.

393. Measures to mitigate the ML/TF risk posed by bearer share warrants for all types of legal entities should be issued, such as demobilisation which is required for bearer shares.

394. Competent authorities should conduct outreach to accountants, lawyers and TCSPs to foster a greater awareness of the ML/TF risks involved with legal persons and arrangements.

8. INTERNATIONAL COOPERATION

Key Findings

- International cooperation in Vanuatu can be conducted both through (i) formal request under MACMA and Extradition Act, or (ii) informal sharing of information by competent authorities and their regional counterparts.
- VFIU can exchange information with foreign FIUs in accordance with the Egmont Group principles, or under the terms of the relevant MOU, regardless of the other FIU's status as administrative, law enforcement, judicial or other FIU.
- There is no clear internal guideline, procedure and mechanism in the SLO for the execution of formal assistance requests or for prioritising requests based on the risks (in terms of countries, and nature of offence involved) identified in Vanuatu. A comprehensive database to maintain statistics on MLA matters is lacking.
- Vanuatu has been unable to provide MLA in a timely manner for most incoming requests.
- Vanuatu does not fully utilize MLA for its own domestic investigations involving overseas evidence despite the risk profile of crimes involving foreign elements.
- The recently amended definition of 'serious offence' in the POCA, which is restricted to offences of not more than 12 months' imprisonment, seriously impedes Vanuatu's ability to render MLA.
- Vanuatu has not received or issued any extradition requests. The effectiveness of the extradition regime has yet to be tested.
- Vanuatu does not maintain systems to record incoming and outgoing informal cooperation requests therefore no statistics on the numbers of requests could be provided.
- Vanuatu's ability to provide informal assistance in relation to international companies is prohibited by s.125 International Companies Act which requires a court order/warrant.

8.1 Background and Context

395. Vanuatu is an international financial centre and tax haven. Accordingly it attracts foreign capital investment and in-flows. Some government agencies agreed that high risk countries for in-flows relating to ML (but less so for TF) are Australia, China, Malaysia, Hong Kong, China and Indonesia.

396. The Attorney General (AG) is the competent authority for dealing with MLA and extradition matters.

8.2 Technical Compliance (R.36-40)

397. See the technical compliance annex for the full narrative on these Recommendations.

Recommendation 36 – International instruments

398. **Vanuatu is partially compliant with R.36.** Vanuatu has ratified the Vienna, Palermo, Terrorist Financing and Corruption Conventions and enacted legislative measures to implement the requirements. However, further measures are needed to ensure domestic legislation fully implements these conventions, including addressing the deficiencies, *inter alia*, relating to (a) ML offence and sanctions; (b) ancillary offences for ML; (c) criminalising certain offences as predicate offences for ML; and (d) effective,

proportionate and dissuasive sanctions for ML and civil and administrative sanctions against legal persons for TF.

Recommendation 37 - Mutual legal assistance

399. **Vanuatu is partially compliant with R.37.** Vanuatu has a legal framework to facilitate MLA relating to ML and associated predicate offences. The legal framework on dual criminality needs to be clarified and a wider range of investigative techniques for competent authorities is required. As Vanuatu is a tax haven there is a concern on the inability to provide beneficial ownership information on entities to support foreign investigations and prosecutions for foreign tax offences, as such a request can be refused under s.10 of the MACMA as the request relates to prosecution or punishment of a person for an act or omission that, if it had occurred in Vanuatu, would not constitute an offence against Vanuatu law.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

400. **Vanuatu is non-compliant with R.38.** Vanuatu has a legal framework to provide MLA to identify, freeze, seize and confiscate property for ML, predicate offences for ML and TF. However, there are shortcomings. A major deficiency, which adversely affects the MLA framework, is the amended definition of 'serious offence' in the POCA. Other shortcomings include (a) lack of a civil confiscation regime and requirement for conviction in a foreign country before confiscation via MLA request can be taken in Vanuatu; (b) no arrangements for co-ordinating seizure and confiscation actions with other countries; (c) no mechanism for managing and disposing of property frozen, seized or confiscated; and (d) no legal framework or mechanism to share confiscated assets with other countries. The lack of mechanism for coordinating seizure and confiscation action suggests Vanuatu's would not be able to take expeditious action as required under the FATF standards. A further shortcoming relates to the inability to provide MLA in relation to proceeds and instruments of foreign tax offences due to the dual criminality requirement.

Recommendation 39 – Extradition

401. **Vanuatu is partially compliant with R.39.** Vanuatu has a legal framework to provide extradition relating to ML and TF, both of which are extraditable offences. There are no unreasonable and unduly restrictive conditions against extradition. The deficiency in the ML offence does not affect Vanuatu's ability to extradite relating to predicate offences and ML offences, as 'serious offence' is not a requirement for extradition. Regard can be had to only some of the acts to determine if the conduct constitutes an offence under Vanuatu law and tax offences have been designated as extradition offences even though Vanuatu does not have tax laws. Vanuatu is unable to extradite for illicit arm trafficking, piracy of products, insider trading and market manipulation as those offences have not been criminalized in Vanuatu. There is no case management system and no clear process for prioritisation and timely execution of requests, which suggests that Vanuatu cannot execute requests without undue delay. There is also a concern that under the current legal framework, it is impossible for Vanuatu to prosecute a citizen in lieu of extradition for an offence committed abroad, as s.60 (4) of the Extradition Act requires the Public Prosecutor to consider if "there is sufficient evidence in Vanuatu" to justify prosecution, without reference to evidence available in the foreign/requesting country.

Recommendation 40 – Other forms of international cooperation

402. **Vanuatu is non-compliant with R.40.** Vanuatu is a member of the Egmont Group of FIUs and may exchange information with foreign FIUs in accordance with the Egmont Group principles or under the terms of the relevant MOU. Sections 5 and 6 of the AML/CTF Act provide a general legal basis for providing international cooperation, however the process for cooperation is not clearly set out, and there is no evidence that there are clear and secure gateways, mechanisms, or channels in place, or that there are formal procedures for the prioritisation and timely execution of requests, safeguarding of information

received, or timely provision of feedback to counterparts. There is no provision on the exchange of information indirectly with non-counterparts and no evidence that there are clear mechanisms in place for LEAs to exchange information for intelligence or investigative purposes, or for joint investigations.

403. Vanuatu cannot informally provide information to foreign LEAs regarding beneficial ownership of international companies as authorities require a search warrant to obtain this information, hence necessitating a formal MLA. Vanuatu LEAs have not formed joint investigative teams to conduct cooperative investigations.

8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)

(a) Providing and seeking mutual legal assistance

404. Within the SLO headed by the Attorney General (AG), the Solicitor General (SG), together with two senior lawyers, is responsible for processing incoming and outgoing MLA and extradition requests. An internal manual entitled *Requests for MLA pursuant to MACMA* serves as a checklist for dealing with requests. Apart from that, there are no guidelines, directions or prioritisation policies for handling MLA and extradition matters.

405. No priority is given to requests from high-risk countries or requests involving a high-risk offence. The SG deals with requests only in accordance with the deadline set by the requesting country (for instance in relation to trial dates, limitation dates, etc). All information is recorded on a spreadsheet; however there are no data fields which require the recording of specific information in relation to requests. In the absence of a systematic case management system, and with insufficient detail recorded in the spreadsheets, Vanuatu failed to demonstrate that it can process requests without delay.

MLA requests received

406. Since 2010, Vanuatu has received nine MLA requests. Four of the requests related to ML and predicate offences; five related to predicate offences only and none related to TF.

407. With respect to responses to the MLA requests:

- One has been answered and assistance was provided;
- Eight remain outstanding.

408. The one request answered by authorities took five months for its completion. From the information provided, the assessment team's concern that the incoming MLA requests are not handled in a timely manner is well founded.

409. MLA sought relates primarily to search and seizure of materials for investigation and prosecution purposes. Three of the eight unanswered/uncompleted requests relate to ML. No MLA request for TF has been received. None of the MLA requests relate to the freezing and confiscation of tainted or terrorist property for ML/TF. No incoming MLA request has ever been refused.

410. Only limited information was provided by other jurisdictions. One jurisdiction did report that while it recognises that Vanuatu has limited capacity to progress MLA requests, it has been difficult to successfully procure material from Vanuatu that can be used in prosecution as it can take some time to get the material and, therefore, material may be received that is no longer of value as the relevant court dates have passed.

411. The evaluation team noted that no mechanism has been devised to manage and repatriate confiscated assets to a foreign requesting country.

412. The lack of policy guidelines and procedures for managing MLA and extradition requests became apparent when Vanuatu authorities reported that only one MLA request had been withdrawn (a request in relation to a ML/tax fraud case). This conflicted with information received from a requesting jurisdiction that six outgoing requests had been made to Vanuatu, material was received for one of them, *four* were withdrawn for various reasons and one is still ongoing.

MLA requests made

413. Vanuatu has not made any outgoing MLA requests since 2010. No mechanisms are used amongst authorities to select, prioritise, and make requests for assistance. The SG has not been approached by the VPF and/or the PPO to make a MLA request for information for investigation or prosecution purposes. The lack of approach to the SG is due not only to resource constraints, but to the fact that the VPF lacks sufficient knowledge on the use and application of MLA. The agencies agreed that the recent amendment to the definition of 'serious offence' in the POCAA No. 27 of 2014 has seriously hindered the ability of Vanuatu to provide MLA. For instance, Vanuatu cannot assist a foreign jurisdiction to apply for a forfeiture order, which must be based on a conviction of a serious offence. This render Vanuatu's MLA legal framework ineffective.

Extradition

414. Vanuatu's extradition laws have not yet been used (no foreign requests have been received). The system has not, therefore, been tested for effectiveness. However, because the full range of offences within the FATF designated categories are not extraditable, and because there is no case management system in place, it is not likely to be effective if used.

(b) Providing and seeking other forms of international cooperation

415. Vanuatu is a member in regional and international law enforcement bodies and has cooperated informally with foreign LEAs. It is a member of the Egmont Group of FIUs, the Pacific Association of FIUs, the Pacific Transnational Crime Units and the Oceania Customs Organisation.

416. Vanuatu's LEAs however have no clear process for cooperation and no clear and secure gateways, mechanisms, or channels for prioritisation and timely execution of requests arising from, or using, the channels above. There is also no clear process for safeguarding of information received or timely feedback to foreign LEAs. There is no mechanism for LEAs to exchange information or intelligence for joint investigations and there is no provision for the exchange of information indirectly with non-counterparts. Despite the lack of procedures, Vanuatu LEAs have cooperated with foreign LEAs in some investigations with transnational dimensions, however only limited evidence was provided on the details and whether the activity matched, or was consistent with, Vanuatu's risk profile.

417. Despite the lack of procedures, during the on-site meetings Vanuatu LEAs informed the assessment team that they have cooperated with foreign LEAs in some investigations with transnational dimensions. These include Operation Avalon in 2004 (seizure of 750kg of cocaine in yacht believed to have come from Colombia, destined for Australia) and Operation Wickenby. In the latter operation, a significant quantity of documents was seized but could not be transmitted via MLA to Australian authorities due to the requirements of a court order. No details were provided by Vanuatu on the timeliness of the responses.

418. With respect to VFIU and RBV (as AML/CFT supervisors) there is limited evidence of outward cooperation, and some evidence that inward requests for information regarding regulated entities have not always been responded to in an adequate and timely manner. Coordination activities between key agencies

in Vanuatu do not appear to be directed towards maximising the effectiveness of inward and outward information exchanges.

419. With respect to international cooperation involving FIUs, feedback from an APG jurisdiction reported that a response to a request was provided, but it was received approximately six months after the request was made, with a final response seven months after the request. It was noted, however, that the response was useful and was used as a primary source of intelligence.

420. This same jurisdiction reported that four incoming requests had been received from VFIU, however some of the requests related to probity checks rather than ML/TF exchange. The VFIU did not provide feedback in relation to responses to the requests, or on any spontaneous disclosures.

(c) International exchange of basis and beneficial ownership of legal persons/arrangements

421. With regard to information held by the VFSC in relation to international companies, it is only accessible to foreign counterparts through LEAs after obtaining a court order. This is due to the secrecy provisions in s.125 ICA applying to the VFSC. As an international company can act as a beneficial owner of a domestic company, this secrecy provision prevents the VFSC from disclosing such information relating to the domestic company unless served with a relevant court order, which would, if used, impact on the timely exchange of requested information.

422. This was confirmed by the SLO and a jurisdiction that had requested search and seizure of information held on the Company Register for a ML/tax case relating to an international company. In this case a search warrant was required and obtained, however the execution of the search warrant was successfully challenged and the materials were restrained from release. The SLO also confirmed that in 2013, a jurisdiction withdrew their MLA request for search and seizure of company records three months after the request was made with no reason provided.

423. As mentioned above, given these challenges, the feedback from other jurisdictions confirms that it has been difficult to successfully procure material from Vanuatu on beneficial ownership of legal persons/arrangements that can be used in prosecution, as it can take some time to get the material and often the material received may no longer be of value to the prosecution.

424. There is no public registry of beneficial owners or trusts in a Vanuatu. Nor is there any system whereby the authorities can identify the location of such arrangements.

Overall conclusions on Immediate Outcome 2

425. Vanuatu has only answered one incoming MLA, with no outgoing MLA requests made and no extraditions arranged, since 2010. This, coupled with the lack of clear policy guidelines and prioritisation of MLA and extradition, means Vanuatu is unable to demonstrate that it has an effective system which is able to provide timely, constructive MLA and extradition.

426. With respect to cooperation on information sharing, despite the lack of procedures, Vanuatu LEAs demonstrated some capability to provide informal assistance and cooperation with foreign LEAs. However, Vanuatu has not established that it targets resources for international cooperation in relation to its ML and TF risks and, in particular, in relation to customers of its offshore sector and its higher risk countries.

427. Vanuatu has a **low level of effectiveness** for Immediate Outcome 2.

8.4 Recommendations on International Cooperation

428. Given the ML/TF risk profile, Vanuatu needs to prioritise the use of international cooperation, including responding to requests promptly and efficiently and making requests related to market entry controls.

429. Vanuatu needs to develop a more efficient case management system for MLA to ensure timely responses to foreign requests.

430. Vanuatu needs to develop an efficient case management system for extradition to ensure timely responses to foreign requests, plus additional extraditable offences.

431. Vanuatu should remove the secrecy provision under s.125 International Companies Act to enable more effective international cooperation.

432. The SLO should develop a policy and guidelines to prioritise and track requests from high-risk countries and for high-risk ML/TF offences.

433. Vanuatu authorities need to raise awareness across the relevant LEAs and specialist training should be provided to key agencies (VPF, TCU, PPO and SLO) on mechanisms for formal and informal cooperation.

434. A formal interagency coordination mechanism should be established to share information on MLA requests and on domestic ML/TF investigations when the evidence trail goes overseas.

435. Resource constraints in various agencies should be addressed to enable high risk areas for ML/TF to be given priority. This could include re-assigning officers from VPF into TCU and Fraud Unit to increase capacity to perform their functions.

436. Vanuatu's AML/CFT supervisory authorities should develop and implement procedures to co-ordinate with relevant agencies, and provide timely responses, in respect of requests for information from foreign regulatory and AML/CFT supervisory authorities in relation to reporting entities.

TECHNICAL COMPLIANCE ANNEX

1. INTRODUCTION

1. This annex provides detailed analysis concerning the level of technical compliance for Vanuatu with the FATF 40 Recommendations. It does not include descriptive text on the member's situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous mutual evaluation in 2006. This report is available from www.apgml.org[2].

2. NATIONAL AML/CFT POLICIES AND COORDINATION

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. Recommendation 1 is a new FATF Recommendation, added in the 2012 revision. Accordingly, the 2006 MER did not assess Vanuatu's compliance in relation to understanding and mitigating the ML/TF risks the country faces, although it did set out a range of risks relevant to Vanuatu and some risk mitigation measures.

4. *Criterion 1.1* - Vanuatu conducted its first *Money Laundering and Financing of Terrorism National Risk Assessment* (NRA) during 2014, with technical assistance provided by Asian Development Bank (ADB) and New Zealand consultants. A draft of the NRA was circulated to government authorities for comment during December 2014; however the NRA has yet to be considered and adopted by the Vanuatu government. The evaluation team had only limited access to the full draft NRA during on-site. A draft condensed summary was provided to the team that did not include the complete data sets and information on the analytical process.

5. The draft NRA is described as a preliminary overview that provides a foundation for the development of a more adequate assessment of the ML/TF risk over the next few years. The draft NRA acknowledges that it lacks many of the essential criteria for a thorough assessment of ML/TF risk, making reference to the limited data and statistical information available in Vanuatu. The information and statistics that are required will need to be identified and collected in order to develop a more thorough NRA. The draft NRA draws on the "best available data" to identify risks and propose mitigating strategies. This includes data from workshops and interviews, government agencies, financial sector data, public information sources and media reports. The draft condensed summary NRA does not quantify or estimate the size of the criminal economy in Vanuatu (both domestic and foreign proceeds of crime). It attempts to put a range on the extent of ML in Vanuatu at between USD16.6m – USD41.7m, in the first instance, or approximately USD14.2m in the second instance, but these figures are not based on national statistics and associated analysis. The evaluation team was able to confirm there was only limited, or no, consultation with key private sector stakeholders in the preparation of NRA.

6. The draft NRA identifies Vanuatu's ML threats as arising from foreign predicate offences (including foreign tax crimes), illicit cross-border currency, domestic bribery and corruption, fraud (particularly VAT evasion) and drug offences. The high risk sectors are identified as the international sector, including international banks and companies; remittance; trust and company service providers; currency exchange businesses; casinos and interactive gaming businesses. Of less, but still significant risk are lawyers and accountants, real estate and high value asset dealers.

[2] http://www.apgml.org/includes/handlers/get-document.ashx?d=866e80e0-42b2-484a-990b-0d61b3dfb19b

7. While the draft NRA intends to focus on ML and TF risks, the primary focus of the report is on ML and predicate crimes. There is no specific focus on TF risks and vulnerabilities. In addition, while the draft NRA draws reasonable preliminary conclusions on the main ML risks, there is no evidence that the ML/TF risks associated with all types of legal persons created in the country have been assessed, as required under Recommendation 24. Taking materiality into account, these are significant omissions. The draft NRA does not, therefore, fully identify and address the ML/TF risks for Vanuatu.

8. *Criterion 1.2* - Whilst the Vanuatu Financial Intelligence Unit (VFIU) is the authority responsible for coordinating preparation of Vanuatu's NRA, there is no designated authority, or mechanism, charged with coordinating ongoing actions across the government and private sector to assess ML/TF risk. The NRA was developed in conjunction with the Vanuatu Financial Sector Advisory Group (VFSAG), however this body does not have a dedicated AML/CFT mandate.

9. *Criterion 1.3* - The 2014 draft NRA is Vanuatu's first risk assessment exercise. While the draft NRA indicates that the NRA will be reviewed over the coming 12 months and a further NRA will be conducted within the next 2 to 5 years, this has not been endorsed by the government. Vanuatu did not provide any further information on plans to update the NRA or conduct sector assessments.

10. *Criterion 1.4* - It is not clear that the draft NRA has been disseminated to all government stakeholders as the some of the representatives of agencies interviewed by the evaluation team were unaware of its existence. No mechanisms were identified to provide information on the results of the risk assessment to all competent authorities, self-regulatory bodies (SRBs), financial institutions and DNFBPs.

11. *Criterion 1.5* - As the NRA has not been finalised and adopted by the government and Vanuatu has not yet implemented a comprehensive risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of the risks assessed.

12. *Criterion 1.6* - The NRA has not been finalised and adopted by the Vanuatu government. Vanuatu authorities have not exempted or reduced AML/CFT requirements for any of its financial institutions or DNFBPs on the basis of proven low risk.

13. *Criterion 1.7* - The NRA has not been finalised and adopted by the Vanuatu government and the Vanuatu authorities have not, as yet, required reporting entities to take enhanced measures to manage and mitigate the identified risks, or ensure the NRA outcomes are incorporated into their risk assessments. Sections 6 and 8 of the AML/CTF Regulations require reporting entities to conduct enhanced customer due diligence (CDD) measures for categories for customers deemed to be of high ML and TF risk and s.5 of the Regulations specifies what factors a reporting entity should take into account when determining which customers are of a higher risk. These generic requirements, however, pre-date the 2014 NRA and do not, therefore, relate to the "identified" risks.

14. *Criterion 1.8* - The NRA has not been finalised and adopted and the Vanuatu government has not allowed simplified measures for any of the FATF Recommendations based on identified lower risk areas.

15. *Criterion 1.9* - Whilst analysis of R.26 and R.28 indicates that the supervisors generally have adequate powers of inspection, nothing in the AML/CTF Act or Regulations requires that supervision and monitoring be undertaken with regards to identified sector risk. In addition, as the NRA has not yet been adopted, supervisors are not able to ensure reporting entities are implementing their obligations under R1.

16. *Criterion 1.10* - Section 35 of the AML/CTF ACT requires reporting entities to carry out a ML and TF risk assessment and prepare a written report, which is to be provided to the Director of the VFIU in the prescribed form. Section 5 AML/CTF Regulations requires that entities must have appropriate risk-based systems and controls in place. When determining the risk-based systems and controls, entities must understand and have regard to the nature, size and complexity of the business and the type of ML and TF risk it might reasonably face. In identifying the ML and TF risk reporting entities must consider the risk

posed by the following factors: customer types, including any PEPs; types of designated services it provides; the methods by which the services are delivered; and the foreign jurisdictions with which it deals. There is no requirement to understand the risks or keep the risk assessment up to date.

17. *Criterion 1.11* - As noted under *criterion 1.10*, s.35 of the AML/CTF Act requires reporting entities to carry out a ML and TF risk assessment. Section 5 of the AML/CTF Regulations requires entities to have appropriate risk-based systems and controls in place, which must understand and have regard to the reporting entity's customer types, including any PEPs; types of designated services; the methods by which the services are delivered; and the foreign jurisdictions with which it deals. There is no requirement for the policies, controls and procedures to have been approved by senior management, neither is there a requirement to monitor those controls and enhance them is necessary. Section 33(1) of the AML/CTF Act requires reporting entities to establish and maintain an AML and CTF procedure manual and s.33(2) includes the requirement for the manual to contain *inter alia* policies to implement risk-based CDD requirements; to train the entity's officers and employees to recognise and deal with ML and TF. Section 6 requires reporting entities to have an enhanced CDD process in place for customers deemed to be higher ML and TF risk, however the Regulations do not specifically require enhanced due diligence to be performed in all circumstances where the ML/TF risk are higher (for example customers that are normally regarded as low risk utilising high risk products or channels).

18. *Criterion 1.12* - Whilst s.35 of the AML/CTF Act requires reporting entities to identify, assess and understand their ML and TF risks and s.33 of the AML/CTF act requires reporting entities to establish policies processes and procedures to enable them to manage and mitigate the ML and TF risks that have been identified, as Vanuatu has not met the requirements of *criteria* 1.9 – 1.11, there is no indication that Vanuatu is at a stage to permit reporting entities to take simplified measures to manage and mitigate risks.

Weighting and conclusion

19. While it is a beginning, the draft NRA does not fully identify and assess the ML/TF risks for the country. The focus of Vanuatu's 2014 draft NRA is primarily on ML and associated predicate crimes, and it does not cover the risks and vulnerabilities for TF, including NPOs, or the specific risks of ML and TF associated with all forms of legal persons created in the country. The draft NRA has been based on the best available data and while it draws reasonable conclusions with respect to Vanuatu's ML risks, the analysis is not based on national statistics or focused consultation with key private sector entities. These are significant shortcomings. Vanuatu is making some progress in completing the 2014 NRA, however there is still no designated authority or mechanism to coordinate actions to assess risks, nor any identified plan for keeping the risk assessment up to date or for providing the results to competent authorities and other stakeholders. In addition, while some initial steps have been taken Vanuatu has not yet implemented a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of the assessed risks. **Vanuatu is non-compliant with R.1**

Recommendation 2: National cooperation and coordination

20. In the 2006 MER Vanuatu was rated non-compliant with the former R.31. It was found there were no effective mechanisms in place to enable law enforcement and other competent authorities to cooperate and, where appropriate, coordinate domestically with each other concerning the development and implementation of AML/CFT policies and activities. In addition, outside of mechanisms such as the Combined Law Agency Group (CLAG), there was little cooperation or coordination among the competent authorities in terms of implementing legislation.

21. *Criterion 2.1* - Vanuatu has advised that Vanuatu's national AML/CFT policy will be drafted once the draft 2014 NRA has been finalised and adopted by the government.

22. *Criterion 2.2* - Section 5(1) of the AML/CTF Act lists the functions and powers of the VFIU including, under s.5 (1)(l), that the VFIU will *conduct research into money laundering and terrorism financing trends and developments and recommend on detecting and deterring measures against money laundering and terrorism financing activities'*. The legislation does not specify a national AML/CFT policy coordination function for the VFIU or any other agency. Since the establishment of the VFIU in 2000, it has been responsible for briefing relevant Ministers and the Council of Ministers (COM) on strategic AML and CFT outcomes/deficiencies and ensuring AML/CFT policies are developed and approved, but this responsibility has not been formally designated. The Vanuatu Financial Sector Advisory Group (VFSAG) was appointed by the COM as an advisory group in 2005. The VFSAG is chaired by the Director General of the Prime Minister's Office and consists of the following key ministries and institutions: Prime Minister's Office, Governor and Deputy Governor of the Reserve Bank (Secretary), Attorney General, Director General of Finance, Director General of Foreign Affairs, Director of VFIU, Police Commissioner, and the Commissioner of the Vanuatu Financial Services Commission (VFSC). Vanuatu authorities advised that the VFSAG is responsible for AML/CFT coordination, however no TOR or other information was provided to demonstrate a designated AML/CFT coordination role for VFSAG.

23. *Criterion 2.3* - As noted in *criterion 2.2*, the VFIU and VFSAG oversee the development of AML/CFT policies and activities, which are presented to the COM by the Minister of Finance. Legislative proposals are reviewed by the VFSAG and presented to the Departmental Committee of Officials (DCO) by the relevant institution and then to the COM. The DCO is comprised of the 12 Directors General from the 13 government ministries (two ministries share one Director General due to their small size) and the 13 1st Political Advisors to the 13 ministers. The DCO acts as a 'check and balance' to political decisions undertaken by COM. The 13 government ministries are the Prime Minister's Office, Ministry of Finance, Ministry of Commerce, Ministry of Infrastructure, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Health, Ministry of Justice, Ministry of Agriculture, Ministry of Climate Change, Ministry of Lands, Ministry of Sports and Ministry of Education. The DCO is set up by the COM to provide a technical review of policies submitted to COM for its approval. All government policies are required to be reviewed and approved by DCO prior to discussion and approval by the COM.

24. At the operational level, whilst some *ad hoc* cooperation has occurred, the Vanuatu authorities did not provide evidence of specific mechanisms that enable policy makers, VFIU, LEAs, supervisors and other relevant competent authorities to coordinate and cooperate with each other concerning the implementation of AML/CFT policies and activities. Some MOUs exist between VFIU and Vanuatu Police Force (VPF), Department of Customs and Inland Revenue and the Reserve Bank of Vanuatu (RBV) and separate MOUs with VFSC and Immigration Department are under negotiation. Vanuatu confirmed the CLAG arrangements referred to in the 2006 MER are no longer in existence. No other operational cooperation mechanisms or arrangements were detailed.

25. *Criterion 2.4* - Whilst Vanuatu authorities advised that the VFSAG provides the national coordination mechanism to combat the financing of proliferation of weapons of mass destruction, no evidence was provided. No information was provided on operational cooperation with respect to combating the financing of proliferation of weapons of mass destruction, although the VFIU reported that it will be drafting policies to combat the financing of proliferation of weapons in early 2015.

Weighting and conclusion

26. Vanuatu is yet to develop a national AML/CFT policy, or policies, informed by ML/TF risks. There are major shortcomings in national cooperation and national coordination, in particular at the operational level, where no coordination mechanisms exist, and even the previous coordination mechanisms referred to in the 2006 MER are no longer in existence; and in respect of operational cooperation in relation to financing of proliferation issues. **Vanuatu is non-compliant with R.2**.

Recommendation 33 – Statistics

27. Vanuatu was rated partially compliant with former R.32 in the 2006 MER. The evaluation team noted that MLA and VFIU statistics had been provided, but no statistics on other requests for cooperation and information.

28. *Criterion 33.1* - Section 5(1)(p) of the AML/CTF Act empowers the VFIU to compile statistics and records and to disseminate information within Vanuatu. The VFIU can provide some statistics on STRs received and disseminated, ML/TF investigations, prosecutions and convictions, property frozen, seize/confiscated, as well as MLA and other international cooperation requests made and received.

- STRs: In 2014, VFIU received 55 STRs compared to 76 STRs in 2013, 50 STRs in 2012 and 40 STRs in 2011. Of the 55 STRs received in 2014, 34 were submitted by the banking sector, 3 by international banks), 15 by the non-banking sector and 3 by real estate agents. The STRs were assessed whereby 43 were closed and filed for future reference 12 were further analysed and 5 were disseminated to the assisting entities.

- STRs: Of the 76 STRs received in 2013, 57 were submitted by the banking sector including 2 from international banks, 12 by the non-banking sector, 2 by real estate agents, 1 by vehicle dealerships, 2 by law firms. The STRs were assessed whereby 70 were closed and filed for future reference, 6 were further analysed and 4 were disseminated to the assisting entities.

- ML/TF investigations: In 2014 VFIU disseminated 3 ML cases to law enforcement which were subsequently investigated. There have been no prosecutions or convictions in Vanuatu for ML and/or TF.

- Property frozen, seized and confiscated: There has been only one case of property frozen since 2011, no other property has been seized or confiscated between 2006 and 2014 of a variety of matters relevant to AML/CFT.

- International cooperation: Vanuatu is only able to provide limited statistical information related to mutual legal assistance or other international requests for cooperation made and received.

Weighting and conclusion

29. While some statistics are available, Vanuatu does not maintain comprehensive and relevant statistics in accordance with this criterion. This is also referred to in the 2014 draft NRA. **Vanuatu is non-compliant with R.33.**

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 - Money laundering offence

30. Vanuatu was rated partially compliant with former R.1 and R.2 in the 2006 MER. The factors underlying the rating for R.1 were: it was not specified in the Proceeds of Crime Act (POCA) No.30 of 2005 whether property or proceeds included property or proceeds situated outside Vanuatu; Vanuatu had not criminalised all the designated categories of offences; the ML offence did not apply to persons who commit the predicate offence; and it was not specified in the law that the ancillary offences available under the Penal Code were applicable to the ML offence. The factors underlying the PC rating for R.2 were: the law did not permit the intentional element of the offence of ML to be inferred from objective factual circumstances; Vanuatu did not have "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for ML; and given that no ML offences had been prosecuted, it was

difficult to assess the effectiveness of ML legislation. The POCA has been amended twice since the 2006 MER, in 2012 and in January 2015.

31. *Criterion 3.1* - The elements of the offence of money laundering (ML) defined in sub-section 11(3), POCA No.30 of 2005 were mostly consistent with the FATF standards. The offence is criminalised under sub-section 11(2) and the penalty is – for a natural person – a fine of VT10 million (approximately USD100,000) or imprisonment for 10 years or both. For a body corporate the penalty is a fine of VT50 million. Section 12 creates the offence of possession of property suspected of being proceeds of crime. The penalty for this offence is the same as for ML under s.11. The POC (Amendment) Act No.12 of 2012 addressed a number of deficiencies in the previous ML offence in new sub-sections 11(4) and (5) and improved on the definition and scope of "property" by amending the old s.2 (definition provision). Under sub-section 11(4) the ML offence applies to a self-launderer and under sub-section 11(5) a person can be prosecuted for ML as a standalone offence.

32. The ML offence is however inconsistent with the FATF standards following amendment to the definition of 'serious offence' in the POCA (Amendment) Act No.27 of 2014 (POCAA). This amendment came into force on 2 January 2015 and defines serious offence as an offence against a"*(a) law of Vanuatu for which the penalty is a fine not less than VT40,000 or imprisonment for a term of not more than 12 months; or (b) law of Vanuatu or another country that, if the conduct had occurred in Vanuatu, would constitute an offence under Vanuatu law for which the proceeds, property or benefit of that offence is VT3 million or more or its equivalent in foreign currency*". This is a major shortcoming as a ML charge is dependent on dealing(s) with proceeds of a serious offence.

33. *Criterion 3.2* - The POCAA No. 27 of 2014 amended the definition of serious offence to be an offence against a"*(a) law of Vanuatu for which the penalty is a fine not less than VT40,000 or imprisonment for a term of <u>not more than</u> 12 months; or (b) law of Vanuatu or another country that, if the conduct had occurred in Vanuatu, would constitute an offence under Vanuatu law for which the proceeds, property or benefit of that offence is VT3 million or more or its equivalent in foreign currency*" (emphasis added). This is a major shortcoming as the definition of serious offence now excludes a majority of the FATF designated categories of predicate offences. In addition, Vanuatu has still not criminalised tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for ML.

34. *Criterion 3.3* - Vanuatu has adopted a monetary and imprisonment approach to the criminalization of money laundering. However as noted in *criterion 3.2* above, under the new definition of 'serious offence', a majority of the FATF designated categories of predicate offences, and any offences that attract a fine of less than VT40,000 or attract more than 12 months imprisonment, and where the proceeds, property or benefit attributed is less than VT3 million, are not categorised as serious offences and are therefore not predicate offences to ML.

35. *Criterion 3.4* - The ML offence under s.11 of the POCA does not apply to all types of property. A critical element of the ML offence is that the property must be proceeds of crime. 'Proceeds of crime' is defined in s.5 of the POCA as property derived or realised directly or indirectly from a 'serious offence' including (a) property into which any property derived or realised directly from the offence is later successively converted or transformed and (b) income, capital or other economic gains derived or realised from that property since the commission of the offence. A monetary limit or value on property is created indirectly by the definition of serious offence. The ML offence has no application to property or benefit arising from an offence that is less than VT3 million in value. Also, the ML offence does not apply to property that directly or indirectly represent proceeds of most predicate offences. The ML offence does apply to property that directly or indirectly represent proceeds of an offence that attracts a fine of VT40,000 or more or imprisonment for a term of not more than 12 months, and an offence for which the proceeds, property or benefit of that offence is VT3 million or more.

36. *Criterion 3.5* - Sub-section 11(5) of the POCA Amendment Act No. 12 of 2012 provides that nothing in the POCA requires a person to be convicted of an offence that generates the proceeds of crime, before they can be convicted of ML in respect of those proceeds of crime.

37. *Criterion 3.6* - The amended definition of 'serious offence'' under sub-section 2(1)(b) of the POCAA No. 27 of 2014 includes '*an offence against the law of another country that, if the relevant act or omission occurred in Vanuatu, would constitute an offence against Vanuatu law for which the proceeds, property or benefit of that offence is VT3 million or more, or its equivalent in foreign currency.*' There is a major deficiency however, because offences for which the proceeds, property or benefit is less than VT3 million would not be considered a serious offence in Vanuatu and would, therefore, fall outside the ambit of the ML offence.

38. *Criterion 3.7* - Section 11(4) of the POCAA No. 12 of 2012 provides that nothing under the Act prevents a person who commits a predicate offence from being convicted of a ML offence in respect of those proceeds of crime. A self-launderer can therefore be convicted for both the predicate offence and the ML offence.

39. *Criterion 3.8* - The POCA Amendment Act No.27 of 2014 amended s.11 and introduced sub-section 11(6), which provides that knowledge, intent or purpose required as an element of the offence of ML may be inferred from objective factual circumstances. The standard of proof in the POCA for ML and other offences in that law is "on the balance of probabilities" s.85.

40. *Criterion 3.9* - The penalty for ML under sub-section 11(2) of the POCA for a natural person convicted of ML is a fine of VT10 million (approximately USD100,000) or imprisonment for 10 years or both. The penalty is not proportionate or dissuasive, as Vanuatu authorities confirmed that the courts cannot impose any lesser or higher penalty other than that prescribed under s.11. This means the courts have no discretion to impose a lesser fine or term of imprisonment, regardless of the circumstances of individual cases.

41. *Criterion 3.10* - The ML offence provision attaches criminal liability and sanctions to legal persons. It is not clear if criminal liability for ML would preclude parallel civil or administrative proceedings or sanctions against a legal person and/or would prejudice criminal liability of natural persons.

42. *Criterion 3.11* - The POCA does not criminalise ancillary offences to ML, nor do ancillary offences in the Penal Code (attempt, conspiracy, complicity, etc.) apply to the ML offence in the POCA, nor can they given the differing standards of proof. The standard of proof in the Penal Code is "beyond a reasonable doubt" (s.8 (1)). The standard of proof in the POCA for ML is "on the balance of probabilities" (POCA s.85).

Weighting and conclusion

43. The ML provision does not meet the FATF standards. The new definition of 'serious' offence has a critical impact on the ML offence. Despite complying with some of the requirements for an ML offence, the system is not capable of implementation as the ML offence is dependent on proving an engagement in 'proceeds of crime', which is defined in s.5(1) of the POCA as property derived or realised directly or indirectly from a serious offence. In addition, the penalty for both natural and legal persons is not proportionate or dissuasive, and there are no ancillary offences to ML. Vanuatu has not criminalised tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation as predicate offences for ML and has a threshold of VT3 million property value for ML. **Vanuatu is non-compliant with R.3.**

Recommendation 4 - Confiscation and provisional measures

44. Vanuatu was rated partially compliant with former R.3 in the 2006 MER. The factors underlying that rating were: the legislation was not being utilised despite some cases arising under which applications could have been made under the Proceeds of Crime Act 2005 (POCA); a lack of awareness and understanding of the POCA by the administering law enforcement agency; a lack of coordination between the law enforcement agencies in the administration or implementation of the POCA; and as a result of the above there was no effective implementation.

45. *Criterion 4.1* - The POCA enables confiscation, following conviction for a serious offence, of property laundered, proceeds including income and other benefits derived from such proceeds, or instrumentalities used or intended to be used in ML or predicate offences including property of corresponding value. Vanuatu also has measures to enable confiscation of property that is used in, or likely to be used for financing of terrorism, terrorist acts or terrorist organisations. Part 3, Division 2 of the POCA (ss.20 to 27) deals with forfeiture orders and Part 3, Division 3 (ss.28 to 36) deals with pecuniary penalty orders. Division 1 of Part 3 (ss.15 to 19) contains general provisions relating to practice and procedure on application. An application for a forfeiture order or a pecuniary penalty order can be made to the court by the AG under s.15 of the POCA following 'conviction for a serious offence'. The court can make a forfeiture order under s.20 of the POCA and a pecuniary penalty order under s.28. A major shortcoming is created by the new definition of 'serious offence' which has severely restricted the types of predicate offences for ML and similarly limits the offences for confiscation.

46. Section 5 of the POCA defines 'proceeds of crime' as "*property derived directly or indirectly from a serious offence including (a) property into which any property derived or realised directly from the offence is later successively converted or transformed, and (b) income, capital or other economic gains derived from that property since the offence"*. Where there is intermingling of original proceeds with other property from which the original proceeds cannot be readily separated, that proportion of the whole represented by the original proceeds is taken to be proceeds of crime. 'Benefit' is defined in s.2 of the POCA as "*the receipt at any time of any payment or other reward in connection with, or any pecuniary advantage derived from, the commission of the offence"*. 'Tainted property', in relation to a serious offence, is defined in s.2 of POCA as "*property intended for use in, or used in or in connection with, the commission of the offence, or proceeds of crime"*. 'Terrorist property' is defined in s.2 of the Counter Terrorism and Transnational Organised Crime Act (CTTOCA) as "*property that has been, is being or is likely to be used to commit a terrorist act, or property that has been, is being or is likely to be used by a terrorist group, or property owned or controlled, or derived or generated from a property owned or controlled by or on behalf of a specified entity*". Property laundered and tainted property can be forfeited under s.20 of POCA following conviction. Terrorist property can be seized along with tainted property under s.38 of the POCA. Property including terrorist property can also be seized under s.45 of the POCA in relation to foreign offences or terrorist property. The powers to seize terrorist property under ss.38 and 45 of the POCA complement the powers under Part 3 of the CTTOCA which deals with management and forfeiture of terrorist property.

47. *Criterion 4.2* – Part 4 of the POCA provides measures to facilitate investigations and preserve tainted and terrorist property. Section 37 of the POCA gives an authorised police officer the authority to apply to the Court for a warrant to search land or premises for tainted property or terrorist property and to seize the tainted or terrorist property. Section 38 authorises the authorised police officer to seize any other thing on the basis that (a) the officer believes on reasonable grounds that the other thing is tainted property in relation to a serious offence or to be terrorist property or (b) to afford evidence about the commission of a serious offence or existence of terrorist property in Vanuatu, or (c) it is necessary to seize the property or thing to prevent it being lost, concealed or destroyed or used to commit, continue or repeat the offence or another offence. The AG may apply *ex parte* to the court for a direction to take custody and control of terrorist property (s.12 CTTOCA) and a notice of the direction must be served on the person who owns or controls the property including any person that may have any interest in the property. A person who owns

or controls the property or the AG can apply to vary or revoke the direction (s.14) or can appeal to the High Court against a decision made by the court under Part 2. Sections 28 to 36 POCA deal with pecuniary penalty orders, including rules for determining benefit and assessing value of property subject to confiscation. Sections 50 to 60 deal with restraining orders and ss.61 to 71 deal with interim restraining orders following a mutual assistance request to preserve property that is subject to confiscation. Sections 51(2)(a) and 63(2) provide the legal basis for the relevant application to be made ex parte. Section 21A provides the legal basis to void transfers done after seizure of the property or service of a restraining order. To avoid the court voiding a conveyance or transfer, the court must be satisfied that the transfer was made for valuable consideration and done in good faith. Regarding terrorist property, any conveyance or transfer of property made after seizure or making of a restraining order can be voided under s.22 CTTOCA unless the transfer was made for valuable consideration to a person acting in good faith and without notice. Section 23 provides protection of third parties.

48. *Criterion 4.3* – Section 22 of the POCA provides for the protection of bona fide third parties. Third parties must demonstrate that they were not involved in committing the offence in relation to which forfeiture of the property is sought or a forfeiture order against the property was made, and if they acquired the interest in the property when or after the offence was committed, they acquired the interest for sufficient consideration and without knowing, and in circumstances such as not to arouse a reasonable suspicion that the property was, at the time of its acquisition, tainted property. Section 20(4)(a) of the POCA states that in considering whether to make a forfeiture order against property, the Court may take into account any right or interest of a third party in the property. Any property seized under s.38 must be given to the AG (s.38 (2)). Seized property can generally be returned under s.39 upon application to a court by a person claiming interest in it. The person must satisfy the court that they are entitled to possession of the property, it is not tainted or terrorist property, and, in the case of tainted property, the person in relation to whose conviction, charging or proposed charging has no interest in the property seized. Property seized can be returned if no information is laid within 48 hours or no forfeiture order made over terrorist property within 14 days (s.40). Seized property can be returned if any proceedings for an offence because of which the property is tainted have been completed and the AG does not apply for a forfeiture order under s.20 within 14 days of completion of the proceeding (s.41). Regarding terrorist property, any conveyance or transfer of property made after seizure or making of a restraining order can be voided under section 22 CTTOCA unless the transfer was made for valuable consideration to a person acting in good faith and without notice. Section 23 provides protection of third parties**.**

49. *Criterion 4.4* - Vanuatu does not have any mechanisms for managing and disposing of restrained, seized or confiscated property.

Weighting and conclusion

50. Vanuatu has adequate powers in place to trace, seize and confiscate terrorist property and the definition of terrorist property meets international standards. The POCA ss.34 and 35 and CTTOCA (Part 3) contain adequate provisions for this and the deficiency in definition of 'serious offence' does not affect tracing, seizure, management and confiscation of terrorist property. Confiscation under POCA is however dependent on conviction for a serious offence. Confiscation of proceeds and instrumentalities of crime would have been largely compliant but for the POCAA No.27 of 2014 which amended the definition of 'serious offence'. The amendment came into force on 2 January 2015. The significant shortcoming in the definition of serious offence means competent authorities are unable to use powers under Parts 4, 5A and 5B of the POCA to trace, preserve and confiscate proceeds of most predicate offences and the ML offence. Authorities are also unable to take confiscation action relating to tax offences, illicit arms trafficking, piracy of products, insider trading and market manipulation due to non-criminalisation of these offences. Although Vanuatu is largely compliant in relation to seizure and confiscation of terrorist property, there is a major deficiency relating to confiscation of proceeds and instrumentalities of crime. **Vanuatu is partially compliant with R.4**

Operational and Law Enforcement

Recommendation 29 - Financial intelligence units

51. In the 2006 MER, Vanuatu was rated partially compliant with former R.26. The factors underlying that rating were: guidelines issued to financial institutions were out of date; no guidelines issued to or examinations conducted of non-traditional financial businesses; VFIU had not issued public reports on its activities and ML/FT typologies and trends; substantial weaknesses in the administrative structure responsible for overseeing the VFIU; and no evidence that the work of the VFIU had resulted in the successful investigation, prosecution or conviction for money laundering or terrorist financing activities.

52. *Criterion 29.1* - The Vanuatu FIU (VFIU) operates under the State Law Office, headed by the Attorney General. As an administrative FIU, VFIU is responsible for the receipt, analysis and dissemination of STRs and is the main AML regulator in Vanuatu. In its intelligence role, the VFIU plays a central role in the collection and development of financial intelligence, providing analytical support to the financial investigations of law enforcement agencies and providing financial intelligence to overseas counterparts (Part 2, s.4 AML/CTF Act refers).

53. *Criterion 29.2* - The VFIU serves as the central agency for the receipt of STRs and other relevant information. Reporting entities have an obligation to file reports related to suspicious transactions, suspicious activity, large cash transactions, international currency transfers, cash courier reports and border currency declarations to the VFIU. (Part 2, s.5 and Part 6, ss.20 to 30 AML/CTF Act; ss.10, 12 to 13, AML/CTF Regulation No.122 refer).

54. *Criterion 29.3* - The VFIU is empowered, through the AML/CTF Act, to seek or receive additional information related to any reported financial transaction filed by any financial institution. The VFIU can obtain additional information from reporting entities, public or private, as provided for in Part 2, s.5 (c), (e), and (g) of AML/CTF Act. Although the VFIU does not have direct access to law enforcement databases, it can collect information from law enforcement agencies on request. Part 10, s.45 of AML/CTF Act provides the Director of the FIU with the power to collect necessary information from any person, for the purpose of its analysis process or performing its functions.

55. *Criterion 29.4 - Sub-criterion 29.4(a)* - Part 2, s.5 (1)(l) of the AML/CTF Act provides the legal basis for VFIU to conduct research into ML and TF trends and developments and recommend on detecting and deterring measures against ML and TF activities in order to conduct operational and strategic analysis of reports and information received. Part 2 s. 5(1)(b), (c), (d), (e), and (g) together, empower the FIU to conduct operational analysis as it relates to specific targets, transactions, and offences. Sub-section (b) refers specifically to the FIU's power to "analyse … any report or information referred to under this Act," which enables the FIU to conduct analysis regarding any report filed under the Act. Sub-section (d) also covers the FIU's ability to "disclose information derived from any report," which also refers to analysis conducted by the FIU under, for example, sub-section (b). The sub-sections listed at (d) also refer to specific targets and offences, not larger trends and patterns. Additionally, sub-section (e) discusses the FIU's power to obtain information from a variety of sources, including government and commercial databases, which seems to be referring to the compiling of information from different sources to conduct analysis. Finally, sub-section (g) refers to the FIU's power to request information in order to perform "analysis or assessment mentioned in paragraph (b)."

56. *Sub-criterion 29.4(b)* - Part 2, Section 5(1)(l) of the AML/CTF Act provides the power for the VFIU *"to conduct research into money laundering and terrorism financing trends and developments and recommend on detecting and deterring measures against money laundering and terrorism financing activities"*. Whilst the VFIU's operational capability is undermined by a lack of resources, it does carry out operational analysis and disseminates financial intelligence reports based on STRs and other related

financial information received from reporting entities. The VFIU does not, however, conduct strategic analysis as required by this criterion. The VFIU did cite an instance, in 2011, where information available through analysis of STRs, CTRs, IFTRs and BCRs and information submitted to it by agencies (overseas and domestic LEAs), was used to identify a possible ML channel using the remittance/exchange sector. In response, the VFIU created and issued a declaration requirement (CCR) for cash couriered overseas by the remittance/exchange sector and proposed a legislative amendment for the registration of money remitters/exchangers).

57. *Criterion 29.5* - The VFIU is authorized via s.5 (d) and s.6 of the AML/CTF Act to share spontaneously and upon request, information and the results of its analyses, to an assisting entity. In particular, s.6 provides for the agreement and arrangement which the FIU may undertake to share information. The main channel for dissemination of information from the FIU to domestic law enforcement agencies (LEAs) is either by hand-delivery directly to the recipient or via e-mail. Information disseminated via e-mail transmission is encrypted and the password is passed on to the recipient via telephone.

58. *Criterion 29.6* - The VFIU Standard Operating Procedures Manual is currently under review and in the process of being updated. In the interim the VFIU has set out security procedures in a series of written Standard Operating Procedures (SOP) that include provisions such as password protection for computerized files, a clear desk policy, access to the VFIU facility by visitors, and removal of data from VFIU premises. Information held in computer databases is secured through the use of a password-enabled log-in process. Paper files maintained by the VFIU are kept in locked cabinets accessible only by VFIU staff. All VFIU staff are subject to police clearance during the recruitment phase and are required to sign an official secrecy declaration with the Attorney General. VFIU staff employment contracts contain provisions of secrecy and information confidentiality which if breached would result in instant termination. The building housing VFIU offices is within a government compound housing the offices of the Prime Minister, the State Law Office and other government components. Doors to the VFIU offices are locked at the close of business.

59. *Criterion 29.7 - Sub-criterion 29.7(a)* – The VFIU is under the State Law Office, but acts with operational independence as per Part 2 s.7 (2)(3) of the AML/CTF Act. The VFIU Director is authorized to perform the functions and exercise the powers of the Unit as stated in the AML/CTF Act, as well as to authorize a senior officer to carry out any functions or powers of the Director under the AML/CTF Act. *Sub-criterion 29.7(b)* - The VFIU is unable to independently enter an agreement or arrangement with an assisting entity regarding the exchange of information without the written approval of the Prime Minister, under Part 2, s.6 (1) of the AML/CTF Act. Absent an agreement, however, s.6 (4) allows the VFIU Director to exchange information with an assisting entity whose functions and duties are similar to those of the Unit. *Sub-criterion 29.7(c)* – As noted above, the VFIU is under the State Law Office, but has legally established core functions under Part 2 s.5 of the AML/CTF Act. The VFIU SOP manual sets out the VFIU's procedures for receiving, assessing, analysing and disseminating intelligence to law enforcement agencies. The SOP further sets guidelines regarding the incoming/outgoing assistance provided to, and received from, domestic authorities and foreign counterparts. *Sub-criterion 29.7(d)* - VFIU is responsible for their operational budget and has correspondence procedures/processes independent of the State Law Office. However, under Part 2, s.6 (1) of the AML/CTF Act, the VFIU is unable to independently enter an agreement or arrangement with an assisting entity regarding the exchange of information without the written approval of the Prime Minister.

60. *Criterion 29.8* - Vanuatu FIU has been a member of the Egmont Group of FIUs since 2002.

Weighting and conclusion

61. Vanuatu has adequate legal provisions governing the power, functions and operations of the financial intelligence unit, however shortcomings remain, namely the FIU's lack of strategic analysis and

ability to operate independently of the State Law Office as noted in c*riterion* 29 (b) and (d). **Vanuatu is largely compliant with R.29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

62. Vanuatu was rated non-compliant with former R.27. The factors underlying that rating were: the authority to postpone arrest, conduct controlled deliveries, and use other specialised techniques in ML/TF investigations was limited to legislation addressing terrorist financing only; and there was a lack of awareness by law enforcement and prosecution authorities of the value or authority to use specialised investigation techniques in TF investigations.

63. *Criterion 30.1* - The Vanuatu Police Force (VPF) is the designated authority for investigating money laundering offences, associated predicate offences and terrorist financing offences (s.4 Police Act). The VPF has specialised units mandated to undertake relevant criminal investigations, these are: the Fraud Unit (fraud and financial crimes), Drug Unit (drug-related offences, drug smuggling), Criminal Investigation Unit (offences by unknown suspects e.g. theft, trespass), Uniform Investigation Unit (offences by known suspects e.g. assault) and Transnational Crime Unit (transnational offences).

64. *Criterion 30.2* - The VPF is authorized to conduct financial investigations related to its criminal investigations, both in parallel and simultaneously, under the supervision of the Judicial Authority and the Prosecutor. It can also refer cases to other agencies to follow up with such investigations, where appropriate, regardless of where the predicate offence occurred. The VPF and Department of Customs and Inland Revenue have signed a MOU with the VFIU. As provided for in the MOUs, VFIU is able to conduct parallel financial investigations with either of these law enforcement agencies and to share information on those investigations. Vanuatu Customs Officers may request the assistance of a police officer in the performance of a function or the exercise of a power of a customs officer (s.7 Customs Act No. 7 of 2013).

65. *Criterion 30.3* - The VPF is the designated authority responsible to identify, trace and initiate freezing and seizure of property (s.4 Police Act).

66. *Criterion 30.4* - In Vanuatu, financial investigations are carried out by the VPF. The VPF cooperates with authorities that have the responsibility to pursue financial investigations of predicate offenses. This is especially true of agencies that are legally empowered to source information from financial institutions. Other relevant authorities include the Ombudsman's Office, the Office of Auditor General and Department of Finance and Treasury-Internal Audit Section. However, most of these authorities only have the mandate to conduct investigations and report the results of their investigations to their respective management heads that have discretion to pursue formal criminal investigation or prosecution. Further there are other agencies which deal with records and registries that law enforcement seek assistance from on predicate offences ML/TF offences.

67. *Criterion 30.5* - The VPF may cooperate with other agencies to carry out investigations on corruption offences, and may work with other agencies to identify, trace and initiate freezing and seizing of assets.

Weighting and conclusion

68. The legal requirements regarding the responsibilities of law enforcement and investigative authorities meet the criteria for R.30. **Vanuatu is compliant with R.30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

69. Vanuatu was rated partially compliant with former R.28. The factors underlying that rating included the lack of effective implementation by the authorities to compel the production of records, conduct searches and make seizures in money laundering and terrorist financing investigations.

70. *Criterion 31.1* - The VPF is empowered either by the Police Act, Part 4 s.35 (3), or by a judicial order to obtain access to all necessary documents and information for use in investigations and prosecutions. Competent law enforcement investigators who are responsible for investigating predicate offences, money laundering and terrorist financing, have powers to obtain records held by financial institutions, can conduct searches on a person or premises, obtain witness statements and can seize evidence either during a search or upon arrest of a suspect. The powers of investigators are provided under ss.4 to 24 of the Criminal Procedure Code. Associate agencies can be used to source information and some have the legislative capacity to seize financial records, search a person and premises and obtain evidence if needed quickly.

71. *Criterion 31.2 - Sub-criterion 31.2(a)* - Vanuatu does not have legislation that permits undercover operations if there is a predicate offence, money laundering or terrorist financing act identified. *Sub-criterion 31.2(b)* - Vanuatu does not have legislation that permits investigators to intercept communications for the investigation of money laundering, associated predicate offences and terrorist financing. *Sub-criterion 31.2(c)* - Vanuatu does not have legislation that permits access to computer systems for the investigation of money laundering, associated predicate offences and terrorist financing. *Sub-criterion 31.2(d)* - Vanuatu's competent authorities do not have the ability to conduct investigations utilizing the range of investigative techniques. Section 46 of the *Counter Terrorism and Transnational Organized Crime Act* includes a provision that supports controlled deliveries to aid investigations, however the provision applies only to offences set out in that Act and does not apply to predicate offences for money laundering or money laundering offences.

72. *Criterion 31.3 - Sub-criterion 31.3(a)* - Under s.45 of the AML/CTF Act, the Director of the VFIU may issue notice to reporting entities (banks, trust and company service providers, accounting firms, law firms, etc.), the Vanuatu Financial Service Commission and any other holder of such information to give or produce this information or records with a period determined by the Director. The VFIU will require a response within 5 working days. The response period may be shorter depending on the circumstances surrounding the case. *Sub-criterion 31.3(b)* - Section 5(1) (j) of AML/CTF Act provides a mechanism to the Director of the VFIU to conduct checks on any person if requested to do so by the Investment Promotion Authority, Ministry, Department or agency of the Government. The FIU conducts these checks via s.45 of the AML/CTF Act and strictly request the information holder not to disclose to the person that FIU is conducting such checks on the subject.

73. *Criterion 31.4* - Section 5(1) (d) of the AML/CTF Act requires the Director to disclose information derived from any report or information provided to the Director to an assisting entity if the Director has reasonable grounds to suspect that the report or information is relevant to: (i) the detection, investigation or prosecution of a person for a ML/TF offence or another serious offence; (ii) the commission of ML offence, a TF offence or another serious offence; (iii) an act preparatory to a TF offence; or (iv) the enforcement of the AML/CTF Act, the proceeds of crime act or any other Act prescribed. The VPF's TCU and the VFIU have signed an MOU, enabling them to share information relating to predicate offences and ML/TF.

Weighting and conclusion

74. Vanuatu does not have the ability to conduct investigations utilizing a wide range of investigative techniques. The provision that supports controlled deliveries to aid investigations applies only to offences

set out in the CTTOCA and does not apply to predicate offences for money laundering or money laundering offences. **Vanuatu is partially compliant with R.31.**

Recommendation 32 – Cash Couriers

75. Vanuatu was rated non-compliant with former SR.IX in the 2006 MER. The factors underlying that rating were that Customs was unaware of its responsibilities under the governing legislation; there was no policy for the implementation of cross-border currency reporting legislation; no mechanism to notify travellers of cash reporting requirements; no reporting mechanism; no system for tracking cross-border currency movements; and administrative measures required by law to implement cross-border currency reporting legislation, such as the delegation of "authorised officers", had not been undertaken.

76. *Criterion 32.1* - Vanuatu has implemented a declaration system for incoming and outgoing cross-border transportations of currency and bearer negotiable instruments. Declarations are made by travelers coming into and out of Vanuatu. The Currency Declaration Act No. 7 of 2009 provides the legal basis for the border currency declaration system. Under s.30 of the AML/CTF Act, authorized officers under the Currency Declaration Act No.7 of 2009 must send all declarations of physical currency and bearer negotiable instruments entering or departing Vanuatu to the Director of the VFIU.

77. *Criterion 32.2* - Vanuatu has a written declaration system for all travellers making a physical cross-border transportation of currency or negotiable bearer instruments amounting to VT1,000,000 or more (approx. USD10,000) or “equivalent in foreign currency” which must be declared to Customs upon arrival or departure (s.2 (1) (2) of the Currency Act and s.28 of the Customs Act refer).

78. *Criterion 32.3* - Vanuatu has a requirement that all information given to Customs regarding any physical cross-border transportation of currency or negotiable bearer instruments must be completed, true and correct as required (s.28 Customs Act No.7, s. 2 Currency Declaration Act No. 7 of 2009).

79. *Criterion 32.4* - Vanuatu Customs has the power to request and obtain further information from the carrier with regard to the origin of the currency or BNIs and their intended use whenever it is required (s.151 Customs Act No.7).

80. *Criterion 32.5* - Under s.102 of Customs Act No. 7, it is a requirement that all information collected for all travellers making a physical cross-border transportation of currency or negotiable bearer instrument must be true, completed and correct on arrival and departure. Failure to provide correct and complete information to Customs can to lead to penalties including confiscation of goods, fines, prosecution and imprisonment. Section 2 (3) of the Currency Declaration Act No. 7 of 2009 provides for a fine (on conviction) not exceeding VT5 million (approx. USD50,000) or forfeiture of the currency.

81. *Criterion 32.6* - As required under the Customs Act and Currency Act, any traveller who is carrying cash or negotiable bearer instruments with a combined value of more than VT1,000,000 (USD10,000) or the equivalent amount in foreign currency must declare these upon arrival or departure. The passenger is required according to the law to complete a border currency report (BCR) to Customs which will later be provided to the VFIU for profiling and targeting purposes. Section 30 (1) (a) (b) of the AML/CTF Act notes the obligation of authorized officers prescribed under the Currency Declaration Act No.7 of 2009 to send a report to the Director of the VFIU regarding all physical currency and bearer negotiable instruments entering or departing Vanuatu.

82. *Criterion 32.7* - There is no overarching operational coordination among domestic institutions; and Vanuatu did not provide any information to demonstrate adequate coordination among Customs, Immigration and other related authorities on issues related to the implementation of R.32.

83. *Criterion 32.8* - Section 127 of the Customs Act No.7 gives Customs the power to stop and restrain currency or bearer negotiable instruments for further verification or investigation if the officer believes that the currency or bearer negotiable instrument is suspicious and may lead to ML/TF, or if he/she believes that information about the currency or BNI provided to Customs is false or misleading.

84. *Criterion 32.9* - Customs Act No.7 2013 s.9 (1) (b) authorizes the disclosure of information to any government department, agency, foreign government, any regional or international organization.

85. *Criterion 32.10* - Customs Act No.7 s.164 provides safeguards to ensure proper use of information collected through the declaration systems domestically; while Customs Act No.7 of 2013 s.9(2) provides safeguards internationally.

86. *Criterion 32.11* - Under Section 5 (1) (a) (b) (c) of the Currency Declaration Act of 2009, an authorized officer may seize currency if they have reasonable grounds for suspecting that the currency is, in whole or in part, currency related to unlawful conduct under the criminal law of Vanuatu or another country or territory, is intended for use by a person in unlawful conduct; or undeclared currency which is intended for use in unlawful conduct. Under s.6 (1) currency seized under s.5 may not be detained for more than 72 hours, however the Court may order that the currency be detained for a period of not more than 3 months if it is satisfied that the currency is related to unlawful activity and further investigation is needed under s.6 (3) (a) (b) (c). Section 6 (4) states that the currency can be further detained for a period up to two years, if any of the conditions under sub-section (3) are met. Section 9 (2) (a) (b) gives the Court power to order the forfeiture of the currency or any part of it, if it is satisfied that the currency related to unlawful conduct, is intended for use by a person in unlawful conduct.

Weighting and conclusion

87. Vanuatu has made significant progress with respect to cash couriers since their last mutual evaluation. There is not, however, a central coordinating mechanism or any overarching operational coordination among domestic institutions. Inadequate coordination among Customs, Immigration and other related authorities remains an obstacle to full compliance on issues related to the implementation of Recommendation 32. **Vanuatu is largely compliant with R.32**.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Recommendation 5 - Terrorist financing offence

88. Vanuatu was rated partially compliant with former SR.II in the 2006 MER. The factors underlying that rating were: although the various Acts and Regulations covered the majority of requirements to criminalise terrorist financing, the legislation was piecemeal which led to duplication, inconsistencies, statutory interpretation issues, and a lack of clarity as to its practical application; a lack of familiarity among Vanuatu Government agencies with the CTF legislation or who administers the legislation; no ancillary offences to the TF offence or other counter-terrorism offences under the Counter Terrorism and Transnational Organised Crime Act (CTTOCA), no "effective, proportionate and dissuasive" civil or administrative sanctions against legal persons for TF; and given that no TF or other terrorism offences had been prosecuted or investigated, it was difficult to assess the effectiveness of the law. Vanuatu amended the CTTOCA in 2012 and 2014.

89. *Criterion 5.1* - Section 6 of the Counter Terrorism and Transnational Organised Crime (Amendment) Act CTTOCAA No. 39 of 2014 criminalizes the direct, or indirect, wilful provision or collection of property intending, or knowing that the property would be used in full or in part to carry out a terrorist act or benefit any person or terrorist group that they know are involved in carrying out one or more terrorist acts. A 'terrorist act' is defined in s.3 of CTTOCAA. It, *inter alia*, covers an act or omission

that is in contravention of a counter terrorism convention under schedule 1. This is consistent with Article 2 of the International Convention on the Financing of Terrorism.

90. *Criterion 5.2* - Section 6 of the CTTOCAA states '(1) a person must not directly, or indirectly, provide or collect property intending or knowing that they will be used, in full or in part, in order to (a) carry out a terrorist act; or (b) benefit any person or terrorist group that they know are involved in carrying out one or more terrorist acts.' Section 6 (2A) of the CTTOCAA No. 39 of 2014 provides that the property does not have to actually be used, in full or in part, to carry out a terrorist act, however, the offence is linked with a requirement in sub-section (b) that the person providing the funds knows that they will be used by a person/group to carry out one or more terrorist acts.

91. *Criterion 5.3* - Section 6 of the CTTOCAA criminalises the wilful provision or collection, directly or indirectly, of *any property*, intending or knowing that it will be used, in full or in part, to carry out a terrorist act, or benefit an individual or a terrorist group knowing they are involved in carrying out one or more terrorist acts. It extends to any funds whether from a legitimate or an illegitimate source.

92. *Criterion 5.4* - Section 6 of the CTTOCAA generally covers the usage of the funds, whether they will be used in full or in part to carry out a terrorist act, or will benefit an individual or a terrorist group that they know will carry out one or more terrorist acts. The property financing of a terrorist act does not require that the act actually be carried out.

93. *Criterion 5.5* - Section 6(2) of the CTTOCAA provides that knowledge, intent or purpose required as an element of the offence may be inferred from objective factual circumstances.

94. *Criterion 5.6* - Section 6(3) of the CTTOCAA No. 2012 increases the *maximum* penalty for the offence of terrorist financing to a term of imprisonment of not more than 25 years or a fine of not more than VT125 million (approx. USD1.25 million), or both. However, this sanction, though it is applicable to natural persons, may not be regarded as dissuasive and/or proportionate as the penalty is either imprisonment or a fine or both. The section does not require both imprisonment and a fine. Judicial discretion could allow a fine only and in that case the penalty would not be sufficiently dissuasive.

95. *Criterion 5.7* - The criminal liability and sanctions in the CTTOCAA are applicable to legal persons. Section 51 of the CTTOCAA No. 39 of 2014 covers the liability of a company or other legal persona and arrangements and provides the application of the Act to a company or other legal persons or arrangements in the same way as for an individual; and a company may be found guilty of any offence set out in the Act. 'Person' is defined in the Schedule of the Interpretation Act (No.9) 1981 to include 'any statutory body, company, or association or body of persons corporate or non-corporate.'

96. *Criterion 5.8* - By virtue of s.1A of the CTTOCAA, the inchoate and ancillary offences to commit an offence covered by ss.30 to 35 of the Penal Code [Cap. 135] are applicable to terrorist financing offences.

97. *Criterion 5.9* - As noted above in the analysis of R.3, the definition of 'serious offences' was amended by POCAA No. 27 of 2014, and covers only offences with imprisonment of less than 12 months. TF, which carries a maximum sentence of 25 years' imprisonment, is not a serious offence. TF is therefore not a predicate offence for ML.

98. *Criterion 5.10* - Sections 3, 6, and 48 of the CTTOCAA are broad enough to capture offences committed outside Vanuatu.

Weighting and conclusion

99. Vanuatu has criminalised TF on the basis of the Terrorist Financing Convention. The TF offence extends to any person who, directly or indirectly, wilfully provides or collects any property, with the

intention or knowledge that they will be used, in full or in part, in order to (a) carry out a terrorist act; or (b) benefit any person or terrorist group that they know are involved in carrying out one or more terrorist acts. Section 6(2A) of the CTTOCAA provides that the property does not have to actually be used, in full or in part, to carry out a terrorist act, however the offence should not require the property to be linked with a specific terrorist act. In addition, the amendment to the definition of 'serious offence' by POCAA No. 27 of 2014, which means TF is no longer designated as a ML predicate offence, is a significant shortcoming. **Vanuatu is partially compliant with R.5.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

100. Vanuatu was rated partially compliant with former SR.III. The factors underlying that rating were: given that Vanuatu had not frozen any terrorist funds under any of the legislation available, the effectiveness of its procedures could not be assessed including whether it had effective systems in place for communicating actions taken under the freezing mechanisms to the financial sector and whether it had effective procedures for considering de-listing requests and unfreezing funds or assets of de-listed persons; there was a lack of awareness of the CFT legislation among relevant Government agencies; a lack of coordination and communication between relevant Government agencies in terms of identifying terrorist or specified entities as designated in the UNSCRs and distributing such information; and there were no regulations under the CTTOCA designating terrorists or specified entities.

Identifying and designating

101. *Criterion 6.1* - Section 4 of the CTTOCA empowers the Minister of Justice, on the advice of the AG, to proscribe specified entities or persons and s.4 (2) is the deeming provision to give effect to the designations made by the UNSC under the related UNSCRs. Section 4B (2) of the CTTOCA provides that if a person or group has been designated by the related UNSCRs, the basis for such designation is not a matter to be reviewed by the Court. *Sub-criterion 6.1(a)* - No information was provided that identifies the competent authority having responsibility for proposing persons or entities to 1267/1989 and 1988 Committees for designation. During the on-site visit Vanuatu authorities indicated that this would be the Ministry of Foreign Affairs, with information provided by law enforcement and other authorities, however no evidence was provided to support this. Vanuatu further advised that amendments are being proposed to capture 'targeted financial sanctions' in the CTTOCA. The Attorney General will be the 'competent authority' and will recommend persons or entities to the Minster of Justice for proscription. The CTTOCA is structured so that proscription by the Minister is on the recommendation of the Attorney General. *Sub-criterion 6.1(b)* - Vanuatu does not have a mechanism based on the designation criteria set out in the relevant UNSCRs, for identifying targets for designation. *Sub-criterion 6.1(c)* - There is no provision covering the basis for making a proposal for designation by UNSC Committees. No indication of standard of proof is provided. *Sub-criterion 6.1(d)* - There is nothing that would prevent Vanuatu from following the procedures and standard forms for listing, as adopted by the related UNSC Committees (the 1267/1989 Committee or 1988 Committee). *Sub-criterion 6.1(e)* - Vanuatu would be able to provide relevant information on the proposed names, the statement of case details and basis for the listing to be disseminated.

102. *Criterion 6.2* - *Sub-criterion 6.2(a)* - Section 4(2) of the CTTOCA is the deeming provision to give effect to UNSCR 1373. On the advice of the AG, the Minister of Justice is empowered to designate specified entities or persons by making a regulation. *Sub-criterion 6.2(b)* - The Justice Minister may proscribe a specified entity on the basis that the person or group "(a) has threatened or committed or attempts to commit or participate in committing or facilitating the commission of a terrorist act; or (b) is acting or has knowingly acted on behalf of or at the direction of or in association with a person or group referred to in (a)". *Sub-criterion 6.2(c)* - There is no indication in law, or in any other information provided by Vanuatu, of the procedure, mechanism and standard required for a designation to be made by the Minister upon request and, therefore, whether the designation would be made promptly. *Sub-criterion 6.2(d)* - There is no provision on the evidentiary standard that the Minister would have to rely on in making

UNSCR 1373-related designations. *Sub-criterion 6.2(e)* - There is no provision which sets out the mechanism and procedures for information to be provided to another country in order to give effect to actions initiated under the freezing mechanism.

103. *Criterion 6.3* - Section 4(1) of the CTTOCA stipulates that the Minister has the legal authority, and may, on the advice of the AG, proscribe specified entities or persons. Section 4(2) is the deeming provision to give effect to the UNSCRs. However, there is no provision which sets out the procedures or mechanism to (a) collect or solicit information to support or justify the designation; and (b) to operate *ex parte* against such identified persons or those whose designation is being considered.

Freezing

104. *Criterion 6.4* - A person or group that has been designated by the UNSC is deemed to have been prescribed by the Minister as a 'specified entity'. The Minister may, by order, issue directions to take custody or control of terrorist property, which may build in a significant delay. At the time of assessment, no freeze orders had been issued by the Minister. The Minister does not have the power to freeze terrorist property that belongs to, or is meant for the benefit of a non-prescribed terrorist entity or person. Under s.51 of the POCA, before making a restraint order a 14-day written notice has to be given to a person who may have an interest in the terrorist property to make representation. It should also be noted that as a result of the amended definition of 'serious offence' in POCAA No. 39 of 2014, TF is not a 'serious offence' and a restraint order cannot be made by the Court against property that has been used for a terrorist act.

105. *Criterion 6.5 - Sub-criterion 6.5 (a) (b)* - Sections 12 and 12A of the CTTOCA provide a general legal framework to implement targeted financial sanctions by empowering the Minister, by order, to issue directions to freeze and take control of terrorist property. The definition of 'terrorist property' extends the available freeze powers to cover property owned or controlled by, or on behalf of, a specified entity, as well as property derived from such property. The legislation does not, however, empower the Minister to freeze terrorist property that belongs to, or is meant for the benefit of a non-prescribed terrorist entity or person. At the time of the on-site visit, no orders had been issued in relation to any entity on the Taliban or Al Qaida lists, so the assets freezing power had not been brought into force. *Sub-criterion 6.5 (c)* - Section 7 of the CTTOCAA No. 39 of 2014 prohibits property or financial services being made, directly or indirectly, available to any person known to be engaged in carrying out terrorist act. The prohibition is subject to a criminal punishment of 20 years' imprisonment or a fine of not more than VT100 million (equivalent to USD1 million) or both. However, s.7 does not cover scenarios where the property or financial service is made available, wholly or jointly, for the benefit of designated persons or entities that are not known to be engaged in carrying out terrorist acts.

106. *Sub-criterion 6.5 (d)* - There is no mechanism for communication with, or clear guidance for, the financial sector and DNFBPs on the designations, their obligations under the freezing mechanism and the reporting duties of such compliance. *Sub-criterion 6.5 (e)* - Financial institutions must immediately report to the FIU any suspicion that it is in possession or control of any assets owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property. However, there is no legislation, procedure or mechanism which requires financial institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs. At the time of on-site visit, there was no evidence submitted that showed that the competent authorities monitor any reporting entities with regards to their obligations to freeze assets related to TF. *Sub-criterion 6.5 (f)* - Sections 16 and 17 of the CTTOCA provide general protection to bona fide third parties to apply to a court for relief. However, the procedures for doing so and the operation of same are not clearly set out.

De-listing, unfreezing and providing access to frozen funds or other assets

107. *Criterion 6.6* - There are no procedures to delist and unfreeze the funds or other assets of persons or entities which do not, or no longer, meet the criteria for designation. Sections 4A and 4B of the

CTTOCAA No. 39 of 2014 only make general reference to the power of the Minister, on the advice of the AG, to revoke, or vary, a proscribed specified entity under s.4 (1); and the right of the person or group to apply for judicial review. Section 14(3) only provides that a direction made under s.12 of the CTTOCA expires if a person or group ceases to be listed by the UNSC under resolutions relating to terrorism.

108. *Criterion 6.7* - Section 12(2)(c) of the CTTOCAA empowers the Minister, in the issuance of directions under s.12(1), to authorise the exemption of funds and other financial assets and economic resources that he/she determines are necessary for the payment of basic expenses or extraordinary expenses of a kind that have been approved by a Sanction Committee of the UNSC. There is, however, no provision which clearly sets out the procedures and operational mechanism for such access and authorisation.

Weighting and conclusion

109. The assets freezing framework relies on the Minister of Justice issuing a freezing order for each entity under the 1267 list and entities designated domestically under 1373. At the time of the on-site visit, this had not been done, so the freeze obligations were not in force in Vanuatu. There is no provision which clearly sets out the mechanism, procedure and standard of proof for the designation. The 2014 amendment to CTTOCA makes 1267 designations automatic once entities are designated by the UNSC. The Minister still lacks the power to freeze terrorist property that belongs to non-prescribed specified entities. The Minister is empowered to authorise, in the directions, exemption of funds for necessary payment of basic or extraordinary expenses as approved by UNSC; however there is no provision which clearly sets out the procedure and mechanism for such access and authorisation. The procedure and process for the protection of *bona fide* third parties for court relief are not clearly set out and there seems to be no procedure to delist and unfreeze funds or assets of persons and entities who are no longer designated under UNSC. The amended definition of 'serious offence' also renders a restraint order against property used for terrorist act impossible. **Vanuatu is partially compliant with R.6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

110. Targeted financial sanctions relating to proliferation is a new FATF Recommendation added in 2012. During the on-site visit it was determined that there are no statutory provisions in place in Vanuatu to give effect to targeted financial sanctions under R.7.

111. *Criterion 7.1* - Vanuatu did not provide any information in relation to this criterion.

112. *Criterion 7.2* - Vanuatu did not provide any information in relation to this criterion.

113. *Criterion 7.3* - Vanuatu did not provide any information in relation to this criterion.

114. *Criterion 7.4* - Vanuatu did not provide any information in relation to this criterion.

115. *Criterion 7.5* - Vanuatu did not provide any information in relation to this criterion.

Weighting and conclusion

116. There are no statutory provisions in place in Vanuatu to give effect to TF sanctions under R.7. **Vanuatu is non-compliant with R.7**.

Recommendation 8 – Non-profit organisations

117. Vanuatu was rated non-compliant with former Special Recommendation VIII (SR.VIII). The 2006 MER found that there had been no review of the adequacy of laws and regulations relating to the supervision of NPOs, there was a lack of effective implementation of laws and regulations regarding NPOs

and a failure to provide AML/CFT guidance regarding NPOs to financial institutions. The technical compliance criteria for Recommendation 8 are largely similar to those of the former SR.VIII.

118. The Vanuatu Financial Services Commission (VFSC) is responsible for administering the Charitable Associations (Incorporation) Act and Foundation Act No.38 of 2009, which form the legal basis of NPO regulation in Vanuatu. In addition, since 2003 NPOs have been subject to the AML/CFT regime. Under ss.2(g) and 2(h) of the AML/CTF Act No. 13 of 2014, charitable associations and foundations are deemed to be reporting entities and are subject to all the requirements of a reporting entity. VFIU is responsible for AML/CFT supervision of charitable associations and foundations.

119. Charitable associations may be registered with the VFSC under the Charitable Associations (Incorporation) Act, with the local operation of four internationally-recognised aid charities being identified by the VFIU to date. Other non-profit organisations include over 300 small, usually community-based, cooperatives registered under the Cooperatives Societies Act. Foundations are only able to be established by registration with the VFSC under the Foundation Act 2009. Very few foundations (similar in form to a trust but with a legal personality) have been created to date.

120. VFSC reported that there were 496 charitable organizations and two foundations with active registrations over the period 1 January 2014 – 26 January 2015. However the VFSC had no knowledge as to the actual status of charitable organisations in Vanuatu as the legislation states that charitable associations may register with the VFSC, but does not require it. Even if registration does occur, there is no requirement for further reporting or renewals, so the VFIU had no information on how many charitable associations are actually active and operating in Vanuatu or elsewhere.

121. No information was provided on the different types of charitable organisation and foundation, the donations to and financial resources of each type of NPO or whether any domestic NPOs also have international operations.

122. *Criterion 8.1 - Sub-criterion 8.1(a)* - A substantial review of NPO laws was recently undertaken and amending legislation has been drafted, which was provided to the team during the on-site visit. While mitigation of TF risk was not the focus of the review, the proposed amendments would allow for more scrutiny of NPOs by authorities, require registration and filing of annual reports on financial status and source of finance and give the Registrar powers to inspect or to be provided with records held by members of an association or corporate entity. *Sub-criterion 8.1(b)* - The VFSC maintains a registry of those NPOs who wish to be registered with them in Vanuatu and Part 3 s.9 (1) of the AML/CTF Act 2014 requires the Director VFIU to establish and maintain a register of reporting entities, which includes NPOs. However, neither the VFSC nor the VFIU have undertaken domestic reviews of the NPO sector and Vanuatu, therefore, does not have the capacity to obtain timely information on the sector's activities, size and other features to identify NPOs that are particularly at risk of being misused for TF. *Sub-criterion 8.1(c)* - Since the last MER in 2006, Vanuatu has not undertaken any assessments of the NPO sector to review its potential vulnerabilities to terrorist activities. The draft 2014 NRA did not include analysis of the NPO sector

123. *Criterion 8.2* - The VFSC administers the Charitable Associations (Incorporation) Act and the Foundation Act No.38 and has been conducting some awareness sessions on those laws to some clients and the general public; however there has been no focus on TF issues in the outreach sessions. The VFIU has not provided specific guidance or undertaken any outreach sessions with the NPO sector concerning TF issues either.

124. *Criterion 8.3* - Whilst NPOs have been subject to the AML/CFT regime in Vanuatu since 2003 and are subject to all the requirements of a reporting entity, Vanuatu does not have any NPO-specific policies or strategies in place to promote transparency, integrity and public confidence in the administration and management of its NPOs.

125. *Criterion 8.4 - Sub-criterion 8.4(a)* - Vanuatu has not identified the NPOs that account for a "significant portion of the financial resources under the control of the sector", or "a substantial share of the sector's international activities'. Given this, and as registration is optional, entities covered by *criterion* 8.4 (i) and (ii) could be operating in Vanuatu without registration. Should charitable associations choose to register with the VFSC, the Charitable Associations (Incorporation) Act requires NPOs to file with their application for registration (should they choose to register) a constitution or charter which sets out their objectives, a list of members, and a statement of assets and liabilities of the NPO. This must be endorsed by the minimum six committee members required to establish an NPO under the Act. All committee members are required to provide full details of their particulars. Information on NPOs is maintained by the Registrar in a registry at the VFSC and is readily available for inspection. The application of the current legislation is restricted to NPOs conducting activities *within* Vanuatu, which includes some international aid organisations who register as domestic NPOs. To be formed as a legal person under the Foundation Act No.38 of 2009, proposed foundations are required to file with their registration application, the charter of the foundation setting out the purposes and objects of the foundation, the name of the founder and secretary, nature and total amount of initial assets to be transferred and the manner in which the beneficiaries are to be designated. (This could also apply to charitable associations.) Once registered, foundations are required to keep a register that contains personal information on its councillors, guardian and secretary. This information is to be available for inspection by the Commissioner, founder, councillors, guardian and secretary. Part 10 s.46 (1)(2) and (3) requires the Commission to keep a Register of Foundations which must be available for inspection by the public. In addition, Part 3 s.9 (2)(3)(4) AML/CTF Act and AML/CTF Regulation (Amendment) Order No. 2 of 2015 cover the requirements for reporting entities to register and maintain information on the purpose and objectives of the entity and the identity of persons who control or direct the activities. Part 3, s.9(1) requires the Director VFIU to establish and maintain a register of reporting entities.

126. *Sub-criterion 8.4(b)* - Section 52(1) of the Foundation Act No.38 of 2009 requires a foundation to file an annual return with the Commissioner and s.52 (2)(d) requires for a public foundation that the return includes audited accounts for the previous financial year. There is no requirement for charitable associations in Vanuatu to submit annual financial statements that provide a breakdown of income and expenditure. *Sub-criterion 8.4(c)* - Part 5 s.25(1)(2)(3) of the Foundation Act No.38 provides that foundations must keep proper accounts that provide a breakdown of income and expenditure, the sales and purchases of the foundation and the assets of the foundation. These accounts must be kept at the office of the foundation and be available for inspection by the councillors, the guardian and the auditor. The records must be kept for seven years. Section 25(3) provides the penalty for non-compliance. There are no specific legislative provisions for charitable associations in Vanuatu to have controls in place to ensure that all funds are properly accounted for and spent in a manner that is consistent with the NPO's purpose and objectives.

127. *Sub-criterion 8.4(d)* - Registration with the VFSC is not mandatory for NPOs other than Foundations and there is no statutory registration requirement for international NPOs. Section 2(1) of the Charitable Associations (Incorporation) Act states - *The Committee, having not less than six members, of any association established for charitable purposes, may apply to the Registrar for a certificate of incorporation…"*. Similarly, s.6 (1) of the Foundation Act No.38 states - '*A founder or a person acting on behalf of the founder may apply to have a Foundation registered.* However, Part 3 s.9 (1) of the AML/CTF Act covers the requirement for the Director VFIU to establish and maintain a register of reporting entities and s.9 (2) prohibits a reporting entity from providing a service or establishing a business relationship with a customer if its name and details are not entered on the register of reporting entities. Section 9(3) requires the written application to be in the prescribed form and Schedule 1 of the AML/CTF Regulation (Amendment) Order No.2 of 2015 provides the prescribed Registration Form for Reporting Entities. Section 9 (5) of the AML/CTF Act outlines the penalties for non-compliance.

128. *Sub-criterion 8.4(e)* - There are no provisions in the AML/CTF Act and Regulations to make beneficiaries of NPOs, or associated NPOs subject to CDD or "know your beneficiaries and associated

NPOs" rules in Vanuatu, as the beneficiary or associated NPO is not likely to conduct the transactions or otherwise meet the definition of a customer. Similarly, there are no such requirements in the Charitable Associations (Incorporation) Act or the Foundation Act No.38. *Sub-criterion 8.4(f)* - Section 19 AML/CTF Act covers the obligation for reporting entities in Vanuatu to maintain, for a period of at least six years, records of domestic and international transactions. However the information in 8.4 sub-criteria (a) and (b) above is not covered. Part 5 s.25(1)(2)(3) of the Foundation Act No.38, requires foundations to keep proper accounts that provide a breakdown of income and expenditure, the sales and purchases of the foundation and the assets of the foundation. These accounts must be kept at the office of the foundation, be available for inspection by the councillors, the guardian and the auditor and be kept for seven years from the date on which they are made. Part 10 s. 52(1)(2) of the Foundation Act, however, requires a foundation to file an annual return and requires the annual return contain information on the foundation and, for a public foundation, include the audited accounts of the previous year.

129. *Criterion 8.5* - Parts 2 and 10, in particular, AML/CTF Act empower the Director VFIU to monitor compliance and apply proportionate and dissuasive sanctions for violations of the AML/CTF requirements on NPOs, or persons acting on behalf of NPOs. Current legislation does not provide powers for the VFSC Registrar to monitor compliance of NPOs and apply sanctions for violations of the requirements on NPOs. Vanuatu did not provide evidence that monitoring is being undertaken.

130. *Criterion 8.6 - Sub-criterion 8.6(a) - S*ections 5 (1)(c) and s.45, AML/CTF Act empowers VFIU to gather information from an assisting entity, or a ministry, department or agency of the government or any person for the purposes of the Act. There are no domestic mechanisms, or laws, that enable the VFSC to investigate and gather information on NPOs through domestic cooperation and information sharing amongst authorities. *Sub-criterion 8.6(b)* - Section 5(1) sub-section (e) and s.45 AML/CTF Act empowers VFIU to collect information that the Director considers relevant to a ML, TF or any other serious offence, including information in commercially available databases or databases maintained by the government. *Sub-criterion 8.6(c)* - Section 5(1) sub-sections (f) and (g) AML/CTF Act empowers the VFIU to enter into agreements or arrangements with, and/or request information from, an assisting entity regarding the exchange of information where there is reasonable grounds to suspect that the information may be relevant to detecting, investigating or prosecuting a ML, TF or other serious offence, or an offence substantially similar to such an offence and s.5 (1)(d) empowers the Director to disclose information derived from a report or information if there are reasonable grounds to suspect that the report or information is relevant to such offences. Although there are some existing mechanisms in place to share information between authorities (e.g. through the Mutual Assistance in Criminal Matters Act and Proceeds of Crimes Act), legislative amendments would be needed to give the Registrar and VFSC staff the appropriate powers to carry out investigations into NPOs and collect relevant information which may be of assistance to other agencies, especially where there is a suspicion that a particular NPO is a front for fundraising by a terrorist organisation or being exploited as a conduit for TF.

131. *Criterion 8.7* - Vanuatu has not identified any appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of support for terrorists.

Weighting and conclusion

132. Whilst the risk of TF and terrorist-related activities in Vanuatu is generally considered to be low, the 2014 NRA did not specifically cover TF and NPOs. Neither has Vanuatu undertaken any domestic reviews or assessments of the NPO sector in order to identify the features and types of NPOs that are at risk of being misused for TF or other forms of terrorist support. There is no requirement for charitable associations in Vanuatu to submit annual financial statements that provide a breakdown of income and expenditure and there are no legislative requirements for NPOs in Vanuatu to have specific controls in place to ensure that all funds are properly accounted for and spent in a manner that is consistent with the NPO's purpose and objectives. The record keeping requirements do not cover the information required in

8.4 (a) and (b) and whilst the VFSC administers the laws covering NPOs, current legislation does not provide powers for the VFSC Registrar to monitor compliance of NPOs and apply sanctions for violations of the requirements on them. Neither are there domestic mechanisms, or laws, that enable the VFSC to investigate and gather information on NPOs through domestic cooperation and information sharing amongst authorities. Customer due diligence is not required on beneficiaries of NPOs or associated NPOs under the AML/CTF Act and Regulations. No evidence has been provided regarding AML/CFT compliance monitoring or sanctions in relation to NPOs. There is no supervision of the NPO sector in relation to TF issues and there has never been any targeted approach or outreach undertaken to the NPO sector by the VFIU or any other government agency to inform the sector of TF risks. **Vanuatu is non-compliant with R.8.**

5. PREVENTIVE MEASURES

Preamble: Scope of Financial institutions

133. The table below sets out the types of entities operating in Vanuatu against the 13 activities listed in the Glossary to the FATF Recommendations and non-life insurers which are also defined as reporting entities under the AML/CTF Act:

	Activities and operations according to the FATF definition of financial institutions	**FIs authorised to conduct these activities and operations**	**Licensing/ supervisory authority**
1	Acceptance of deposits and other repayable funds from the public	Domestic banks (5); International banks (8); non-bank deposit taker (1);	RBV (licensing authority and AML/CFT supervisor); VFIU (AML/CFT registration & supervisor)
2	Lending	Credit union (1)	VFSC (registrar of credit unions); RBV (AML/CFT supervisor); VFIU (AML/CFT registration & supervisor)
3	Financial leasing	(Approx. 6 companies)	VFIU (AML/CFT registration & supervisor)
4	Money or value transfer services	Money remitters (5)	VFIU (AML/CFT registration & supervisor)
5	Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)		VFIU (AML/CFT registration & supervisor)
6	Financial guarantees and commitments	Financial Guarantors (approx. 2)	VFIU (AML/CFT registration & supervisor)
7	Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Exchange, interest rate and index instruments (1)	VFIU (AML/CFT registration & supervisor)

	Activities and operations according to the FATF definition of financial institutions	FIs authorised to conduct these activities and operations	Licensing/ supervisory authority
8	Participation in securities issues and the provision of financial services related to such issues	Securities companies (approx. 4)	VFSC (licenser) VFIU (AML/CFT registration & supervisor)
9	Individual and collective portfolio management	Approx. 4	VFIU (AML/CFT registration & supervisor)
10	Safekeeping and administration of cash or liquid securities on behalf of other persons	Approx. 2	VFIU (AML/CFT registration & supervisor)
11	Otherwise investing, administering or managing funds or money on behalf of other persons	Portfolio Management (approx. 4)	VFSC (licences mutual funds and registers Unit Trusts) VFIU (AML/CFT registration & supervisor)
12	Underwriting and placement of life insurance and other investment related insurance	No underwriting or placement of life and other investment-related insurance is currently carried out in Vanuatu	RBV (licensing authority and AML/CFT supervisor) VFIU (AML/CFT registration & supervisor)
13	Money and currency changing	Foreign currency exchange (10)	VFIU (AML/CFT registration & supervisor)
14	Non-life insurers, managers and intermediaries	Insurance entities (34) (including Managers (5), Brokers (5) and Agents (8))	RBV (licenser & AML/CFT supervisor) VFIU (AML/CFT registration & supervisor)

134. In addition to the categories of financial institutions listed in the table above, the RBV is also defined as a reporting entity in s.2 of the AML/CTF Act, for which the VFIU is the designated AML/CFT supervisor.

Nature of requirements applicable to financial institutions/DNFBPs

135. All categories of financial institution and DNFBP activities as defined by the FATF are covered in the definition of "reporting entity" in s.2 AML/CTF Act and are subject to the full requirements of the Act. For the purposes of compliance with the Act's requirements, there is no distinction made between the obligations on (and powers over) financial institutions and other categories of reporting entities. The AML/CTF Regulations 2014 (as amended in January 2015) detail the underlying CDD, record keeping, risk based procedures and reporting obligations to be undertaken by reporting entities to comply with the corresponding provisions in Parts 4 to 6 of the AML/CTF Act.

136. The RBV issued Prudential Guidelines No. 9 on Customer Due Diligence (RBV PGs 9) for domestic banks (2009) and international banks (2003). These Guidelines are enforceable through conditions of a banking licence issued by RBV under the Financial Institutions Act 1999 (FIA) and the International Banking Act 2002 (IBA) respectively. The guidelines have been revised in January 2015 to delete previous references to the now-repealed FTRA and refer to the relevant provisions of the AML/CTF Act 2014. In respect of a small subset of the revised FATF requirements (e.g. R.13), the revised PGs No.9 have more explicit obligations on banks than the AML/CTF Act and Regulations. The guidelines can be considered 'enforceable means' as defined in the FATF Methodology.

Recommendation 9 – Financial institution secrecy laws

137. Vanuatu was rated compliant with former R.4 in the 2006 MER. The effect of the former provisions overriding secrecy laws, contained in the FTRA, appears to have been carried over to the new AML/CTF Act.

138. *Criterion 9.1* - Reporting entities and their officers, employees and agents must comply with the requirements of the AML/CTF Act. Section 43 of the Act is comprehensive and has the effect of overriding secrecy provisions or other restrictions on the disclosure of information in all other legislation to ensure reporting entities and their officers, employees and agents are not prevented from complying with their obligations under the Act. However, section 125 of the ICA prevents the VFSC from obtaining CDD information on international companies or passing to it on other regulators or AML/CFT supervisors.

Weighting and conclusion

139. Financial institution secrecy laws applying to reporting entities are overridden by specific provisions in s.43 of the AML/CTF Act. However, s.125 of ICA prevents VFSC from obtaining CDD information on international companies, or passing it on to other regulators or supervisors. **Vanuatu is largely compliant with R.9.**

Customer due diligence and record-keeping

Recommendation 10 – Customer due diligence

140. Vanuatu was rated partially compliant with the former R.5 in the 2006 MER. The key factor underlying that rating was that the legislative requirements on CDD under the amended FTRA addressed most of the essential criteria but effective implementation by financial institutions was absent. Vanuatu has introduced the AML/CTF Act and Regulations, which replaced the FTRA, since the 2006 MER.

141. Recommendation 10 contains some new requirements that were not assessed under the 2004 Methodology. The main changes concern identifying and verifying the identity of customers, beneficial owners that are legal persons and arrangements, and the beneficiaries of life insurance policies (*criteria* 10.9 to 10.13); and when there is a suspicion of ML/TF and a reasonable belief that performing CDD will tip-off the customer FIs should be permitted not to pursue the CDD process and instead be required to file an STR (*criterion* 10.20).

Detailed CDD requirements

142. *Criterion 10.1* - Reporting entities must maintain accounts or establish business relationships with the true name of the customer (AML/CTF Act s.14). A reporting entity must not establish a business relationship with a person using a false, fictitious or misleading name; or open an account with a person using two or more names unless the person has disclosed the other names to the reporting entity (AML/CTF Act s.15).

When CDD is required

143. *Criterion 10.2 - Sub-criterion 10.2(a)* - Reporting entities must conduct customer identification if a person: (a) opens an account with the reporting entity; (b) engages the services of the reporting entity; (c) enters into a business relationship with the reporting entity; or (d) conducts as occasional transaction as prescribed (s.12(1) AML/CTF Act). The prescribed identification process is set out in detail in clause 3 of the AML/CTF Regulations. The RBV PGs No.9 require all banks to have a customer acceptance policy and have systematic procedures for identifying new customers as part of their KYC programs. It notes specific identification issues for each category of customer. *Sub-criterion 10.2(b)* - For the purposes of

customer identification requirements under s.12 of the AML/CTF Act, occasional transactions are large cash transactions (except those between reporting entities) and international currency transactions as defined in ss.27 and 28 of the Act. The prescribed identification process is as for criterion 10.2(a). Thresholds for both these categories of transactions are prescribed in clauses 12 and 13 respectively of the AML/CTF Regulations at VT1 million (approx. USD10,000), which is below the permissible FATF threshold of USD15,000. There is no evidence of a mandatory obligation on reporting entities to conduct CDD in respect of a series of occasional transactions below the threshold that appear to be linked and in total amount exceed the occasional transactions thresholds. Lower thresholds are provided for occasional cash transactions conducted through businesses of gaming, gambling and casinos (VT300,000); money changing (VT200,000); and sale or hire of motor vehicles (VT500,000) (clause 12 (2) of the Regulations).

144. *Sub-criterion 10.2(c)* - Identification requirements for reporting entities (including financial institutions) conducting any transactions that are wire transfers are the same, i.e. the applicable thresholds for occasional wire transfers is VT1 million (approx. USD10,000) under s.12 (3)(a) AML/CTF Act. Transactions using a debit or credit card where the number is included in the information accompanying the transfer, and transfers between reporting entities acting on their own behalf, are excluded. Currency is defined to include cash and currency in electronic form (s.2 AML/CTF Act). The captured transactions are both local and foreign currency electronic funds transfers, with no distinction made between domestic and cross-border electronic funds transfers. *Sub-criterion 10.2(d)* - Reporting entities must carry out the prescribed identification process on a customer (as per clause 3 of the AML/CTF Regulations) if the reporting entity suspects that the customer is involved in proceeds of crime, financing of terrorism or a serious offence, or suspects that the transaction involves proceeds of crime, or may be used for financing terrorism or a serious offence (s.12 (3)(a) and (b) AML/CTF Act). No thresholds or exemptions are provided in the Act for this requirement. *Sub-criterion 10.2(e)* - Reporting entities must carry out the prescribed identification process on a customer (as per clause 3 of the AML/CTF Regulations) if the reporting entity has doubts regarding the veracity or adequacy of the customer identification or information it had previously obtained (s.12 (3)(d) AML/CTF Act).

Required CDD measures for all customers

145. *Criterion 10.3* - Requirements to identify customers are set out in s.12, and to verify identification, are set out in s.16 of the AML/CTF Act. Prescribed identification and verification processes are set out in clauses 3 and 4 of the AML/CTF Regulations respectively. Clause 4 of the Regulations requires a reporting entity to include appropriate risk-based systems and controls to determine what reliable and independent documentation will be required from customers for verification purposes. Clause 4 (3) requires a reporting entity to verify its customer using specified verification documents from reliable and independent sources. Clause 5 requires reporting entities to put in place risk-based systems and controls to adequately identify and verify its customer, designed to enable it to be reasonably satisfied with the identification and verification of its customer. Clause 7 (1) requires that for the purposes of verification (s.16 (1) of the Act) a reporting entity must complete the identification process before a business relationship is established, offering its service to a customer or opening an account for the customer. RBV PGs 9 also requires that banks should not establish a banking relationship until the identity of the new customer is satisfactorily verified. To ensure that records remain up to date and relevant, banks are also required to undertake regular reviews of existing records.

146. *Criterion 10.4* - A reporting entity must carry out the prescribed identification process on the person conducting the transaction, the person on whose behalf the transaction is being conducted and the beneficial owner of the transaction, if there are reasonable grounds to believe that the person is conducting a transaction on behalf of another person (s.12 (2) AML/CTF Act). Section 16 requires the reporting entity to undertake the prescribed verification process after carrying out the identification process. The customer is defined to include any person who is authorised to conduct the transaction or control the relationship or account. For legal persons, required identification information includes obtaining a copy of the authorisation of any person purporting to act on behalf of the customer and the identity of that person

(clause 3(b)(H) AML/CTF Regulations). However it is not mandated that a reporting entity is required to verify that any person purporting to act on behalf of the customer is authorised to do so, for non-legal persons.

147. *Criterion 10.5* - Identification of the beneficial owner is required under s.12(2) if there are reasonable grounds to believe that the person is conducting a transaction on behalf of another person. (Beneficial owner means a natural person who ultimately owns or controls the rights or benefits from a fund or a person who exercises ultimate effective control over a legal person or legal arrangement). Verification of prescribed identification information is required under s.16 of the Act. Clause 5 requires reporting entities to put in place risk-based systems and controls to adequately identify and verify its customer, sufficient to enable it to be reasonably satisfied with the identification and verification of its customer. Clause 4 (3) requires a reporting entity to verify its customer using specified verification documents from reliable and independent sources.

148. *Criterion 10.6* - A reporting entity must ensure that as part of identifying its customer, it must also collect information on the purpose and intended nature of the business relationship (clause 3(a), (b) and (c), AML/CTF Regulations). A reporting entity must put in place appropriate risk-based systems and controls to understand the customer (clause 5(1) (a) but the requirement does not explicitly refer to understanding the purpose and intended nature of the business relationship.

149. *Criterion 10.7 - Sub-criterion 10.7(a)* - Ongoing due diligence is required under s.17, AML/CTF Act, with the specifics prescribed in clause 8, AML/CTF Regulations. A reporting entity must establish appropriate risk-based systems and controls to determine whether any further customer information is required for its ongoing due diligence purposes and to scrutinize transactions that are inconsistent with the information held about the business relationship, and monitor its relationships. It must have a process to monitor its relationships with its customer to ensure the customer's activities are conducted consistent with its knowledge of the customer, the customer's business, source of funds, and risk profile. Paragraph 48 of the RBV PGs No.9 for banks set out requirements for on-going monitoring of accounts and transactions. *Sub-criterion 10.7(b)* - Ongoing due diligence in respect of customers which are deemed to present a high ML or TF risk in terms of the reporting entity's risk-based systems and controls, must be applied under clause 8 (1) (c), AML/CTF Regulations as part of the enhanced customer due diligence process. Accordingly, the reporting entity must include the following when undertaking its appropriate risk-based systems and controls: regularly collecting information from the customer or from third party sources in order to update its knowledge (derived from the enhanced identification and verification process) of the customer; undertake more detailed analysis of customer information, including the background and purpose of transactions and business relationship; regularly verify or re-verify the customer; and analysis and monitoring of transactions, both past and future (clause 8(2) AML/CTF Regulations). The RBV PGs No.9 for banks (paragraph 49) and sets out expected standards.

Specific CDD measures required for legal persons and legal arrangements

150. *Criterion 10.8* - For legal persons and legal arrangements, the reporting entity must collect information on the nature of the legal person or legal arrangement's business and its beneficial ownership and control structure (including the trustees, settlor and each beneficiary of a trust) (Clause 3 (b) and (c) AML/CTF Regulations). However there is no explicit requirement for a reporting entity to understand the nature of the business and its beneficial ownership and control structure. Paragraph 25 of the RBV PGs 9 for banks provide that for corporate and other business customers, banks should obtain evidence of their legal status, such as an incorporation document, partnership agreement, association documents or business license. If significant changes to the company structure or ownership occur subsequently, further checks should be made.

151. *Criterion 10.9* - For legal persons and legal arrangements, the reporting entity must obtain information on the full name of the legal person or arrangement. For legal persons, the registered address,

legal form and registration details, powers that regulate and bind the legal person, and full names of directors and secretary must be collected. For legal arrangements, the full name and address of each trustee and the settlor and each beneficiary of a trust are required (Clause 3 (b) and (c) AML/CTF Regulations) must be collected. However, there is no requirement to separately obtain an address or place of business for a legal arrangement (if one exists).

152. *Criterion 10.10 - Sub-criterion 10.10(a)* - The reporting entity must identify and verify the identity of the beneficial owner (the natural person who ultimately owns or controls the rights or benefits from a fund) if the reporting entity has reasonable grounds to believe that a person is undertaking a transaction on behalf of another person. Hence, unless the reporting entity considers that the person undertaking a transaction or establishing the business relationship on behalf of the legal person is the beneficial owner, it must also conduct identification and verification processes on the beneficial owner (s.12(2)(c) and s.16, AML/CTF Act and clause 4, AML/CTF Regulations). *Sub-criterion 10.10(b)* - If the ultimate controlling owner of a customer cannot be identified, a reporting entity must identify and verify the identity of the natural person who exercises ultimate effective control over a legal person or legal arrangement, if the reporting entity has reasonable grounds to believe that a person is undertaking a transaction on behalf of another person. *Sub-criterion 10.10(c)* - A reporting entity must put in place risk-based systems and controls that are designed to enable it to be reasonably satisfied with the identification and verification of its customer (clause 5(1)(a) AML/CTF Regulations). Schedule 2 Table A of the Regulations requires the collection of information on the name of each director, and company secretary for legal persons and the full name and address of each beneficial owner. There does not appear to be any specific requirement, where no natural person exercising control has been identified, to take reasonable steps to verify the identity of the person who holds the position of senior managing official.

153. *Criterion 10.11 - Sub-criterion 10.11(a)* - Under the legal arrangements' prescribed identification process the reporting entity must identify the settlor, each trustee and any beneficiary of the arrangement (clause 3 (c), AML/CTF Regulations). (Verification under clause 4 follows identification required by s.12 of the Act, in all cases). The risk-based systems and controls implemented by a reporting entity must include an enhanced identification process for customers deemed to be a high ML or TF risk and would include collecting information on the ultimate beneficial owner of the customer (if a legal person or arrangement) under clauses 5 and 6). However, there is no specific requirement to identify any other natural person exercising ultimate effective control of a trust or other legal arrangement. RBV PGs 9 for banks (para 26) note that trust, nominee and fiduciary accounts can be used to circumvent customer identification procedures and banks should establish whether the customer is taking the name of another customer or other intermediary. If so, a necessary precondition is receipt of satisfactory evidence of the identity of any intermediaries, and of the persons upon whose behalf they are acting, as well as details of the nature of the trust or other arrangements in place. *Sub-criterion 10.11(b)* - There is no specific requirement to identify persons in equivalent positions exercising effective control over other types of legal arrangements.

CDD for Beneficiaries of Life Insurance Policies

154. *Criterion 10.12* is not applicable. Financial institutions in Vanuatu do not issue life insurance policies.

155. *Criterion 10.13* is not applicable. Financial institutions in Vanuatu do not issue life insurance policies.

Timing of verification

156. *Criterion 10.14* - A reporting entity must carry out the verification of the customer's identity as soon as reasonably practical but not more than 5 working days after the identification date so essentially not to disrupt the normal course of business, or earlier if other prescribed circumstances apply: i.e. within 2

days if the transaction or customer is suspected of involving proceeds of crime or financing of terrorism or a serious offence; or within three (3) days if the reporting entity has reasonable grounds to suspect that the customer is not the person they claim to be (s.16 of the Act and clause 7, AML/CTF Regulations). The Regulations do not specifically require financial institutions to ensure that the basis for delaying verification is only justified where the ML/TF risks of allowing occasional customers to conduct transactions before their identity is verified are effectively managed.

157. *Criterion 10.15* - Clause 7 of the AML/CTF Regulations requires that a reporting entity must identify its customer before a business relationship is established, and complete verification requirements within prescribed periods, as noted under Cr.10.14. The 2015 revision to the Regulations provides that where the VFIU has assessed and approved a reporting entity to have overall medium or low risk, verification must be completed within 15 working days. This option is not available if there is a suspicion that the customer or transaction involves the proceeds of crime, or that the customer is not who they claim to be. No such reporting entities have been approved yet. A concern exists that the VFIU's discretion should be exercisable in respect of proven low risk categories of customers of a reporting entity only, rather than for all customers of approved reporting entities. There are no explicit requirements on reporting entities to establish risk-management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

Existing customers

158. *Criterion 10.16* - Appropriate risk-based systems and controls must be put in place by reporting entities to determine if ongoing due diligence requirements under clause 8(1) of the revised AML/CTF Regulations should include updating existing customer information or obtaining further customer information. Ongoing due diligence may also include transaction monitoring, customer relationship monitoring and enhanced due diligence. The Regulations do not specifically refer to conducting due diligence on existing relationships at appropriate times, taking into account whether and when CDD measures have been previously undertaken and the adequacy of data obtained. RBV PGs 9 for banks (para 12) requires that banks undertake regular reviews of existing records and sets out required steps and timing.

Risk-based approach

159. *Criterion 10.17* - A reporting entity must have in place an enhanced due diligence process for customers, services, designated delivery methods or (foreign) jurisdictions which are deemed to be high ML&TF risk (clause 6, revised AML/CTF Regulations). The Regulations (clause 5) refer to a limited range of designated services including development of new products, business practices or use of new and developing technologies. However, the Vanuatu authorities should review the wording to clarify the intended effect in respect of designated services. The RBV PGs No.9 (para 4), require banks to formulate a customer acceptance policy and graduated procedures that involves a more extensive due diligence for higher risk customers. Examples of circumstances requiring enhanced CDD are outlined in the guidelines.

160. *Criterion 10.18* - There are no legislative provisions regarding the circumstances when it may be appropriate for financial institutions to adopt simplified CDD measures on the basis of low risk, as part of the risk-based systems and controls, although a reporting entity would not appear to be precluded from adopting risk-based simplified CDD as part of its AML and CFT procedures manual, which the FIU can request and review under its supervision powers (s.5, AML/CTF Act). A reporting entity may be assessed and approved by the VFIU to have an overall low or medium-low ML TF risk (clause 7(3) of the AML/CFT Regulations) for the purpose of delayed verification although no criteria or justifications are stated as the basis for making such assessments. The RBV PGs No. 9 for domestic banks (para. 24) provides guidance on simplified measures for personal customers (e.g. customers in rural areas or in outer Islands of Vanuatu) who may not have formal identification documents normally required for personal

customers. However, the onus is on the bank to satisfy itself as to the customer's identification and to ensure that it fully understands the nature of such customers' transactions with the bank.

Failure to satisfactorily complete CDD

161. *Criterion 10.19 - Sub-criterion 10.19(a)* - There is no explicit requirement in the AML/CTF Act or Regulations, that where a reporting entity is unable to comply with relevant CDD measures it must not open the account, or should terminate the business relationship. Section 13 of the Act provides that if satisfactory CDD cannot be completed, the reporting entity must not proceed any further with the account opening or transaction unless directed to do so by the VFIU. The RBV PGs No.9 (para 10), require that banks should establish systematic procedures for identifying new customers and should not establish a banking relationship until the identity of a new customer is satisfactorily verified. When an account has been opened, but problems of verification arise in the banking relationship that cannot be resolved; the bank should close the account and return the monies to the source from which they were received (para 17). *Sub-criterion 10.19(b)* - If satisfactory evidence of the identity or verification of a person is not produced or obtained within the required timeframes, a reporting entity must prepare an STR for the FIU, and must not proceed further with the transaction, account or business relationship unless directed to do so by the FIU (s.13, AML/CTF Act). RBV PGs No.9 for banks (para 17) also require banks to prepare a STR and submit it to the VFIU, should it have reasonable grounds to suspect that an account where verification problems have not been resolved may have been for illegal purposes.

CDD and tipping-off

162. *Criterion 10.20* - Clause 7, sub-clauses (3) and (5) of the revised AML/CTF Regulations permits a reporting entity to exempt (a customer) from the required CDD verification process, if it reasonably believes that by doing so may inform the customer of its suspicions. In such circumstances, the reporting entity must make a suspicious report to the VFIU as if it were a transaction where satisfactory evidence of verification has not been obtained. However, the Vanuatu authorities should review the wording of sub-clause (3) to clarify the intended effect. RBV PG 9 for banks (para 60) provides that if a bank forms a suspicion that a transaction relates to money laundering or terrorist financing, it should take into account the risk of tipping off when performing the CDD process. If the bank reasonably believes that performing the CDD process will tip-off the customer, or potential customer, it may choose not to pursue that process, and should file a STR. Banks should ensure that their employees are aware of /be sensitive to these issues when conducting CDD.

Weighting and conclusion

163. Vanuatu has adequate legal provisions covering the core CDD requirements, with several elements strengthened in the January 2015 revision to the AML/CTF Regulations. The RBV PG9 guidelines provide good reinforcement of obligations for banks. A moderate level of shortcomings remain, including absence of requirements for: CDD obligations when a series of occasional transactions appear to be linked but individually are below the CDD threshold; verification that persons purporting to act on behalf of legal arrangements are authorised to do so; permitting delayed verification of occasional customers only where the ML/TF risks are effectively managed; criteria/justification for reporting entities to adopt simplified CDD measures or delayed verification where lower risks exist; and if a reporting entity is unable to comply with relevant CDD measures, that it must not open the account or must terminate the business relationship. **Vanuatu is partially compliant with R.10.**

Recommendation 11 – Record-keeping

164. Vanuatu was rated partially compliant with the former R.10 in the 2006 MER. Factors underlying that rating were: deficiencies identified in the required time period for keeping customer records and no

requirements for financial institutions to make customer records available on a timely basis to the VFIU upon request. The AML/CTF Act includes revised record-keeping requirements.

165. *Criterion 11.1* - A reporting entity must keep records of all transactions for 6 years after the completion of the transaction (s.19 AML/CTF Act). Records maintained must include comprehensive transaction details as prescribed in clause 9, AML/CTF Regulations, plus any other information held relating to the transaction, for both domestic and international transactions. RBV PGs No.9 (para 14) state that banks should develop clear standards on what records must be kept on individual transactions and their retention period.

166. *Criterion 11.2* - If identification and verification information is obtained for CDD purposes, a reporting entity must retain a record that indicates the kind of evidence obtained, and either a copy of the evidence, or information that enables a copy of it to be obtained (s.19 (6), AML/CTF Act). A reporting entity must keep the records of such information for a period of 6 years after the closure or termination of the account, service or business relationship (s.19 (7), AML/CTF Act). Thus the previous deficiency in the period for retention of CDD records has been resolved in the new Act. A reporting entity must also keep any other information relating to a transaction (defined to include any transaction, establishment of a business relationship, opening of an account or engagement of a service) as required by s.19 (1) AML/CTF Act and clause 9, AML/CTF Regulations. A new requirement in the revised Regulations includes keeping records of account files and business correspondence and findings of CDD analysis relating to the transaction. The RBV PGs No.9 (para 14) state that banks should develop clear standards on what records must be kept on customer identification and their retention period. Insurers and Insurance intermediaries must also maintain records of policies and policy holders for at least 6 years (s. 62, Insurance Act).

167. *Criterion 11.3* - A reporting entity must keep records of all transactions sufficient to enable the transaction to be readily reconstructed at any time by the VFIU (s.19 (1) AML/CTF Act). All available information relating to the transaction must be recorded, in addition to prescribed details (clause 9, AML/CTF Regulations).

168. *Criterion 11.4* - Under s.32 (1), AML/CTF Act, the VFIU may request any further information in relation to a report made by a reporting entity, on a transaction or attempted transaction, or activity or attempted activity, or in relation to other information provided by the reporting entity under the reporting requirements of ss.20 to 31 of the Act. Further, under s. 45 the VFIU may by notice in writing require a reporting entity to produce within a specified time, any information or records relevant to the operation of the Act or Regulations. While there is no explicit obligation in the Act or Regulations on reporting entities to make CDD information swiftly available to the VFIU on request, except where an STR has been made, the s.45 powers should be adequate to achieve that requirement.

Weighting and conclusion

169. Vanuatu's record keeping requirements, incorporating the January 2015 amendments to the AML/CTF Regulations meet most of the requirements of R.11 except that there is no explicit obligation on reporting entities to make CDD information swiftly available to the VFIU on request, except where an STR has been made. **Vanuatu is largely compliant with R.11.**

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

170. Vanuatu was rated partially compliant with the former R.6 in the 2006 MER. Factors underlying that rating were mostly around effectiveness. Although banks had been observing PEP requirements in accordance with the RBV prudential guidelines, the legislative requirements on PEPs had only recently been introduced under the amended FTRA and financial institutions except for banks had not been aware

of the new requirement. The FTRA was repealed by the AML/CTF Act which came into effect in June 2014 and, together with the AML/CTF regulations, contains the current requirements relating to PEPs.

171. *Criterion 12.1 - Sub-criterion 12.1(a)* - A reporting entity is required to establish an adequate AML and CFT Procedures manual before it may open accounts, provide services or establish a business relationship with a customer (s.33, AML/CTF Act). It must put in place appropriate risk-based systems and controls to adequately identify and verify its customers, having regard to the nature, size and complexity of its business and the type of ML and TF risk that it might reasonably face. In identifying its ML and TF risk, the reporting entity must consider the risk posed by its customer types, including any politically exposed persons (clause 5, AML/CTF Regulations). Politically exposed person (PEP) is defined, consistent with FATF Glossary, in s. 1, AML/CTF Act and does not distinguish between domestic and foreign PEPs. Clause 5 (4) of the revised Regulations requires that the reporting entity must have in place appropriate risk-based systems and controls to identify, verify and understand whether the customer or the beneficial owner of the customer is a politically exposed person. RBV PGs 9 (paragraphs 35-40) outline general requirements that banks should gather sufficient information from a new customer, and check publicly available information, in order to establish whether or not the customer is a PEP, consistent with the revised Regulations. *Sub-criterion 12.1(b)* - A reporting entity must have in place an enhanced identification process for customers which are deemed to be high ML and TF risk (according to its risk-based systems and controls) and must, in addition to the normal identification process under clause 3, obtain the approval of senior management of the reporting entity to commence or continue the business relationship with those customers deemed to be high ML and TF risk (clause 6, AML/CTF Regulations). Clause 5 (3) of the revised Regulations requires that a person identified as PEP must be subject to enhanced CDD as per clause 6 and therefore it is mandatory for a reporting entity to obtain senior management approval before commencing or continuing all PEP relationships. RBV PGs 9 for banks (paragraph 37) requires that the reporting entity's decision to open an account for a PEP should be taken at a senior management level.

172. *Sub-criterion 12.1(c)* - For customers which are deemed to be high ML and TF risk, the reporting entity must (in accordance with its risk-based systems and controls), in addition to the normal identification process, conduct enhanced CDD including collecting and verifying information on the source of funds or source of wealth of the customer, and on the ultimate beneficial owner of the customer (if legal person or arrangement) but not explicitly on the source of funds of the beneficial owner (clause 6, AML/CTF Regulations). Under clause 5(3), enhanced CDD must be applied to PEPs who are customers. RBV PGs 9 for banks (paragraph 37) requires that banks investigate the source of funds before accepting a PEP as a customer. *Sub-criterion 12.1(d)* - Ongoing due diligence requirements are imposed under s.17, AML/CTF Act and detailed in clause 8, AML/CTF Regulations. Enhanced CDD ongoing monitoring must be applied where it is determined under the reporting entity's risk-based systems and controls that the ML and TF risk is high. Under clause 5(3) of the revised Regulations PEPs must be subject to the enhanced ongoing due diligence process RBV PGs 9 for banks (paragraph 49) outlines the manner in which higher risk accounts should be monitored, policies and procedures developed, and vigilance maintained regarding business relationships with PEPs and high profile individuals or with persons and companies that they are clearly related to or associated with. As all PEPs may not be identified initially and since existing customers may subsequently acquire PEP status, regular reviews of at least the more important customers should be undertaken.

173. *Criterion 12.2 - Sub-criterion 12.2(a)* - The definition of PEP applies to both foreign and domestic PEPs including senior executives of international organisations (s.1 AML/CTF Act). Clause 5 (4) of the revised Regulations requires that the reporting entity must have in place appropriate risk-based systems and controls to identify, verify and understand whether the customer or the beneficial owner of the customer is such a person. Information on the beneficial owner must be obtained (clause 5 and 6(c) AML/CTF Regulations). *Sub-criterion 12.2(b)* - The measures in sub-criteria 12.1(b) to (d) would apply to a person if the customer is a domestic PEP or a senior executive member of an international organisation.

174. *Criterion 12.3* - Clause 5(4) of the revised AML/CTF Regulations requires reporting entities to have in place appropriate risk-based systems and controls to identify, verify and understand whether the customer or the beneficial owner of the customer is an immediate family member of a political exposed person or a close associate of a politically exposed person and clause 5(3) requires reporting entities to apply enhanced CDD to PEPs. There is no explicit requirement for family members and close associates of PEPs to be included as PEPs or subject to enhanced CDD. A reporting entity could however apply enhanced CDD if, under its risk-based systems and controls, those persons are separately identified as customers which are deemed to be high ML and TF risk.

175. *Criterion 12.4* is not applicable. Financial institutions in Vanuatu do not issue life insurance policies.

Weighting and conclusion

176. The 2015 revision to the AML/CTF Regulations has strengthened Vanuatu's compliance with R.12 requirements, but shortcomings remain including that reporting entities are not explicitly required to apply PEP requirements to family members or close associates of PEPs. **Vanuatu is largely compliant with R.12.**

Recommendation 13 – Correspondent banking

177. Vanuatu was rated partially compliant with former R.7 in its previous MER as outside of banks there was no awareness of the requirements in the FTRA. The FTRA was repealed by the AML/CTF Act which came into effect in June 2014 and contains the current requirements relating to correspondent banking.

178. *Criterion 13.1* - Under section 36 of the AML/CTF Act, reporting entities that carry out cross-border correspondent banking activities are required to gather sufficient information to understand the respondent's business, assess the respondent's AML/CFT controls, obtain approval from a senior manager before establishing a correspondent relationship, and document the responsibilities of each institution. However, there is no obligation to establish whether the respondent has been subject to AML/CFT investigation or regulatory action.

179. *Criterion 13.2* - Section 36 (3)(a) & (b) of the AML/CTF Act requires with respect to "payable through accounts" reporting entities to ensure that the respondent bank performs CDD obligations on its customers and can provide relevant CDD data upon request.

180. *Criterion 13.3* - There is a prohibition against reporting entities establishing or continuing correspondent banking relationships with shell banks at s.46 of the RBV PG9 (Revised) issued in February 2015. The same section also prohibits financial institutions from opening correspondent accounts with financial institutions that deal with shell banks.

Weighting and conclusion

181. Vanuatu has measures in place that satisfy most of the requirements of R13. The remaining deficiency is there is no obligation to establish whether the respondent has been subject to AML/CFT investigation or regulatory action. **Vanuatu is largely compliant with R.13**

Recommendation 14 – Money or value transfer services

182. Vanuatu was rated non-compliant with former SR.VI in its previous MER. This was due to the lack of an adequate supervisory regime for money or value transfer services (MVTS) and no specific

guidance being issued to the sector. Criteria 2 and 5 of the new R14 are additional requirements to those of the old SR.VI.

183. *Criterion 14.1* - MVTS are defined as reporting entities at section 2(n) of the AML/CTF Act and are required by section 9 to be registered with the FIU before commencing business in Vanuatu.

184. *Criterion 14.2* - The AML/CTF Act has an offence and corresponding dissuasive penalty at section 9(5) which would apply to a MVTS operating in Vanuatu without first registering with the FIU. Evidence was submitted which showed that in January 2015 the VFIU had identified and engaged with six entities suspected of acting as a MVTS. The six were not registered with the VFIU under the AML/CFT Act. There was, however, no evidence submitted detailing any actions taken by Vanuatu between 2008 and 2015 to identify natural or legal persons acting as MVTS without being on the required register.

185. *Criterion 14.3* - The VFIU is responsible for the registration of MVTS and their compliance with the AML/CTF Act. There are no vetting requirements or legal provisions which allow the VFIU to refuse an MVTS's entry onto the registry or removal at a later date for breach of the AML/CTF Act. Section 46 of the AML/CTF Act provides the VFIU with the power to carry out on-site examination visits to verify compliance with the Act. However the exercise of this power has only been sporadically used with three such on-site inspections being carried out since 2009. No other authority has any supervisory responsibility for MVTS.

186. *Criterion 14.4* - When a MVTS applies for registration with the VFIU under the AML/CTF Act the applicant must provide details on the application form of any agent it may have in Vanuatu. The agent is registered as an affiliate of the applicant.

187. *Criterion 14.5* - There is nothing in legislation or regulations which require a MVTS to include its agents within its AML/CFT programmes and monitor them for compliance with ML/TF policies and procedures.

Weighting and conclusion

188. Although requirements exist for the registration of MVTS businesses with the VFIU, very limited action has been taken to identify unlicensed activity. The authorities acknowledged MVTS as high risk for ML/TF purposes but have made no significant attempts to continuously monitor the sector for compliance. **Vanuatu is partially compliant with R.14.**

Recommendation 15 – New technologies

189. Vanuatu was rated partially compliant with former R.8 in its previous MER. This was because other than for banks, there were no requirements for reporting entities to have policies or measures in place, to mitigate the risks associated with developing new technologies. R.15 has additional requirements which require amongst other things the undertaking of risk assessments prior to the launch or use of new products or policies using new technology.

190. *Criterion 15.1* - The AML/CTF Act and Regulations requires reporting entities to put in place policies and procedures to undertake CDD on customers and services offered in order to recognise, manage and mitigate the potential AML/CFT risk. The AML/CTF Regulations at s.5(2)(c) include a specific provision which requires reporting entities to actively identify and assess the ML/TF risks arising from the development of new products, business practices and the use of new or developing technologies.

191. *Criterion 15.2* - There are no specific requirements in legislation or regulations for financial institutions to undertake risk assessments prior to the launch or use of new products, practices and technologies. However, s.5 (2) of the AML/CTF Regulations requires reporting entities to consider the

risks associated with such new products when determining the risk-based systems and controls they are required to put in place.

Weighting and conclusion

192. The 2015 amendment to the AML/CTF Regulations requires reporting entities to consider the risk posed by development of new products, business practices and use of new and developing technologies in determining appropriate risk-based systems and controls. However, the Regulations do not specifically require reporting entities to undertake risk assessments prior to the launch or use of new products, practices and technologies. **Vanuatu is largely compliant with R.15.**

Recommendation 16 – Wire transfers

193. The requirements relating to wire transfers were contained in old SR.VII. Much has been added to in the new R16. In the last MER Vanuatu was rated partially compliant with SR.VII. Assessors found that although there were some legal requirements to conduct CDD and collect originator details connected to wire transfers, there was no guidance in place to indicate what type of information should be collected and maintained. Vanuatu has enacted new legislation in the AML/CTF Act since the MER was finalised. Therefore little or no analysis is carried forward from the previous MER.

Ordering financial institutions

194. *Criterion 16.1* - Section 37(1) of the AML/CTF Act provides that reporting entities must include accurate originator information when making electronic transfers of funds and such information is to be recorded as part of that transfer. However, the Act does not define what constitutes "accurate originator details". There are also no requirements in legislation requiring beneficiary details to accompany a wire transfer.

195. *Criterion 16.2* - There are no provisions in legislation or regulations relating to procedures and policies required when dealing with bundles/batches of wire transfers.

196. *Criterion 16.3 is* not applicable. Vanuatu does not apply *de minimis* thresholds to the provisions regarding wire transfers.

197. *Criterion 16.4* is not applicable (criterion 16.3 refers).

198. *Criterion 16.5* - Vanuatu's legislation makes no distinction between cross-border and domestic wire transfers. Section 37 (1) of the AML/CTF Act provides that reporting entities must include accurate originator information when making electronic transfers of funds and such information is to be recorded as part of that transfer. However, the Act does not define what constitutes "accurate originator details".

199. *Criterion 16.6* - There are no provisions in legislation or regulations relating to procedures and policies detailing how reporting entities make use of account numbers or unique transaction reference numbers on domestic wire transfers.

200. *Criterion 16.7* - There are no specific provisions in legislation or regulations which require reporting entities to maintain all originator and beneficiary information collected in accordance with R.11.

201. *Criterion 16.8* - There are no provisions in legislation or regulations specifically stipulating that a wire transfer should not proceed if it does not comply with the requirements specified in criteria 16.1 – 16.7.

Intermediary financial institutions

202. *Criterion 16.9* - There are no provisions in legislation or regulations specifically stipulating how an intermediary financial institution should proceed regarding retaining originator and beneficiary details on a wire transfer it is involved in processing.

203. *Criterion 16.10* - There are no specific provisions in legislation or regulations which stipulate how an intermediary is to proceed regarding recording and retaining information when technical limitations prevent the originator or beneficiary details being attached to the wire transfer.

204. *Criterion 16.11* - Intermediary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack originator or required beneficiary information.

205. *Criterion 16.12* - Intermediary financial institutions are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate follow-up action.

Beneficiary financial institutions

206. *Criterion 16.13* - Beneficiary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack required originator or beneficial information.

207. *Criterion 16.14* - There is no requirement in the AML/CTF Act or Regulations for the beneficiary financial institution to identify the beneficiary if it has not been previously verified, for cross-border transfers of USD/EUR 1,000 or more.

208. *Criterion 16.15* - Beneficiary financial institutions are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information, or for determining the appropriate follow-up action.

Money or value transfer service providers

209. *Criterion 16.16* - MVTS providers are not required to comply with all of the requirements of R.16 in the countries in which they operate, directly or through agents.

210. *Criterion 16.17* - MVTS providers fall within the scope of the AML/CTF Act, which includes general requirements regarding filing of STRs with the VFIU and implementing internal controls. However in cases where the MVTS operator controls both the sending and receiving end of the transfer, there is no specific obligation in law or regulation to file an STR in any other jurisdiction.

Implementation of targeted financial sanctions

211. *Criterion 16.18* - There are no requirements for MVTS providers to ensure that when processing wire transfers, they take freezing action and comply with prohibitions from conducting transactions with designated persons and entities, as per the obligations set out in the relevant UNSCRs, relating to the prevention and suppression of terrorism and terrorist financing.

Weighting and conclusion

212. The originator information requirements do not specify the nature of information to be contained in a wire transfer. There are no requirements with respect to beneficiary information. There are no obligations consistent with *criteria* 16.9 to 16.17 imposed by law or regulation on intermediary and beneficiary institutions and MVTS operators (as appropriate). There are no mechanisms to ensure the

reporting entities take freezing actions or comply with prohibitions from conducting transactions with designated person or entities under targeted financial sanctions. **Vanuatu is non-compliant with R.16**.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

213. Vanuatu was rated partially compliant with the former R.9 in the previous MER. This was based upon only the banks being aware of new requirements introduced by the amended FTRA. The FTRA has since been repealed and replaced by the AML/CTF Act. Therefore little or no analysis is carried forward from the previous MER.

214. *Criterion 17.1* - Section 18 of the AML/CTF Act allows reliance on third parties under certain circumstances, including carrying out customer identification and CDD. The reporting entity must obtain the required information immediately. Section 18(1) (b) however wrongly requires that the copies of identification documentation must be made readily available to the intermediary party (who already holds the documents) rather than to the reporting entity. The section requires a reporting entity to satisfy itself that the third party is regulated and supervised, but it is not stipulated that responsibility for CDD measures remains with the financial institution relying on the third party.

215. *Criterion 17.2* - The AML/CTF Act does not impose any limitation on the range of countries where third parties can be relied upon and does not have regard to information on country risk. It only requires that the reporting entity must be satisfied that the third party is regulated and supervised, and has measures in place to comply with CDD requirements. Section 5 of the corresponding Regulations stipulates that when identifying and verifying a customer a reporting entity must have in place risk-based system and controls which include the risks posed by the foreign jurisdictions with which it deals.

216. *Criterion 17.3* - There are no specific provisions in the AML/CTF Act or Regulations that would modify the manner in which a relying reporting entity could satisfy the conditions for reliance when a third party is part of the same financial group.

Weighting and conclusion

217. Vanuatu's measures regarding use of third parties have major shortcomings including that there is no requirement for a risk appraisal regarding the location of the third party. The shortcomings are not mitigated by a requirement that the responsibility for the actions of the third party concerning CDD remain with the reporting entity. In addition, there is no requirement that the reporting entity be provided with the required documentation by the intermediary on request. **Vanuatu is non-compliant with R.17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

218. In the previous MER Vanuatu was rated partially compliant for former R.15 and R.22 which covered the requirements of R.18. On the requirement to have internal controls, only banks were found to be complying in response to RBV guidelines whilst other financial institutions were unaware of their legislative obligations in the FTRA. There were no requirements to extend policies on AML/CFT to overseas operations of locally incorporated financial institutions, except for the RBV guidance that applied to banks only. The FTRA has been replaced by the AML/CTF Act, therefore little or no analysis is carried forward from the previous MER.

219. C*riterion 18.1* - Financial institutions are required to have and maintain an AML/CFT Procedure Manual under s.33 of the AML/CTF Act which contains internal policies, processes and procedures to ensure compliance with their obligations under the Act. However, there is no stipulation that these must take into regard the AML/CFT risks or size of the business or that the Procedure Manual's contents must

be implemented. Section 5 of the AML Regulations requires risk-based systems and controls to be implemented for the identification and verification of customers. More specifically:

a) Section 34 of the AML/CTF Act requires the appointment of a Compliance Officer but does not stipulate that the appointment must be made at the management level. Section 31 requires the submission of a compliance report to the FIU, using a prescribed form and by a prescribed date. The prescribed form for the compliance report was made by regulation in January 2015 but is not yet in use.

b) There are no requirements to have in place screening procedures to ensure high standards when hiring employees.

c) The AML/CFT Procedure Manual as required by s.33 (2)(d) of the AML/CTF Act must contain policies and procedures to train the entity's officers and employees regarding relevant legislation and internal policies regarding AML/CFT. Section 33(2)(e) requires the training of staff to recognize and deal with AML/CFT. There are no specific requirements to require that the contents of the Procedure Manual are implemented.

d) The AML/CFT Procedure Manual as required by s.33 (2)(g) of the AML/CTF Act must contain policies and procedures on the establishment of an audit function. There are no specific requirements to require that the contents of the Procedure Manual are implemented. There is no mention that the audit function must be an independent one. Under the Financial Institutions Act 1999 banks are subject to independent audit.

220. *Criterion 18.2* - None of the essential elements for financial groups are met, and financial institutions are not specifically required to implement group-wide AML/CFT policies and procedures.

221. *Criterion 18.3* - Under s.41 of the Financial Institutions Act 1999 prior approval of the RBV is needed before any bank may establish a branch, agency or office, outside of Vanuatu. Section 34 of the Act has the same restriction if a bank wishes to create a subsidiary. Part of the consideration for the approval involves a comparison of KYC procedures between the involved jurisdictions. The Vanuatu authorities stated that in practice, it is rare for a reporting entity to be a parent business or profession for an entity in a foreign jurisdiction. These provisions only apply when establishing a branch, agency or office and there are no legal provisions to ensure that comparisons continue after establishment is completed. There are no requirements that the banks must ensure that their foreign branches or subsidiaries apply the same or a higher standard of AML/CFT controls and procedures.

Weighting and conclusion

222. The AML/CTF Act contains certain requirements regarding internal procedure manuals but is silent on their implementation and the screening of employees. The Act also requires the appointment of a Compliance Officer but is silent on the required management level of that officer. There is also a complete absence of requirements regarding group entities. **Vanuatu is non-compliant with R.18.**

Recommendation 19 – Higher-risk countries

223. Vanuatu was rated partially compliant with the former R.21 in its last MER. Its related requirements were in the FTRA which is now repealed and replaced by the AML/CTF Act. The new R.19 contains new requirements and so no analysis is carried forward from the previous MER.

224. *Criterion 19.1* - There is a requirement at s.5 (2)(d) of the AML/CTF Regulations for reporting entities to implement risk-based systems and controls in which one of the risks considered should be if a business relationship or transactions involves countries about which the FATF has issued warnings. The AML/CTF Regulations require at s.8 (1)(c)(iii) that enhanced due diligence procedures should be applied

in all such cases where a transaction involves an entity based or incorporated in such a FATF designated country.

225. *Criterion 19.2* - Vanuatu does not have legal powers or procedures in place to apply countermeasures when called upon to do so by the FATF, or when acting independently.

226. *Criterion 19.3* - Vanuatu does not have a formalised process for ensuring financial institutions are advised of concerns about weaknesses in the AML/CFT systems of foreign jurisdictions.

Weighting and conclusion

227. Vanuatu has procedures in place to require reporting entities to apply CDD to transactions that involve countries on FATF warning lists but operates no mechanism to alert its reporting entities of those identified countries in the first instance. **Vanuatu is partially compliant with R.19.**

Recommendation 20 – Reporting of suspicious transaction

228. Vanuatu was rated largely compliant with former R.13 on suspicious transaction reporting on money laundering and former SR.IV on suspicious transaction reporting on terrorist financing. The 2006 MER noted that financial institutions did not report STRs to the VFIU for attempted suspicious transactions and declined business. Those deficiencies have been addressed in the new AML/CTF Act, and reporting requirements for suspicious activity or attempted activity has been added.

229. *Criterion 20.1* - A reporting entity must report a transaction or attempted transaction to the FIU within 2 working days if the reporting entity suspects or has reasonable grounds to suspect that a transaction or attempted transaction involves proceeds of crime (not defined), or is related to terrorist financing (not defined) (s.20, AML/CTF Act). A reporting entity must likewise report to the FIU a suspicious activity (activity is defined as a series of transactions or any act or omission of an act) or attempted activity within 2 working days if it suspects or has reasonable grounds to suspect that the activity or attempted activity involves proceeds of crime or is related to terrorist financing (s.21). Vanuatu should clarify through legislation, and provide additional guidance on, the definitions and scope of 'proceeds of crime' and 'terrorist financing' for the purposes of the STR reporting requirements.

230. *Criterion 20.2* - All suspected transactions and attempted transactions are required to be reported by reporting entities to the FIU (under ss.20 and 21, AML/CTF Act), regardless of the amount of the transaction.

Weighting and conclusion

231. Legal requirements regarding reporting of suspicious transactions and suspicious activity or attempted transactions or activity are consistent with the criteria for R.20. However, providing definitions of 'proceeds of crime' and 'terrorist financing' could assist reporting entities in fulfilling their reporting obligations. **Vanuatu is largely compliant with R.20.**

Recommendation 21 – Tipping-off and confidentiality

232. Vanuatu was rated compliant with former R.14 on tipping-off. All the requirements of R.21 were assessed under former R.14 in the 2004 Methodology.

233. *Criterion 21.1* - Under s.43(2), AML/CTF Act, no civil or criminal proceedings may be taken against a reporting entity or any officer, employee or agent, for complying with their obligations under the Act despite any written law to the contrary. The provision protects reporting entities and their directors, officers and employees from criminal and civil liability for breach of any restriction on disclosure of

information if they report their suspicions to the FIU. However, the Act does not explicitly state that this applies regardless of whether the person knew precisely what the underlying criminal activity was or whether illegal activity actually occurred (as required by c.21.1).

234. *Criterion 21.2* - A person must not disclose any information to any other person that a reporting entity has formed a suspicion regarding a transaction or attempted transaction or an activity or attempted activity, or that a report or any relevant information is provided to the FIU. Exceptions are provided for disclosure arising from obligations under the Act or to a relevant supervisory body, or for the purpose of obtaining legal advice or representation in relation to the disclosure. Disclosure by the FIU to an assisting entity or any other person under the Act is also permitted (s. 38 AML/CTF Act).

Weighting and conclusion

235. Vanuatu's tipping off and confidentiality provisions meet almost all R.21 requirements. The legislation should be amended to clarify that tipping-off protections apply regardless of whether the person knew precisely what the underlying criminal activity was or whether illegal activity actually occurred (as required by c.21.1). **Vanuatu is largely compliant with R.21.**

Designated non-financial businesses and professions

Preamble: Scope of DNFBPs

236. Vanuatu has established obligations fully consistent with those applied to financial institutions under the AML/CTF Act and Regulations, on the full range of DNFBPs as defined under the FATF Recommendations. The definition of reporting entity in s.2 AML/CTF Act includes casinos, on-line gambling, real estate agents and dealing in sale or hire of motor vehicles, dealers in bullion, precious metals and stones, lawyers, notaries and accountants and trust and company service providers. The VFSC licences (inter alia): trust and company service providers; securities dealers; unit trust managers; trustee companies; and mutual funds and administrators but does not perform supervision of those entities. The VFIU is the designated AML/CFT supervisory authority, responsible for compliance monitoring and supervision with respect to AML/CFT requirements for all categories of casinos and DNFBPs, and for those other categories of non-financial business defined as reporting entities for the purposes of the AML/CTF Act.

237. A summary of these entity types and approximate numbers is as follows:

	Activities and operations according to the FATF definition of DNFBPs	**Reporting entities authorised to conduct these activities and operations**	**Licensing/ supervisory authority**
1.	Casinos	Casinos (3) Other gaming machine operators (2) Interactive gaming (at least 2) Lottery (1)	Minister of Finance (licenser) VFIU (AML/CFT registration & supervisor)
2.	Real estate agents	(at least 16)	VFIU (AML/CFT registration & supervisor)
3.	Dealers in precious metals and stones	Bullion dealers (nil)	VFIU (AML/CFT registration & supervisor)
4.	Lawyers, notaries and accountants	Lawyers (18 firms) Accountants (at least 11 firms)	VFIU (AML/CFT registration & supervisor)
5.	Trust and company service providers and Trust companies	TCSPs (at least 27 Trust companies (at least 11)	VFSC (licenser) VFIU (AML/CFT registration & supervisor)

	Activities and operations of other non-financial reporting entities under the AML/CTF Act	Reporting entities authorised to conduct these activities and operations	Licensing/ supervisory authority
1.	Charitable Associations	Charitable organisations (at least 4)	VFSC (registrar) VFIU (AML/CFT registration & supervisor)
2.	Foundations	Foundations (at least 2)	VFSC (registrar) VFIU (AML/CTF registration & supervisor)
3.	Cooperative societies	Over 400 small societies	Office of the Registrar of Cooperatives & Business Development Services (registrar) VFIU (AML/CFT registration & supervisor)
4.	Dealers in high value items (other than real estate)	Motor vehicle dealers and hiring (29)	VFIU (AML/CFT registration & supervisor)

Recommendation 22 – DNFBPs: Customer due diligence

238. Vanuatu was rated non-compliant with former R.12. The key factors underlying that rating were that although the FTRA provided the necessary legal instrument for compliance, effectiveness of implementation was lacking.

239. *Criterion 22.1* - The CDD obligations for reporting entities as assessed under R.10 apply to all relevant DNFBP activities as defined in criterion 22.1 of the FATF Recommendations. The CDD obligations apply when a person opens an account with, engages the service of, or enters into a business relationship with a reporting entity, or carries out an electronic currency transfer or occasional transaction through a reporting entity. The occasional transaction minimum size threshold (for the purposes of s.27 and 28 of the Act) attaching to casinos, online gambling and gaming businesses is VT 300,000 (approx. USD3,000); to dealing in the sale or hire of motor vehicles is VT500,000 (approx.USD5,000) and to all other categories of DNFBP are VT1 million (approx. USD10,000) as prescribed in clause 12, AML/CTF Regulations. These thresholds are equal to or lower than the limits set out in R. 22.1. NPOs (Charitable Associations and Foundations) are reporting entities under the AML/CTF Act, however, it is not clear that the circumstances in which CDD requirements apply under s.12 (1) of the Act (and therefore consequential CDD provisions in the Act and Regulations) include transactions or relationships between NPOs and their beneficiaries or associated NPOs. The moderate deficiencies in CDD obligations as outlined in the analysis for R.10 mean that *criterion* 22.1 is only partially met.

240. *Criterion 22.2* - Vanuatu's record keeping requirements as set out in s.19, AML/CTF Act apply to all categories of reporting entities including relevant DNFBP activities as defined in *criterion* 22.1. There is no explicit obligation on reporting entities to make CDD information swiftly available to the VFIU on request, except where an STR has been made.

241. *Criterion 22.3* - Under clause 5, AML/CTF Regulations, each reporting entity including DNFBPs must have in place appropriate risk-based CDD systems and controls having regard to the type of ML and TF risk that it might face, including PEPs and must include enhanced CDD under clause 6. However, as set out in the analysis for R.12, there is no mandatory requirement on a reporting entity, where a person is identified as a PEP, to treat the person's immediate family and their associates as PEPs.

242. *Criterion 22.4* - Under clause 5, AML/CTF Regulations, each reporting entity including DNFBPs must have in place appropriate risk-based CDD systems and controls having regard to the nature, size and complexity of its business and the type of ML and TF risk that it might face including any development of new products, business practices and use of new or developing technologies.

243. *Criterion 22.5* - A reporting entity (including DNFBPs) must: (a) satisfy itself that that the intermediary or third party is regulated and supervised, and has measures in place to comply CDD and record keeping requirements in the Act; and (b) ensure that copies of identification data and other relevant documentation relating to the requirements under this Part is made available to the intermediary or the third party upon request without delay; and (c) immediately obtain the required CDD information (s.18, AML/CTF Act). However, there are a number of deficiencies with Vanuatu's third party reliance provisions (analysis for R.17 refers).

Weighting and conclusion

244. The scope of DNFBP reporting entities is consistent with FATF Recommendations, however, shortcomings remain with respect to CDD requirements (R.10) and reliance on third parties (R.17) for DNFBPs. **Vanuatu is partially compliant with R.22.**

Recommendation 23 – DNFBPs: Other measures

245. Vanuatu was rated non-compliant with former R.16 in the 2006 MER. The factors underlying that rating were primarily a lack of implementation and effectiveness.

246. *Criterion 23.1* - The suspicious transaction and suspicious activity reporting requirements (including for attempted transaction and activities) in ss.20 and 21 of the AML/CTF Act apply to all reporting entities including DNFBPs as defined in the FATF Recommendations, and are largely consistent with the requirements of R.20.

247. *Criterion 23.2* - Sections 33 and 34, AML/CTF Act set out required internal policies and procedures for all reporting entities including DNFBPs. Specific references are to CDD, record-keeping and reporting requirements. However, significant gaps are evident in respect of requirements for compliance with R.18 including: a compliance officer is required to be appointed under s.34 and may be, but is not required to be at the management level; screening procedures for hiring employees are not required; the required audit function (s.33 (2) (g) is not specifically required to be 'independent'; and no requirements exist in respect of group-wide programs, or measures applicable to foreign branches and subsidiaries.

248. *Criterion 23.3* - The AML/CTF Regulations as revised in January 2015 (sub-clause 8(1)(c)(iii)) require that enhanced due diligence procedures (as per clause 6) should be applied in all cases where a transaction involves an entity based in or incorporated in a jurisdiction designated as high risk by FATF. However there is no evidence of mandatory requirements on reporting entities to apply countermeasures proportionate to the risks; or for the authorities to have measures in place to advise reporting entities of weaknesses in the AML/CFT systems of other countries.

249. *Criterion 23.4* - The legislative protections in s. 43 (2) of the AML/CTF Act are largely consistent with criterion 21.1 for reporting entities (including DNFBPs) and their directors, officers and employees when complying with their obligations under the Act. The 'tipping-off' provisions of s.38, AML/CTF Act are consistent with *criterion* 21.2 and apply to all reporting entities including DNFBPs.

Weighting and conclusion

250. Significant deficiencies remain with respect to requirements on several aspects of internal controls, audit, and foreign branches and subsidiaries (R.18), and for higher risk countries (R.19) for DNFBPs. **Vanuatu is partially compliant with R.23.**

6. SUPERVISION

Recommendation 26 – Regulation and supervision of financial institutions

251. Vanuatu was rated partially compliant with former R.23. Banks were being adequately regulated by the RBV, but the insurance industry was not being adequately regulated by the VFSC, and money changers/remitters were not under any supervision. Recommendation 26 now has additional requirements and Vanuatu has also introduced new legislation. R.26 contains requirements relating to shell banks which was previously covered by former R.18.

252. *Criterion 26.1* - The RBV has the responsibility for regulating and supervising the banking and insurance industry. Supervision of the insurance industry was transferred to RBV in 2010.The VFIU has, with the passing of the AML/CTF Act, taken over responsibility for monitoring compliance with the AML/CTF Act for all designated reporting entities, which includes the financial institutions.

Market entry

253. *Criterion 26.2* - Banks and insurance entities are required to be licensed by the RBV. All other reporting entities as defined in the AML/CTF Act, including those providing a money or value transfer service or a money or currency changing service, must register with the VFIU. Shell banks are prohibited in Vanuatu by action of s.20 of the International Banking Act, which requires a physical presence, the maintaining of records and the operation of staff from Vanuatu premises as an obligation on all licensees under that Act.

254. *Criterion 26.3* - As part of the licensing requirements and ongoing supervision for banks and insurance business the RBV has powers to prevent criminals from holding an interest or management position in the licensees. However such requirements are not in place for other financial institutions that are only required to be registered with the VFIU. The AML/CTF Act at s.48 empowers the VFIU to remove a director, manager, secretary or other officer of a reporting entity if certain conditions are met. One of which is the failure to meet criteria for fitness and suitability as may be prescribed. No such prescription is found however in the corresponding AML/CTF Regulations. Section 48 would also not apply to anyone holding an interest in a financial institution.

Risk-based approach to supervision and monitoring

255. *Criterion 26.4* - There is no direct reference in the legislation or regulations to adherence to the Core Principles, but the requirements imposed by legislation on the banking and insurance sector go some way to meet them. Vanuatu's AML/CFT legislation and regulations are silent on the application of consolidated group supervision. Other financial institutions come under the new AML/CTF Act. The Act develops the necessary AML/CFT requirements and gives the VFIU power to intervene if some of its measures are not met. It provides at s.46 the power for the VFIU to examine the records and affairs of a relevant entity, including that of financial institutions providing money or value transfer services, or a currency changing service. It however on its own does not fully meet the requirements of R.26 regarding the regulatory or monitoring supervision of financial entities, as nothing in the AML/CTF Act or Regulations require that supervision and monitoring are undertaken with regards to identified sector risk.

256. *Criterion 26.5* - Since 2010 the RBV has conducted 10 supervisory visits on banks, although three were of limited scope, and 21 supervisory visits on insurance entities. However nothing in the legislation requires a risk-based approach to supervision by competent authorities. No evidence was provided by Vanuatu to demonstrate that the frequency and intensity of off-site or on-site supervision has been undertaken based on any risk assessments of the institution's policies and procedures. There was also no evidence of any risk profiling being undertaken outside of the limited NRA process.

257. *Criterion 26.6* - There are no procedures in place for the supervising bodies to review the assessment of the ML/TF risk profile of individual financial institutions either periodically or when a major event occurs. Section 35 of the AML/CTF Act provides that the VFIU may require a reporting entity to carry out a money laundering and terrorism financing risk assessment and produce a written report on their findings. There is no evidence such reports have been requested, or that any other risk profiling work has been undertaken on individual reporting entities.

Weighting and conclusion

258. The RBV does not conduct on-site inspections or other AML/CFT supervision on banks or the insurance sector on a risk-based basis. This is a serious deficiency when so few on-site inspections are taking place. For other financial institutions, no regulatory supervision is being carried out. The very limited supervision of MVTS is also a major concern given the risks posed by this sector in Vanuatu. **Vanuatu is partially compliant with R.26.**

Recommendation 27 – Powers of supervisors

259. Vanuatu was rated partially compliant with former R29, with the noted deficiency being that the VFSC did not have adequate monitoring and inspection authority. New legislation has since been enacted with the AML/CTF Act and the Insurance Act so the analysis carried out for the MER 2006 is only partially still valid, i.e. regarding the powers of the RBV under the Financial Institutions Act 1999 (FIA) and International Banking Act 2002 (IBA).

260. *Criterion 27.1* - As detailed in the 2006 MER, the RBV has adequate monitoring and inspection authority under Part 3 of the FIA and Part 3 of the IBA to ensure compliance with AML/CFT requirements by the banking sector. It has also subsequently taken over the responsibility of supervising the insurance industry using powers in Part 2 of the Insurance Act. The VFIU, as the AML/CFT supervisor for all financial reporting entities has authority under ss.46 and 47 of the AML/CTF Act to inspect and ensure compliance with that Act. That includes in respect to the financial leasing and money or value transfer services sector. However there is a lack of power for the VFIU to remove entities from registration for failure to comply with their AML/CFT obligations.

261. *Criterion 27.2* - The VFIU has powers to conduct inspections of financial institutions under s.46 of the AML/CTF Act. Additional powers of inspection are also provided to the RBV under s.28 of the FIA, s.14 (1) of the IBA and s.7 of the Insurance Act.

262. *Criterion 27.3* - The VFIU has powers under s.45 of the AML/CTF Act to compel financial institutions to produce information relevant to the AML/CFT requirements. Additional powers of compulsion are also provided to the RBV under s.28 (3) of the FIA, s.14 of the IBA and s.6 of the Insurance Act.

263. *Criterion 27.4* - The VFIU has powers to employ criminal sanctions on financial institutions for breaches of the AML/CTF Act under Part 10 of that Act and may under s.48 of the Act remove officers from holding office in certain circumstances. The VFIU however has no fining or civil powers to impose lesser sanctions when required. Similarly the RBV has powers at the higher end of the scale, such as removing, restricting or suspending a license under s.17 of the FIA, s.11 of the IBA and s.27 of the Insurance Act, but an appropriate range of civil, disciplinary and financial sanctions is lacking.

Weighting and conclusion

264. Between the RBV and the VFIU there are some sanctioning powers to supervise all sectors, however the VFIU's sanctioning powers are not proportionate in effect and the RBV's administrative sanctioning powers can only be applied in limited circumstances. As the majority of sectors fall under the

supervision of the VFIU it is a serious shortcoming that they cannot remove any entity from the AML/CTF Act register for any failings in compliance no matter how serious. **Vanuatu is partially compliant with R.27.**

Recommendation 28 – Regulation and supervision of DNFBPs

265. Vanuatu was rated non-compliant with former R.24 in the 2006 MER. The factors underlying that rating were: there were no clear procedures to process the application to open casinos; there was no system in place to monitor and ensure DNFBPs' compliance with AML/CFT requirements; and there was no assessment of the risk of money laundering and terrorist financing in the DNFBP sector.

266. *Criterion 28.1 - Sub-criterion 28.1(a)* - Casinos operating in Vanuatu are required to be licensed under the Casino (Control) Act. Online gambling is licensed under the Vanuatu Interactive Gaming Act 2000. Domestic gaming operators are licensed under the Gaming Control Act 1983. Instant lottery, pool betting schemes, and overseas lottery promoters are licensed under the Lotteries Act 1989.

267. Licences are issued by the Minister of Finance with application forms available from the Customs and Inland Revenue Department. *Sub-criterion 28.1(b)* - In considering a casino licence application, the Minister must be satisfied that the proposed licensee is a suitable person to be a licensee under the Act, including that the licensee is of good repute, having regard to character, honesty and integrity; is of sound and stable financial background; and in the case of the proposed licensee not being a natural person, that it has a satisfactory ownership, trust or corporate structure suitability criteria; and that the person has no business association with any person, body or association who or that, in the opinion of the Minister after investigation made or caused to be made by the Minister, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources. The due diligence process for a casino application is conducted by the Department of Customs and Revenue (or third party consultants) on behalf of the Minister. However, it is not clear to what extent this process will establish whether criminal interests or their associates are holding, or are being the beneficial owner of a significant controlling interest in a casino. It is also not clear that the processes carried out at the time of licensing are applied by the Department of Customs and Revenue in respect of changes in senior management or ownership after licensing. There is no evidence of monitoring processes or compliance inspections in place in relation to licensing requirements.

268. The Minister has the power to issue a direction to a casino, or to suspend or cancel its licence, in the public interest. Section 48 of the Casino (Control) Act empowers the VFIU to remove disqualified persons (as defined in s.49) as directors, managers or secretary of reporting entities including casinos, or if the person does not meet one or more of the fitness and suitability criteria prescribed (no such criteria have been prescribed to date). The Minister has similar powers in respect of online gambling licensees under the Vanuatu Interactive Gaming Act 2000. However, the VFIU's powers do not extend to disqualifying persons holding a controlling interest in a reporting entity or being beneficial owners thereof. Nor does the VFIU appear to have powers to forcibly remove a reporting entity from the Register under the Act.

269. *Sub-criterion 28.1(c)* - The VFIU is responsible for AML/CFT supervision of casinos, online betting and domestic gaming and businesses licensed under the Lotteries Act, under the AML/CTF Act (as per the functions of the VFIU under s.5 of the Act). Sections 45 to 47 of the AML/CTF Act provide adequate powers for information collection, examination and enforcement of casinos' compliance with the AML/CFT requirements under the Act, including to issue directions, and power to obtain court orders to enforce compliance. The VFIU has held meetings with, and received copies of the AML/CFT procedures of the three (3) casino operators but has had less engagement with the online betting, gaming and lottery licensees to date. No on-site inspections have been conducted by the VFIU for AML/CFT compliance and supervision purposes.

DNFBPs other than casinos

270. *Criterion 28.2* - The VFIU is responsible for ensuring compliance of reporting entities including DNFBPs (as defined by FATF) with AML/CFT requirements (s.5, AML/CTF Act).

271. *Criterion 28.3* - The general powers in s.5 and the specific powers in s. 45 to 47 of the AML/CTF Act provide adequate powers for information collection, examination and enforcement of other DNFBPs' compliance with the AML/CFT requirements under the Act.

272. *Criterion 28.4 - Sub-criterion 28.4(a)* - The general powers in s.5 and the specific powers in s.45 to 48, AML/CTF Act are adequate for information collection, examination and enforcement, including issuing of directions and the power to obtain court orders to enforce compliance. *Sub-criterion 28.4(b)* - The VFIU has powers under s. 48, AML/CTF Act to remove directors, managers or other officers who are disqualified persons in DNFBPs for: being convicted of an offence under the Act; being involved as a director or manager of a reporting entity in Vanuatu or elsewhere whose license has been revoked or it has been wound up; for being convicted for an offence involving dishonesty; becoming bankrupt; or having compounded debts with their creditors. However, a material deficiency remains in that the VFIU's powers do not extend to disqualifying criminals or their associates from holding a controlling interest in a reporting entity, or being beneficial owners thereof. There are no fit and proper requirements at registration or licensing for DNFBPs other than casinos, and no requirements to check criminal records with foreign jurisdictions where appropriate. *Sub-criterion 28.4(c)* - The AML/CTF Act imposes criminal sanctions (conviction-based) on DNFBPs (as reporting entities under the Act) for breaches of each of the provisions imposing obligations. The absence of civil penalties or administrative remedies under the AML/CTF Act (or Regulations), however, is a material deficiency impacting on the issue of proportionality of sanctions, particularly in respect of lesser offences.

273. *Criterion 28.5* - The VFIU endeavours to adopt a risk-sensitive approach in determining the frequency and intensity of AML/CFT supervision of DNFBPs under the AML/CTF Act on the basis of their understanding of Vanuatu's ML/TF risks. Annual reviews of compliance assessments and other available information on entity risks determines the high and medium-high risk entities to be subject to more intensive monitoring or examination during the year. The VFIU will have regard for whether the reporting entity's risk-based systems and controls are appropriate to the nature, size and complexity of the business and type of ML and TF risk it might reasonably face when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs.

Weighting and conclusion

274. Material shortcomings exist with inadequate requirements or processes in place to prevent criminals or their associates becoming beneficial owners or controllers of casinos and similar entities after licenses have been granted, and likewise in respect of owners or controllers of most other categories of DNFBP. No fit and proper requirements are in place at registration or licensing for DNFBPs other than casinos. Although the VFIU has adequate powers with respect to AML/CFT supervision, almost no AML/CFT compliance monitoring or supervision of casinos and similar entities has been carried out to date. Sanctions powers are not proportionate in respect of less serious breaches. **Vanuatu is partially compliant with R.28.**

Recommendation 34 – Guidance and feedback

275. Vanuatu was rated non-compliant with the former R.25 with the underlying factors noted as being that no guidance had been issued to DNFBPs to assist them to comply with the FTRA. There also were no procedures or systems set up to provide feedback to the DNFBPs.

276. *Criterion* 34.1 - The VFIU is required under s.5 (1)(k) of the AML/CTF Act to provide feedback to reporting entities regarding the outcomes relating to reports or information that has been received under the Act. The VFIU acknowledges receipt of the information to the supplying reporting entity and confirms which agency they are forwarding the information on to, if any. They do not provide any feedback which would assist the reporting entity in applying further AML/CFT measures, improving the quality of the reports, or in detecting further suspicious transactions. All reporting entities interviewed cited a lack of such feedback from the VFIU. The VFIU is also tasked by s.5 (1)(n) to issue guidelines to financial institutions in relation to CDD obligations, record keeping and other AML/CFT requirements. The VFIU issued guidance in 2008 based on the FTRA, but this this was not updated or replaced when this legislation was repealed and replaced by the AML/CTF Act and Regulations. The RBV had also issued guidance on the operation of the AML/CFT Act in February 2015, at the time of the MER on-site, applicable to banks and credit institutions only. There is a lack of enforceable or unenforceable guidance to all other sectors. The VFIU staged a workshop in August 2014 regarding the AML/CFT Act coming into force; however this was limited in attendance.

Weighting and conclusion

277. The RBV has issued guidance to the banking sector. Although legally charged with providing similar to the entities it supervises, no written guidance has been produced by the VFIU and very little training has been held to assist reporting entities with their AML/CFT obligations. All entities interviewed stated they had never received any feedback from the VFIU when having made a STR or assistance to help them detect and report suspicious transactions. **Vanuatu is partially compliant with R.34.**

Recommendation 35 – Sanctions

278. Vanuatu was rated partially compliant with former R.17. The main deficiencies noted were: the VFIU had limited administrative powers to sanction a financial institution that has failed to comply with AML/CFT measures provided for under the FTRA; the RBV had administrative powers to sanction a bank that has failed to comply with prudential regulations under the FIA and the IBA but had no such powers with respect to AML/CFT measures under the FTRA. Vanuatu passed the AML/CTF Act in June 2014 which repealed the FTRA and provided criminal sanctions for breaches of obligations on reporting entities.

279. *Criterion 35.1* - The AML/CTF Act imposes criminal sanctions (conviction-based) on reporting entities for breaches of each of the provisions imposing obligations on reporting entities under the Act. The maximum fines or sentences for imprisonment of individuals committing offences, and for body corporate offences are scaled according to the severity of offence, and appear reasonably dissuasive, with a maximum fine of VT$25 million (approx. USD250,000) or 5 years imprisonment for an individual, or fine of VT100 million (approx. USD1,020,000) for a body corporate, for example for failing to report a suspicious transaction. The absence of civil penalties or administrative remedies under the AML/CTF Act (or Regulations) is a material deficiency impacting on the issue of proportionality of sanctions, particularly in respect of lesser offences.

280. The VFIU Director may also remove a director, manager, secretary or other officer of a reporting entity if the person is disqualified (not fit and proper) in terms of s.49, AML/CTF Act. Grounds for disqualification include: being convicted of an offence under the Act, being convicted by a court for a dishonesty offence; becoming bankrupt or compounding (debt arrangements) with creditors; or being a director of or involved in the management of a reporting entity that has had its license revoked or has been wound up by the court.

281. The RBV has a range of administrative sanction powers in respect of domestic banks and insurance licensees, including the ability to issue directives for example to cease an action or take required actions, remove a director or officer, or revoke a licence, in defined circumstances including breaches of their governing Acts or conditions of licence. Such sanctions could only be applied to insurance entities in

relatively limited circumstances in relation to AML/CFT matters, for example for failure to make an STR as required under s.89 of the Insurance Act (IA), or failure to comply with key AML obligations as listed in s.88 of the IA (once amended to refer to the AML/CTF Act instead of the FTRA).

282. Section 16 of the IBA provides for the RBV to take enforcement action against a licensee for contravening the Act or regulations, or *inter alia*, being in breach of a condition of its licence. Such action includes appointing an auditor or examiner, and revocation of its license. Section 25 of the IBA provides for the RBV to direct that a person be removed from being an officer of a licensee if disqualified, or not meeting one or more of the criteria for fitness and propriety set out in RBV guidelines.

283. *Criterion 35.2* - Section 44 of the AML/CTF Act extends liability to any director or officer of a reporting entity (legal person) for any offence under the Act that took place with his or her knowledge, authority, permission or consent. Likewise, disqualification under s.49 applies to a person involved as a director, manager secretary or other officer of a reporting entity. In respect of domestic banks and deposit takers, offences committed by any person who fails to comply with any requirements of the FIA, or any regulations, notices or directives under the Act, or aids or abets, counsels or procures any person to commit such an offence, may be charged against either a natural or legal person. However there are only limited provisions imposing sanctions on persons other than licensees for international banks under the IBA. Civil remedies and administrative sanctions available under s.91 and 92, IA can be applied to directors and senior managers.

Weighting and conclusion

284. Broad criminal sanctions powers are available under the AML/CTF Act and Regulations but lack proportionality. No administrative fine or penalty framework is available to the VFIU for less serious breaches. Although RBV can apply administrative sanctions to banks and insurance entities e.g. through directives or revocation of licence, they can only be used for AML/CFT purposes in limited circumstances. **Vanuatu is partially compliant with R.35.**

7. LEGAL PERSONS AND ARRANGEMENTS

Recommendation 24 – Transparency and beneficial ownership of legal persons

285. Vanuatu was rated partially compliant with former R.33. The underlying factors for this rating were that details of beneficial ownership were required to be filed with the VFSC and were publically available. There were no secrecy provisions which seemed to hinder investigations; however the obligations in this area did not apply to international companies. Vanuatu's underlying legislation has not changed in this area since the last evaluation. As a consequence some of the analysis from the previous MER has been carried over, although some of the requirements of R.24 are different or in addition to those of the former R.33.

286. Under the Companies Act and International Companies Act (ICA) three types of company may be formed in Vanuatu through registration with the VFSC: local companies, overseas companies and international companies. Limited partnerships are allowed under the Partnership Regulations; foundations under the Foundation Act; and charities under the Charitable Association (Incorporation) Act. Out of 5,500 active companies registered with the VFSC from the 1 January 2014 to 26 January 2015, 3,774 were international companies. Significant weight is placed in this analysis on the measures applying to international companies, given the fact that they constitute the great majority of companies registered in Vanuatu.

287. *Criterion 24.1* - The Companies Act, ICA, Foundations Act, the Partnership Regulation and the Charitable Associations (Incorporation) Act describe the basic features of legal persons in Vanuatu and the process by which they may be formed. Section 117 of the Companies Act allows for public inspection of a

company's register of members (shareholders); s.15 of the Charitable Associations (Incorporation) Act provides similar for charities whilst s.47 and 48 provide for the lodging of similar documents for Foundations with the VFSC with limited inspection by the public. Both foundations and charitable associations are defined as reporting entities under s.2 of the AML/CFT Act and are required to register with the VFIU. No exercise has been undertaken by the VFIU to determine the level of compliance with that requirement. Section 58 of the ICA requires international companies to maintain a register of members (shareholders) at their registered office, which under s.34 must be situated in Vanuatu. The ICA does not require that these details are reported to the authorities and at s.125 makes it a criminal offence to make beneficial ownership details public unless under a court order.

288. *Criterion 24.2* - Vanuatu has reviewed a number of existing pieces of legislation relevant to the financial institutions and ML/TF, but there is no evidence that Vanuatu has assessed the risk associated with all types of legal persons created in the country.

Basic information

289. *Criterion 24.3* - The VFSC maintains a record of domestic companies registered in Vanuatu and its members. The Register holds the statutory forms of memorandum and articles which contain all the details required by Recommendation 24.3. This information is available for inspection on payment of the applicable fee. This does not however apply to international companies (which, as noted above, constitute the great majority of companies actually registered in Vanuatu).

290. *Criterion 24.4* - The Companies Act at s.114 and the ICA at s.58 require companies to keep registers of members which contain the details required by *criterion* 24.4 and have to be kept at registered offices which are compelled to be within Vanuatu. The details of the registered office must be lodged with the VFSC

291. *Criterion 24.5* - There are provisions in s.114 and 115 of the Companies Act relating to the timely updating of the registers detailed at *criterion* 24.4. There are, however, no corresponding provisions in the ICA, only the ability of the court to order rectification of the Registry if someone duly shows it is inaccurate (s.61).

292. *Criterion 24.6* - Direct beneficial ownership details are held by the VFSC for all companies except those formed under the ICA (which constitutes the majority of companies registered in Vanuatu). A stamp duty is imposed on any change of beneficial ownership and related procedures for this duty keep the register notified and updated on any changes. Section 125 of the ICA makes it an offence to provide such information to other competent authorities unless they first obtain a court order. While TCSPs registered as reporting entities are required to obtain and hold more extensive beneficial ownership information under the AML/CTF Act, not all TCSPs are captured under the Act. Those which form less than six companies are not reporting entities.

293. *Criterion 24.7* - Vanuatu does not require that beneficial ownership information be accurate and up to date except with respect to that information held by TCSPs registered as reporting entities. Companies themselves are not required to hold accurate and up-to-date information.

294. *Criterion 24.8* - All references in the Companies Act are to the company itself and not a designated natural person supplying the required information to the authorities, whilst under the ICA restrictions apply to the supply of the information. Legislative amendments are required to remove the restrictions and give further powers to the Registrar to require the relevant information.

295. *Criterion 24.9* - Only the VFSC has obligations to maintain its registry company records for longer than five years after the dissolution or winding-up of a company. Section 328 of the Companies Act leaves it to the discretion of certain parties but does not formally set a time-limit. The ICA is silent on time

limits. Section 19 of the AML/CTF Act requires reporting entities to retain the relevant records for six years after termination of the business relationship.

296. *Criterion 24.10* - Current legislative provisions do not allow basic and beneficial ownership information to be obtained in a timely manner.

297. *Criterion 24.11* - Both the Companies Act (at ss.91 and 382) and the ICA (at ss.16 (1)(a), 22, 23) permit bearer shares and bearer share warrants to be issued by companies registered under those statutes. Section 26 of the ICA requires bearer shares to be deposited with a custodian and those that are not are disabled until so deposited. No such requirements are applied to bearer share warrants. There are no similar restrictions contained in the Companies Act.

298. *Criterion 24.12* - There is nothing in legislation which specifically requires nominee shareholders and nominee directors to disclose the identity of their nominator and record this information in any register.

299. *Criterion 24.13* - Relevant legislation currently lacks provisions that would enable the authorities to ensure compliance and impose proportionate and dissuasive sanctions.

300. *Criterion 24.14* - Policies and procedures exist to share information with foreign counterparts regarding domestic companies, but secrecy restrictions within the ICA hinder the actual collection of the information in the first instance for international companies.

301. *Criterion 24.15* - As current legislation exempts international companies from providing beneficial ownership details to the Registrar at the VFSC, corresponding international requests for assistance relating to that information cannot be answered.

Weighting and conclusion

302. The secrecy provisions in the ICA means no relevant information can be accessed unless a court order is first obtained. This is a major shortcoming. **Vanuatu is non-compliant with R.24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

303. Vanuatu was rated non-compliant with former R.34. The factors underlying that rating included there was no central authority to register trusts; there was no requirement to register trusts and information on trusts was not available to the competent authorities.[3]

304. *Criterion 25.1* - Vanuatu does not require trustees of express or other trusts to hold accurate, adequate and current information on the identity of the settlor, trustee(s), beneficiaries or other constituent elements of a trust. Nor does Vanuatu require TCSP's who facilitate the establishment of trusts to maintain records for at least five years after their involvement in a trust ceases.

305. *Criterion 25.2* - Vanuatu is unable to meet this criterion due to the deficiency in criterion 25.1.

306. *Criterion 25.3* - Trustees are not required to disclose their status to financial institutions and to DNFBPs when forming a business relationship or carrying out an occasional transaction.

307. *Criterion 25.4* - Trustees are not prevented by law or enforceable means from providing competent authorities with information they hold relating to trusts.

[3] Vanuatu has completed a draft "Trust Act" with plans for its enactment within the next year.

308. *Criterion 25.5* - Competent authorities have powers to obtain timely access to information held by trustees but not to information relating to beneficial ownership and control.

309. *Criterion 25.6* - Existing legislative provisions for cooperation with competent authorities in other countries also apply to requests for information on trusts and other legal arrangements, including beneficial ownership information. However, there is no evidence that Vanuatu rapidly provides international cooperation in relation to such information, on the basis set out in Recommendations 37 and 40.

310. *Criteria 25.7 and 25.8* - Analysis for *criteria* 25.1 – 25.5 refers.

Weighting and conclusion

311. Vanuatu places no obligation on trustees to hold and maintain relevant information about any of the constituent members of a trust. In the absence of such arrangements the transparency of legal arrangements cannot be guaranteed. This shortcoming cascades through the other requirements of this Recommendation. **Vanuatu is non-compliant with R.25**.

8. INTERNATIONAL COOPERATION

Recommendation 36 – International instruments

312. Vanuatu was rated largely compliant with former R.35 and SR.I. The 2006 MER found that although Vanuatu has signed and ratified the Vienna, Palermo and the Terrorist Financing Conventions, whether it had "fully implemented" these conventions could not be assessed given that there had been no ML or FT prosecutions or investigations and no confiscation of proceeds under the POCA.

313. *Criterion 36.1* - Vanuatu has ratified the Vienna Convention, Palermo Convention, the United Nations Convention against Corruption (UNCAC) and the Terrorist Financing Convention.[4] Implementing legislation includes the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001, the United Nations Convention Against Transnational Organised Crime (Ratification) Act 2003 and the International Convention for the Suppression of the Financing of Terrorism Act 2002. These laws came into force on 15 September 2003 and were repealed and consolidated by the CTTOCA which came into force on 24 February 2006. An instrument of accession was signed by the Minister for Foreign Affairs on 27 October 2005. The United Nations Act 2002 gives the Prime Minister the power to make orders to enable Vanuatu's compliance with Article 41 of the Charter of the United Nations. This is dependent on the UN Security Council calling on the Government of Vanuatu to apply necessary measures. At present the UN Act cannot be used to give effect to Recommendation 7.

314. *Criterion 36.2* - Vanuatu's CTTOCA further implements the Palermo and Terrorist Financing Conventions. The legislation came into force on 24 February 2006 and it repealed and consolidated the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 2001 and International Convention For The Suppression Of The Financing Of Terrorism Act 2002. The POCA, Suppression of Terrorism and Afghanistan Measures Order No.17 of 2003, the Anti-Terrorism Regulations Order No.9 of 2002 (ATRO) made under the Financial Institutions Act 1999 (FIA), and the Financial Transaction Reporting Act (FTRA) Amendment Act 2005, also implement Convention requirements.

[4] For Vanuatu, the Vienna Convention, the Palermo Convention and the Convention on the Suppression of Financing of Terrorism were all brought into force and effect 15 September 2003. The UN Convention Against Corruption was brought into force and effect on 14 March 2011.

315. The CTTOCA Amendment Act No. 9 of 2012 was enacted to address deficiencies identified in the 2006 MER, which included a recommendation to review the various laws to ensure there was no overlap of responsibilities and powers and to ensure clear delineation of responsibilities among government agencies within the legislation and its inter-linkages. The 2006 deficiencies also included the lack of ancillary offences to the TF and terrorism offences, lack of a provision specifying that knowledge, intent and purpose may be inferred from objective factual circumstances and a lack of effective, proportionate and dissuasive civil and administrative sanctions against legal persons for TF. Section 6(2) of the amended CTTOCA now provides for knowledge, intent and purpose to be inferred from objective factual circumstances, however, the amendments have not rectified the deficiencies relating to effective, proportionate and dissuasive civil and administrative sanctions against legal persons for TF. Sections 6(1) and 7(1) of the CTTOCA were amended by Amendment Act No. 39 of 2014 and now criminalise financing of and provision of property services to an individual terrorist. It is not clear if the UNCAC has been implemented by specific anti-corruption legislation.

Weighting and conclusion

316. Vanuatu has ratified key UN Conventions and enacted legislation to implement the obligations contained in these Conventions. However further measures are needed to ensure domestic legislation fully implements these conventions to address, *inter alia*, shortcomings relating to (a) the ML offence (given the linkage between conviction for a serious offence and deficiency in definition of 'serious offence'), (b) lack of ancillary offences for ML, (c) effective, proportionate and dissuasive civil and administrative sanctions against legal persons and for TF, (d) criminalising tax offences, illicit arms trafficking, piracy of products, insider trading and market manipulation as predicate offences for ML, and (e) special investigative techniques. The deficiency relating to the ML offence is a major shortcoming that affects Vanuatu's entire AML regime including its ability to provide MLA. This means Vanuatu cannot provide assistance where an offence is not a serious offence, and for which a conviction has not been confirmed. Furthermore, a majority of the FATF designated predicate offences do not qualify as serious offences to allow for formal MLA generally, or relating to asset confiscation. **Vanuatu is partially compliant with R.36**.

Recommendation 37 – Mutual Legal Assistance

317. Vanuatu was rated partially compliant with former R.36 and largely compliant with former SR.V in the 2006 MER. The factors underlying those ratings were: mutual legal assistance (MLA) requests had been subject to undue delays; requests for MLA would be refused on the ground that the offence involved fiscal matters and Vanuatu had no tax laws; Vanuatu had not considered mechanisms for determining venue of prosecution in cases that are subject to prosecution in more than one country; and Vanuatu did not provide MLA in respect of the powers available to the Attorney-General under the CFT law, namely the ability to apply for directive over custody of terrorist property; and applications for civil-based forfeiture orders pertaining to terrorist property.

318. *Criterion 37.1* - The Mutual Assistance in Criminal Matters Act (MACMA) and the MACMA Amendment Act No.11 of 2012 provide for a range of MLA. Vanuatu can provide assistance in relation to a wide range of terrorism and terrorist financing offences.

319. *Criterion 37.2* - Section 6 of the MACMA stipulates that the Attorney General (AG) or a person authorised by the AG shall receive MLA requests, however there are no clear processes in place for the timely prioritisation and execution of MLA requests and there is no case management system.

320. *Criterion 37.3* - Section 8, s.9 and amended s.10 (Amendment Act No.28 of 2014) of the MACMA set out grounds upon which a request for assistance can be refused. Mandatory grounds for refusal are under s.8 whilst discretionary grounds are under ss.9 and 10. An MLA request must be refused if (a) it relates to prosecution of or punishment for an offence that is considered to be political, (b) if it

relates to prosecuting, punishing or causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinion, (c) granting of the request would prejudice the sovereignty, security and national interest of Vanuatu, or (d) the request relates to a person who has been acquitted or pardoned by a competent tribunal or authority in the foreign country or has undergone punishment provided by the law of that country.

321. Discretionary grounds of refusal are available if (a) the request relates to an offence that may attract the death penalty, (b) it relates to an act or omission that does not constitute an offence under Vanuatu law, (c) there is lapse of time, (d) providing assistance would prejudice an investigation or criminal proceeding in Vanuatu or a proceeding under the CTTOCA, (e) providing assistance would prejudice the safety of a person, (f) the request relates to a trivial matter, or (g) the request does not comply with the general requirements under s.6 MACMA. These grounds are not unreasonable or unduly restrictive. All requests must relate to a 'criminal matter', which is defined in s.2 of the MACMA to include a matter (whether arising under Vanuatu law or a foreign law) relating to forfeiture or confiscation of property for an offence or the restraining of dealings in property that may be forfeited or confiscated for an offence. The only limitation on providing assistance is the requirement for dual criminality.

322. *Criterion 37.4* - Under s.10 of the MACMA if the request relates to prosecution or punishment of a person for an act or omission that, if it had occurred in Vanuatu, would not constitute an offence against Vanuatu law, the request for assistance may be refused. It follows that Vanuatu is unable to provide assistance in cases where the request relates to an act or an omission constituting a tax offence, as Vanuatu does not have tax laws.

323. *Criterion 37.5* - It is an offence under s.63 of the MACMA to disclose the contents of a request for MLA. The penalty for a natural person is a fine of VT1,200,000 (approx. USD12,000) or imprisonment for not more than two years, or both. The penalty for a body corporate is a fine not exceeding VT6,000,000 (approx. USD60,000).

324. *Criterion 37.6* - Vanuatu did not provide any information whether MLA can be provided in cases where the request does not involve use of coercive powers and dual criminality does not exist. A Manual on MLA provided by the State Law Office (SLO) is silent on this issue

325. *Criterion 37.7* - Vanuatu did not provide information whether the dual criminality requirement will be met even if Vanuatu and the requesting country do not place the offence within the same category of offence or have the same terminology. The discretionary nature of s.10 suggests the possibility to provide assistance, however the Vanuatu authorities provided no information on this. The MLA Manual provided by the SLO is silent on this issue.

326. *Criterion 37.8* - Part 3 (ss.11 to 17) of MACMA provides for assistance with taking evidence and production of documents and other articles to support a criminal investigation or proceeding in Vanuatu or a foreign country. The AG has power to authorise the taking and transmission of evidence to the requesting country. The AG can also authorise production of a document or article for a criminal proceeding or investigation in the requesting country or another foreign country. If the AG authorises the taking of evidence, a Judge may take on oath the evidence of each witness in the matter. The Judge shall then cause the evidence to be in writing and certify it before sending it to the AG for transmission to the requesting country. If the AG authorises the production of a document, the Judge may require the document to be produced to him or her and if produced, the Judge must certify a copy and send it to the AG for transmission to the foreign country.

327. Section 15 empowers the Judge conducting proceedings to take evidence or produce a document to allow legal representation for the person subject to the foreign proceeding, any person giving evidence or producing a document and the relevant authority of the requesting country. It also empowers the Judge to allow examination or cross- examination of any person giving evidence or producing a document

through a video or internet link from the requesting country. Section 16 allows application of Vanuatu laws on compelling attendance before a Judge to give evidence, answer questions and produce documents during a criminal trial to a person summoned to testify or produce documents. The person who is the subject of proceedings in the requesting country is competent but not compellable to give evidence. The MACMA however has no penalty for a person (other than the person who is the subject of the foreign proceeding) who refuses to give evidence or produce a document to support a criminal investigation or proceeding in a foreign country. It is not clear if the Judge could order arrest and imprisonment for non-cooperation

328. Section 19 of the MACMA empowers the AG to direct an authorised officer to apply to the court for a warrant to search land or premises for anything relevant to an investigation or proceeding in a foreign requesting country. The court can issue the search warrant under s.20 and s.21 empowers the authorised officer to seize any other thing under the same warrant if the officer believes on reasonable grounds to be relevant to the proceeding or investigation in the requesting country or to provide evidence about the commission of an offence in Vanuatu and the thing is likely to be concealed, lost or destroyed if it is not seized. Anything seized by the authorised officer must be delivered into the custody of the Commissioner of Police, who shall keep the thing in safe custody and advise the AG of the seizure and custody of the thing. The AG may direct the Commissioner about how the thing is to be dealt with, including a direction to send the thing to an authority of a foreign country.

329. The Criminal Procedure Code does not have provisions for undercover operations, intercepting communications and accessing computer systems. Section 46 of the CTTOCA provides for controlled delivery of property and provides immunity for an authorised officer who during investigations allows a controlled delivery for purposes of gathering evidence to identify a person or facilitate prosecution for the offence. This provision however is limited to investigations under the CTTOCA.

330. Vanuatu does not have mechanisms in place to identify, in a timely manner, accounts held by natural and legal persons and it is not clear if authorities have a process to identify assets without prior notification to the owner. It is however clear that competent authorities conducting investigation for ML and associated predicate offences are able to ask for all relevant information held by the VFIU.

Weighting and conclusion

331. Vanuatu has sufficient legal framework to facilitate MLA relating to ML, associate predicate offences and TF investigations, prosecutions and related proceedings. The legal framework however needs improvement to the dual criminality requirement and to allow more investigative techniques for competent authorities. As Vanuatu is a tax haven, there is a concern regarding its inability to provide beneficial ownership information on entities to support foreign investigations and prosecution for foreign tax offences. **Vanuatu is partially compliant with R.37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

332. Vanuatu was rated largely compliant with R.38 in the 2006 MER. The evaluation team noted that Vanuatu did not have arrangements for co-ordinating seizure and confiscation actions with other countries; and had not considered establishment of an asset forfeiture fund.

333. *Criterion 38.1* - Vanuatu has an adequate legal framework to provide assistance in response to requests to identify, freeze, seize and confiscate laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in money laundering, predicate offences and terrorist financing. The framework, however, is adversely affected by the deficiency in the definition of 'serious offence', which is an essential element of the ML offence.

334. Part 4 of the POCA provides for facilitating investigations and preserving property including terrorist property. Division 2 of Part 4 (ss.44 to 49) of the POCA empowers an authorised officer to apply to the court following an MLA request for a warrant to search and seize tainted property in relation to a foreign serious offence or terrorist property. Part 3 of the CTTOCA provides for management and forfeiture of terrorist property. Part 7 (ss.38 to 48) of the MACMA provides for assistance regarding proceeds of crime and terrorist property. Section 40 of the MACMA authorises the AG to apply to the Court for registration of a foreign restraining or confiscation order upon request from a foreign country. The AG must first be satisfied that the person has been convicted of the offence and the conviction or order is not subject to further appeal in the foreign country. Section 42 states that registration of a foreign restraining or confiscation order has the effect that it can be enforced as if it was made by the Court under the POCA or CTTCOCA in relation to terrorist property. Sections 61 to 71 of the POCA provide measures for interim restraining orders for foreign offences and ss.72 to 79 make further provisions relating to foreign restraining orders. Section 73 empowers the Administrator to take custody and control of property. Section 82D makes provision for production orders in relation to foreign serious offences and s.82G makes provision for search warrants in relation to foreign offences.

335. *Criterion 38.2* - Vanuatu has no legal framework that enables authorities to take civil confiscation action and Vanuatu has not demonstrated that this would be inconsistent with fundamental principles of its domestic law.

336. *Criterion 38.3* - Vanuatu has no arrangements for co-ordinating seizure and confiscation actions with other countries and no mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated.

337. *Criterion 38.4* - Vanuatu has no legal framework, or mechanisms, to share confiscated property with other countries, in particular in the context of co-ordinated law enforcement actions.

Weighting and conclusion

338. Vanuatu has sufficient legal framework to provide MLA to identify, freeze, seize and confiscate laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in ML, predicate offences and terrorist financing. This framework, however, is adversely affected by the deficiency in the definition of 'serious offence', which is an essential element of the ML offence. Other shortcomings include: (a) lack of a civil confiscation regime; (b) no arrangements for co-ordinating seizure and confiscation actions with other countries; (c) no mechanism for managing and disposing of property frozen, seized or confiscated; and (d) no legal framework or mechanism to share confiscated assets with other countries. Lack of mechanisms on co-ordinating seizure and confiscation action suggests Vanuatu will not be able to take expeditious action as required under the FATF standards. Another shortcoming relates to the inability to provide MLA in relation to proceeds and instruments of foreign tax offences due to the dual criminality requirement. **Vanuatu is non-compliant with R.38.**

Recommendation 39 – Extradition

339. Vanuatu was rated largely compliant with R.39 and partially compliant with the former SR.V in the 2006 MER. The MER noted that Vanuatu had no measures or procedures in place that would allow extradition requests and proceedings for ML to be handled without undue delay. In relation to former SR.V the MER noted that it was difficult to assess whether the legislation had been fully implemented as no requests had been made or received relating to terrorist acts or the financing of terrorism.

340. *Criterion 39.1* - The Extradition Act is the legislation governing extradition matters. Sub-section 3(1) of the Act defines 'extradition offence' as "*an offence against the law of the requesting country for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months, and the conduct that constitutes the offence, if committed in Vanuatu, would constitute an*

offence in Vanuatu for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months". Sub-section 3(2) states that in determining whether a conduct constitutes an offence, regard may be had to only some of the acts or omissions that make up the conduct. Sub-section (4) provides that an offence may be an extradition offence if it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or relating to foreign exchange control, although Vanuatu does not impose a duty, tax, impost or control of that kind. Money laundering attracts a penalty of 10 years imprisonment or fine of VT10 million (approx. USD100,000) for a natural person and terrorist financing attracts a term of up to 25 years imprisonment or a fine of not more than VT25 million (approx. USD250,000), therefore both offences qualify as extradition offences.

341. Vanuatu has not devised a case management system and clear processes for the timely execution of extradition requests.

342. There are no unreasonable or unduly restrictive conditions placed on the execution of requests. A person may object in writing to an extradition request on grounds of (a) political offence, (b) prosecution or punishment because of race, religion, nationality, political opinion, sex or status, (c) military offence (d) final judgment has been given against the person in Vanuatu or a third country for the offence, (e) immunity to prosecution due to lapse of time, (f) the person has been acquitted or pardoned in the requesting country or Vanuatu or punished under the law of that country or Vanuatu for that offence or another offence constituted by the same conduct as the extradition offence or (g) judgment has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise a defence the person may have (s.4).

343. *Criterion 39.2* - Section 17(2) of the Extradition Act states that the AG may refuse to order surrender of a person if the person is a citizen of Vanuatu. The term may suggest that a Vanuatu citizen could be lawfully extradited. Sections 60(1) and (2)(a) of the Act provide for prosecution of a Vanuatu citizen where a request for extradition is denied on the basis of nationality. The wording in sub-section 60(1), particularly the term "*may*", clearly suggests discretion to prosecute. Section 60(4) states that a person must not be prosecuted unless the Public Prosecutor considers that there is sufficient evidence "in Vanuatu" to justify prosecuting the person for the offence and consents to the person being prosecuted. This is a serious deficiency as the Public Prosecutor is only allowed to consider "*evidence available in Vanuatu"*. The Public Prosecutor has no power to request the foreign country to hand over evidence available in the foreign country for use in prosecuting the Vanuatu citizen. Under s. 11 of the MACMA Vanuatu's request provision relating to assistance with evidence is restricted to "taking evidence"' and ''production of a document or article" under the law of the foreign country. This means the Public Prosecutor cannot make a request through the AG for the taking of evidence and production of documents in the foreign country to support a criminal prosecution in Vanuatu. It is therefore impossible for Vanuatu to prosecute a citizen where most of the criminal conduct occurred in a foreign country.

344. *Criterion 39.3* - The definition of 'extradition offence' (s.3 (1) of the Act) is an offence against the law of the requesting country for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months, and the conduct that constitutes the offence, if committed in Vanuatu, would constitute an offence in Vanuatu for which the maximum penalty is imprisonment, or other deprivation of liberty, for a period of not less than 12 months. In determining whether conduct constitutes an offence, regard may be had to only some of the acts or omissions that make up the conduct.

345. *Criterion 39.4* - Vanuatu has simplified mechanisms under its Extradition Act. Part 2 of the Act deals with general provisions relating to extradition from Vanuatu. Part 3 applies to extradition to a Commonwealth country. Part 4 deals with extradition to South Pacific countries, Part 5 deals with extradition to a Treaty country and Part 6 applies to Comity countries. Part 2 contains provisions on provisional arrest warrant (s. 6), arrest and remand on provisional arrest warrant (s.7), release from remand (s. 8), authority to proceed (s. 9) and arrest and remand on authority to proceed (s.10). The *prima facie*

evidence and records of the case schemes apply to extradition to Commonwealth countries. The backing of warrants scheme applies to South Pacific countries.

346. Under the *prima facie* evidence scheme - the magistrate must not determine that a person should be surrendered unless the evidence available is such that, if the offence were committed in Vanuatu, there would be sufficient evidence to place the person on trial. In addition, a record of the case, namely a document containing a recital of the evidence acquired to support the request and an authenticated copy, reproduction or photograph of all exhibits and documentary evidence is produced, accompanied by an affidavit of an officer of the authority that investigated the matter deposing to his or her preparation of the case, preservation of the evidence in the record of the case, and accompanied by a certificate of the Attorney General of the requesting country stating that in his or her opinion, the record of the case discloses the existence of an offence to justify prosecution in the requesting country.

347. Under the backing of warrants scheme - a magistrate can issue a provisional arrest warrant for the arrest of a person if an application is made to the magistrate on behalf of a South Pacific country and the magistrate is told by affidavit that an original warrant for the arrest of the person has been issued in the South Pacific country, but the warrant is not available in Vanuatu, and the magistrate is satisfied that it is reasonable in the circumstances to issue the warrant. A person arrested under a provisional arrest warrant must be brought before a magistrate as soon as practicable. The magistrate must remand the person in custody or, if satisfied that the person is unlikely to abscond, remand the person on bail.

Weighting and conclusion

348. Vanuatu has an adequate legal framework to execute extradition requests relating to ML and TF. Both ML and TF are extradition offences and there are no unreasonable or unduly restrictive conditions against extradition. The deficiency in the ML offence does not affect Vanuatu's ability to extradite relating to predicate offences and ML offence, as 'serious offence' is not a requirement for extradition. Vanuatu is able to extradite provided the offence against the foreign law attracts a penalty of 12 months or more and a similar conduct in Vanuatu would attract a penalty of 12 months or more. Regard can be had to only some of the acts to determine if the conduct constitutes an offence under Vanuatu law and tax offences have been designated as extradition offences even though Vanuatu does not have tax laws. Vanuatu is unable to extradite in relation to illicit arms trafficking, piracy of products, insider trading and market manipulation as these offences have not been criminalised. There is no case management system and no clear processes for prioritisation and timely execution of requests, which suggests that Vanuatu cannot execute requests without undue delay. **Vanuatu is partially compliant with R.39**.

Recommendation 40 – Other forms of international cooperation

349. Vanuatu was rated partially compliant with R.40 and largely compliant with former SR.V in the 2006 MER. The factors underlying those ratings were: apart from the VFIU, there were no legislative gateways or mechanisms that authorise competent authorities to cooperate and exchange information with their foreign counterparts, or identify the information that can be requested and establish controls and safeguards to ensure that the information is used in an authorised manner. Further, the process for cooperation or exchange of information through agency to agency and organisational networks was not clearly set out or monitored.

General principles

350. *Criterion 40.1* - Vanuatu did not provide a response in relation to this criterion.

351. *Criterion 40.2* - Sections 5 and 6 of AML/CTF Act provide a general legal basis for providing international cooperation; however the process for cooperation is not clearly set out. There is no evidence

that there are clear and secure gateways, mechanisms or channels in place or that there are clear processes for the prioritisation and timely execution of requests or safeguarding of information received.

352. *Criterion 40.3* - Vanuatu did not provide any information in relation to this criterion.

353. *Criterion 40.4* - Vanuatu did not provide any information in relation to this criterion.

354. *Criterion 40.5* - Vanuatu did not provide any information in relation to this criterion.

355. *Criterion 40.6* - Vanuatu did not provide any information in relation to this criterion.

356. *Criterion 40.7* - Vanuatu did not provide any information in relation to this criterion.

357. *Criterion 40.8* - Vanuatu did not provide any information in relation to this criterion.

Exchange of information between FIUs

358. *Criterion 40.9* - Part 2, ss. (5)(d) and 6 of the AML/CTF Act provide for the exchange of information for the purpose of investigating or prosecuting the money laundering offence, terrorist financing and any other serious offences. Vanuatu also exchanges information with foreign FIUs in accordance with the Egmont Group principles or under the terms of the relevant MOU, regardless of the other FIU's status as administrative, law enforcement, judicial or other FIU.

359. *Criterion 40.10* - The VFIU is empowered to provide feedback to reporting entities and other relevant persons regarding outcomes relating to the reports or information given under Part 2 s.5 (k) of the AML/CTF Act.

360. *Criterion 40.11* - Part 2, ss.5 (d) and 6 of AML/CTF Act cover the disclosure and exchange of information to assist entities which are defined in s.2 to include a law enforcement agency or supervisory body inside or outside Vanuatu. Section 5(d) sets out that the disclosure must be subject to the Director's reasonable grounds of suspicion that the disclosure is of relevance.

Exchange of information between financial supervisors

361. *Criterion 40.12* - For all reporting entities, the powers provided to the FIU in ss.5 and 6 of the AML/CTF Act are sufficient to disclose or exchange information with an assisting entity (defined to include a supervisory body within or outside Vanuatu) relevant to investigating or prosecuting a money laundering or financing of terrorism offence. The RBV also has powers to provide information to a supervisory body outside Vanuatu under the FIA, IBA and IA, and a general power in s.31, RBV Act. These powers are broadly consistent with international standards and can include exchange of supervisory information relevant to RBV's AML/CFT supervision of licensed entities. For domestic banks and deposit takers, such disclosure may made be in respect of the affairs or conditions of a licensee (but not of its clients), for the purpose of the foreign supervisory body exercising functions corresponding to or similar to RBV (s.55 (3) FIA). Disclosure in respect of the affairs or conditions of a client of a domestic bank is limited to being made for the purpose of specified proceedings under the Proceeds of Crime Act or MACMA, for investigation of money laundering or terrorist financing, or under a court order or specific legislative provision mandating disclosure (s.55 (4) and (4A)).

362. For international banks, disclosure may be made to a foreign regulatory authority provided the Reserve Bank is satisfied that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure; and the information disclosed is reasonably required by the foreign authority for the purpose of its regulatory functions (s.38, IBA). For insurance licensees, disclosure may be by way of an agreement or understanding made with a foreign insurance supervisor to share relevant supervisory

information, or to exchange with a foreign insurance supervisor: relevant supervisory information; relevant financial data about a supervised entity; and objective information on individuals holding positions of responsibility in a supervised entity (s.12, IA).

363. *Criterion 40.13* - The powers of the RBV to share information with foreign counterparts (noted in the analysis of *criterion* 40.12 above) do not explicitly extend to obtaining information held by financial institutions except for information necessary for the RBV's own supervisory purposes, which may be shared with foreign counterparts. However, the FIU's powers under the AML/CTF Act extend to requesting information from all reporting entities (including licensed banks, deposit takers and insurance entities) relevant to the operation of the AML/CTF Act and regulations, which may be exchanged with foreign regulatory and law enforcement counterparts. These agencies' powers, taken together, should broadly enable the exchange of information with foreign regulatory counterparts proportionate to their respective needs.

364. *Criterion 40.14* - The RBV's information sharing powers regarding licensed banks, deposit takers and insurance entities would enable exchange of information on (a) regulatory information, such as information on the domestic regulatory system, and general information on the financial sectors; and (b) prudential information, such as information on the financial institution's business activities, beneficial ownership, management, and fit and properness; and information held on a licensee's as internal AML/CFT procedures and policies. With respect to other AML/CFT information regarding financial institutions such as customer due diligence information, customer files, samples of accounts and transaction information, the information would have to be obtained and exchanged under the FIU's powers under the AML/CTF Act (due to the restrictions in s.55 of the FIA set out in the analysis of *criterion* 40.12 above).

365. *Criterion 40.15* - The FIU's powers under the AML/CTF Act extend to requesting information from all reporting entities (including licensed banks, deposit takers and insurance entities), which may extend to conducting inquiries on behalf of foreign counterparts provided the information is relevant to the operation of the AML/CTF Act and regulations. However, there is no evidence of a power to authorise or facilitate foreign counterparts to conduct inquiries themselves, in Vanuatu.

366. *Criterion 40.16* - For exchanges of information by the FIU, a prerequisite is that the information is to be treated in a confidential manner and not to be disclosed without the express consent of both the FIU Director and the assisting entity (i.e. the domestic or foreign supervisor and law enforcement agency) (s.6, AML/CTF Act). Disclosure restrictions also apply to maintain confidentiality of information exchanged relating to international banks and insurance entities, where the RBV is the requested supervisor. Under the RBV Act confidentiality is required to be maintained in respect of information exchanged relating to financial institutions, where the RBV is the requested supervisor.

Exchange of information between LEAs

367. *Criterion 40.17* - Vanuatu did not provide any information in relation to this criterion.

368. *Criterion 40.18* - Vanuatu did not provide any information in relation to this criterion.

369. *Criterion 40.19* - Vanuatu did not provide any information in relation to this criterion.

Exchange of information between non-counterparts

370. *Criterion 40.20* - Vanuatu did not provide any information in relation to this criterion.

Weighting and conclusion

371. There is an adequate legal basis for providing international cooperation under R.40; however, the process for cooperation is not clearly set out. There are no clear and secure gateways, mechanism, or channels in place for prioritisation and timely execution of requests, safeguarding of information received, or timely provision of feedback to counterparts. There is no evidence that there are clear mechanisms in place for LEAs to exchange information for intelligence or investigative purposes, or for joint investigations. There is also no provision on the exchange of information indirectly with non-counterparts. **Vanuatu is non-compliant with R.40.**

ANNEX 1: LIST OF ACRONYMS

AG – Attorney General

AML – Anti-Money Laundering

APG – Asia/Pacific Group on Money Laundering

CA – Companies Act

CCR – Cash Courier Report

CDD – Customer Due Diligence

CFT – Combating the Financing of Terrorism

CIIP – Capital Investment and Immigration Program

CLAG – Combined Law Agencies Group

CTR – Currency Transaction Report

CTTOCA - Counter Terrorism and Transnational Organised Crime Act

DNFBP – Designated Non-financial Business and Professions

FATF – Financial Action Task Force

FI – Financial Institutions

FIA – Financial Institutions Act

FIU – Financial Intelligence Unit

FOC – Flags of Convenience

FSRB – FATF-style Regional Body

FT – Financing of Terrorism

FTRA – Financial Transactions Reporting Act

GDP – Gross Domestic Produce

IBA – International Banking Act

IC – International Company

ICA – International Companies Act

IFTI – International Funds Transfer Instruction report

KYC – Know Your Customer

LEA – Law Enforcement Agency

MACMA - Mutual Assistance in Criminal Matters Act

MER – Mutual Evaluation Report

ML – Money Laundering

MLA – Mutual Legal Assistance

MOU – Memorandum of Understanding

MVTS – Money Value Transfer Service

NRA – National Risk Assessment

PEPs – Politically Exposed Persons

PF – Proliferation Financing

POCA - Proceeds of Crime Act

POCAA - Proceeds of Crime Amendment Act

PPO – Public Prosecutor's Office

RBV – Reserve Bank of Vanuatu

SAR – Suspicious Activity Report

SG – Solicitor General

SLO – State Law Office

SRBs – Self-Regulatory Bodies

STR – Suspicious Transaction Report

TCSP – Trust and Company Service Provider

TCU – Transnational Crime Unit (VPF)

TF – Terrorist Financing

TFS – Targeted Financial Sanctions

UN – United Nations

UNCAC – United Nations Convention Against Corruption

UNSCR – United Nations Security Council Resolutions

VFIU – Vanuatu Financial Intelligence Unit

VFSC – Vanuatu Financial Services Commission

VPF – Vanuatu Police Force

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Anti-money laundering and counter-terrorist financing measures – Vanuatu

Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Vanuatu as at 7 February 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Vanuatu's AML/CTF system, and provides recommendations on how the system could be strengthened.