



GAFILAT

Mutual Evaluation Report of the Republic of Cuba

GAFILAT 15 I PLEN 2



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LIST OF ACRONYMS AND ABBREVIATIONS

AGR	General Customs of the Republic (<i>Aduana General de la República</i>)
AML	Anti-Money Laundering
BCC	Central Bank of Cuba (<i>Banco Central de Cuba</i>)
CDD	Customer Due Diligence
CFPWMD	Countering the Financing of the Proliferation of Weapons of Mass Destruction
CFT	Countering the Financing of Terrorism
CGR	Office of the General Comptroller of the Republic (<i>Contraloría General de la República</i>)
Coordinating Committee	Coordinating Committee for the Prevention and Detection of Transactions to Combat Money Laundering, Terrorist Financing, Financing of Proliferation of Weapons of Mass Destruction, and the Illegal Flow of Capital
CPP	Code of Criminal Procedure
DD	Due Diligence
DGAMDI	Directorate General of International Law and Multilateral Affairs of the Ministry of Foreign Affairs (<i>Dirección General de Asuntos Multilaterales y Derecho Internacional del Ministerio de Relaciones Exteriores</i>)
DGIOF	Directorate General of Financial Transactions Investigation (<i>Dirección General de Investigación de Operaciones Financieras</i>)
DGPNR	Directorate General of the Revolutionary National Police (<i>Dirección General de la Policía Nacional Revolucionaria</i>)
DL	Decree-Law
DNFBP	Designated Non-Financial Business or Profession
FATF	Financial Action Task Force
FCC	Freely Convertible Currency

FGR	General Prosecutor's Office of the Republic (<i>Fiscalía General de la República</i>)
FI	Financial Institution
FPWMD	Financing of the Proliferation of Weapons of Mass Destruction
GAFILAT	Financial Action Task Force of Latin America
Inst.	Instruction (<i>Instrucción</i>)
Merida Convention	The United Nations Convention against Corruption
Methodological Guide	Methodological Guide for the Prevention and Detection of Operations in the Fight against Money Laundering and Terrorist Financing and the Illegal Flow of Capital and the Assessment and Application of a Risk-Based Approach in National Risks
MININT	Ministry of Domestic Affairs (<i>Ministerio del Interior</i>)
MINJUS	Ministry of Justice (<i>Ministerio de Justicia</i>)
MINREX	Ministry of Foreign Affairs (<i>Ministerio de Relaciones Exteriores</i>)
ML	Money Laundering
National AML/CFT Strategy	National Strategy for the Prevention and Fight against Money Laundering and Terrorist Financing
ND	Directive (<i>Norma Directiva</i>)
NPO	Non-Profit Organization
NRA	National Risk Assessment
OG	Official Gazette (<i>Gaceta Oficial</i>)
ONAT	National Tax Administration Office (<i>Oficina Nacional de Administración Tributaria</i>)
ONBC	National Organization of Collective Law Offices (<i>Organización Nacional de Bufetes Colectivos</i>)
Palermo Convention	The United Nations Convention against Transnational Organized Crime 2000
PEP	Politically Exposed Person
PNR	National Revolutionary Police (<i>Policía Nacional Revolucionaria</i>)
PW	Proliferation of Weapons
PWMD	Proliferation of Weapons of Mass Destruction
Res.	Resolution (<i>Resolución</i>)
STR	Suspicious Transaction Report



TF	Terrorist Financing
TSP	Supreme People's Court (<i>Tribunal Supremo Popular</i>)
UN	United Nations
UNSC	United Nations Security Council
Vienna Convention	The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
WMD	Weapons of Mass Destruction

EXECUTIVE SUMMARY

1. This report summarizes the measures against money laundering, terrorist financing and financing of proliferation of weapons of mass destruction (AML/CFT/CFPWMD) implemented in the Republic of Cuba as at the date of the on-site visit (September 2014). It analyses the country's level of compliance with the FATF 40 Recommendations, as well as the level of effectiveness of its AML/CFT/CFPWMD regime, and makes recommendations on how some aspects of the system could be strengthened.

A. Key Findings

2. **As at the date of the on-site visit, it seems that Cuba is not an attractive place for ML/TF.** Cuba's specific context and materiality reduce overall ML/TF risk.

3. **Inter-agency coordination and cooperation at all levels of the Cuban government should be noted.**

4. **The ML/TF National Risk Assessment (NRA) and the development of a National AML/CFT Strategy are the first exercise carried out by Cuba in AML/CFT matters.**

5. The DGIOF produces financial intelligence based on STRs, cash transaction reports, and additional information from reporting entities and from several Cuban agencies where necessary. **As at the date of the on-site visit, no ML or TF STRs had been received from FIs or DNFBPs, and no intelligence reports had been created on these matters.**

6. **There are some shortcomings in the implementation of preventive and supervision measures for DNFBPs.** In general, the country has adapted its AML/CFT national legislation in compliance with international standards. However, major efforts still need to be made for authorities and reporting entities to understand the new responsibilities assigned to them.

7. **There are some shortcomings in the NPO sanctioning system.**

8. **With regard to ML investigations and prosecutions,** as at the date of the on-site visit, the fight against money laundering itself did not seem to be efficient, as only two cases were prosecuted for ML since the criminalization of ML in 1999, whereas there were many trials for money laundering predicate offences.

9. **In the case of measures for the confiscation and forfeiture of assets,** confiscation is considered to have been an excellent tool to fight crime in general and to deprive criminals of their assets.

10. **The Cuban financial system is made up of a limited number of reporting entities and has a low level of internationalization.** Additionally, AML/CFT measures have been implemented for years.

11. It is noted that the Republic of Cuba has a supervision system for banking and non-banking FIs that is based mainly on the suitability and the effective application of the supervision system developed by the Superintendencia of the BCC, **which comprises most of the relevant ML/TF risks in the Cuban economic context described below.**

12. **The current Cuban institutional and regulatory framework for the identification of terrorists, terrorist groups or terrorist support networks** designated by the UNSC or by third countries and the ability to promote actions to deprive entities of their assets **is complete and consistent.**

13. **Legal persons and arrangements with operations in Cuba are mostly state owned; therefore, the ML/TF risk is limited**, since the abuse of legal arrangements and/or companies with illegal purposes is not attractive to criminal organizations.

14. Based on its context, **Cuba can cooperate with other countries in relation to mutual legal assistance, including extradition**. Informal cooperation is generally constructive and timely between all agencies and their foreign counterparts. In both cases, the figures for the volume of assistance requested by the country on ML/TF matters are consistent with the number of investigations, prosecutions or judicial proceedings carried out by the national authorities in this field; with regard to requests from foreign counterparts, inputs are consistent with the context of the country or the ML/TF risks and level of impact detected.

B. Risks and General Situation

15. In terms of threats, based on data provided by the authorities, Cuba does not have, in general, a high crime rate. It is necessary to mention that transnational organized crime seems to have an occasional impact in the country and is linked to international criminals who operate mainly from abroad, although criminal networks show a higher organizational level. Overall, the crimes that may be an ML threat are drug trafficking, embezzlement, bribery, and fraud. In addition, Cuba has updated and strengthened its legal AML/CFT/CFPWMD framework, largely in line with the FATF Standards, reducing potential vulnerabilities of the sectors.

16. In this update process, preventive measures for DNFBPs and NPOs will be implemented; however, according to the authorities, these sectors are currently not characterized by bearing a high risk in Cuba. Higher-risk activities and sectors are FIs and foreign investment, where a number of legal measures are widely and consistently implemented, reducing the chances of these sectors and activities being used for ML/TF/FPWMD.

17. Additionally, it should be noted that Cuba has contextual factors that are very specific and that have an impact on reducing the potential materiality of ML/TF/FPWMD offences being committed in the country. First, most reporting entities are state owned and therefore subject to a double supervision: ML/TF supervision and the supervision of the Office of the General Comptroller of the Republic. Second, Cuba has a limited participation in the international financial system.

18. As shown in the report in more detail, and considering the reduced levels of criminal impact, a strengthened legal framework, the extensive investigative and judicial capacities of all operators, the country's specific characteristics that reduce the potential materiality of crimes such as ML/TF being committed, it is concluded that Cuba is not an attractive place for ML/TF/FPWMD.

C. General Compliance and Effectiveness Level

C.1 National Risk Assessment

19. Cuba drafted its own Methodological Guide for the development of the NRA and created a Coordinating Committee, which developed, along with reporting entities, the AML/CFT National Strategy and a public report with the main national risks, including an action plan with priority actions to be implemented in a three-year period, and its annual follow-up. The process included the development of AML/CFT risk strategies by main authorities and reporting entities in the country, which were reviewed by assessors. However, the NRA development process revealed an inadequate application of the Methodology, which prevented proper identification of ML/TF risks. Also, the priority actions to be developed in the public report actions do not seem to respond entirely to the ML/TF risks identified, which hinders adequate mitigation. It is worth mentioning that due to the questions on the NRA, the assessment team had access to confidential

information that provides more elements to sustain some of the NRA results in line with the country's situation and specific contextual factors which, according to the authorities, lead to the reduction of ML/TF crime materiality. This helped to clear out some of the assessors' doubts.

20. FIs have a good understanding of their AML/CFT obligations and have developed their own AML/CFT strategies. Through letters rogatory, according to FGR Res. 27/2013, related to methodological directions for the processing and control of letters rogatory, the FGR may request information from state bodies and agencies in order to assist with foreign cooperation requests.

C.2 ML Investigation and Prosecution

21. Although Cuba has made great efforts to align its AML/CFT regulatory framework with international standards, the fight against these offences does not seem to have been very effective in the fields of ML investigation and prosecution, as only two ML cases have been tried since the inclusion of ML in the Criminal Code (1999), while many cases have been tried for ML predicate offences.

22. Cuba has an appropriate regulatory framework for the reception of intelligence reports by the DGIOF and their dissemination to the competent authorities in charge of the investigation and prosecution of the ML/TF crimes and predicate offences. However, no specific regulatory measures have been established for concurrent investigations or the application of special investigative techniques. The reports disseminated by the DGIOF to the competent authorities (PNR, FGR and Office of the Comptroller) are useful. Authorities have been able to conduct investigations that resulted in convictions for ML predicate offences. However, as at the date of the on-site visit, no ML or TF STRs had been received, and no intelligence reports had been created. The DGIOF receives and analyses STRs on crimes that are not ML predicate offences.

C.3 Measures for the Confiscation and Forfeiture of Assets

23. In the case of measures for the confiscation and forfeiture of assets, it is considered that confiscation has been a relevant tool to fight crime in general, as some ML predicate offences have been sanctioned with the deprivation of a large number of assets, as well as the appropriate penalties of imprisonment.

24. Alternatively, the forfeiture of ML-related assets has occurred only once. In part, this is due to the recent completion of a comprehensive AML/CFT legal and institutional framework. For this reason, measures for the forfeiture of ML-related assets have only recently begun to be implemented.

C.4 Investigation and Prosecution of TF and TF Targeted Financial Sanctions

25. Despite the absence of cases related to TF, it was verified that the current Cuban institutional and regulatory frameworks are consistent and help, in theory, combat the TF crime. Reporting entities, in particular the financial system, are aware of their obligation to report, the DGIOF is able to analyse and disseminate STRs, the DGPNR has the power and technical capacity to investigate, the Prosecutor's Office has a system for the prioritization of TF cases, and the Judiciary is empowered to enforce the established sanctions, which are proportionate and dissuasive.

26. The current Cuban institutional framework for the identification of terrorists, terrorist groups or terrorist support networks designated by the UNSC and the ability to promote actions to deprive entities of their funds seems to be complete and consistent enough. Based on the above, the trend is expected to be positive with the appropriate implementation of TF investigations and prosecutions and related financial sanctions.

C.5 Preventive Measures and Supervision of FIs

27. In general, Cuba has made efforts to adapt its AML/CFT national legislation in compliance with the international standards. FIs understand their AML/CFT obligations. As regards the implementation of preventive measures, the country generally complies with them, showing improvements in certain areas such as the identification of international PEPs and the quality of the reports filed with the DGIOF.

28. It is important to mention that due to the small size and composition, with the absence of a securities exchange market and other reporting entities normally acting as FIs in other countries, Cuba's financial system is not very complex.

29. The BCC has experience in the area of risk-based supervision and essentially follows the principles of the Basel Committee. Human resources and training seem to be adequate for the size of the Cuban financial system, and there is a good level of supervision tasks.

30. Finally, authorities should pay particular attention to the new sectors that are incorporated into the AML/CFT regime according to the country's economic and social changes. The main concern is that new sectors may begin to operate as AML/CFT reporting entities without being duly registered, regulated and supervised by the appropriate authorities and with a good understanding of their new obligations.

C.6 Preventive Measures and Supervision of DNFBPs

31. Legal and regulatory amendments to the Cuban AML/CFT system since 2013 to apply international standards include AML/CFT regulation and DNFBP supervision. It is important to mention that this sector does not have the same level of development or experience as the financial system; however, there is a commitment by senior authorities to meet the new obligations that have been assigned to them.

32. In general, DNFBPs understand their AML/CFT obligations. However, due to the recent incorporation of this sector into the AML/CFT regime, significant efforts still need to be made to integrate the sector and verify that the authorities understand their new responsibilities.

33. The DNFBPs supervision system is not clear, although formal and non-formal processes to apply a risk-based approach have been identified. The responsibilities of supervisors need to be clarified, and effective supervision needs to be demonstrated. Training for the implementation of preventive measures and supervision of the sector is required.

C.7 Legal Arrangements

34. The characteristics of the Cuban economy and regulations on foreign investment, government approvals of investment and disinvestment processes, and the exchange control system constitute barriers for criminals to find the use of persons or legal arrangements attractive for ML/TF.

35. The above processes are consistent with the duties of beneficial owner identification, and authorities have managed to demonstrate effectiveness through specific examples of rejection of investment processes and forfeiture of assets.

C.8 international Cooperation

36. At the international cooperation level, Cuba has a broad, comprehensive, general legal framework and an approach open to collaboration. Nevertheless, although competent authorities have increased their efforts in the fight against ML/TF, the input provided to the assessors so far shows that operations have not addressed ML/TF per se. The update of the Cuban ML/TF regulatory framework is expected to help

strengthen and increase the number of investigations, prosecutions or judicial proceedings carried out by the competent Cuban authorities in this field at the national level and thus the exchange of information with foreign counterparts. This does not limit the number of requests that can be generated—so far in line with the Cuban context—, but rather their nature and value.

37. With regard to other forms of international cooperation, relations between the DGIOF, the DGPNR and the AGR with their foreign counterparts are consolidating and expanding, both spontaneously and upon request; however, like for the other cases, most of the input provided is not related to ML/TF crimes.

D. Priority Actions

38. Reviewing the application of the Methodological Guide to allow for the adequate identification of national ML/TF threats and vulnerabilities, and incorporating, in the development of the NRA, the use of quantitative data and inputs from the institutions that have developed their own analyses and strategies. This will help appropriately identify the risks and their respective risk-mitigating solutions, thus adequately allocating technical, human, and economic resources.

39. With regard to financial intelligence and its use by law enforcement authorities, the Cuban DGIOF should improve the analysis of information contained in STRs and any additional information received from reporting entities to be able to generate ML/TF intelligence, as intelligence reports currently generated are mostly related to money laundering predicate offences.

40. Developing mechanisms and processes to maintain updated statistics consistent at the institutional and national levels.

41. With regard to the investigation of the ML crime, authorities should continue to make a major effort to implement the recently adopted legislative measures aimed at strengthening the AML/CTF regime, as well as to implement parallel financial investigations. Specifically, it is expected that the number of money laundering investigations will increase, as well as the forfeiture of property related with this offence.

42. Adapting mitigation actions to identified TF risks and targeted sanctions, based on certain differences found between the national risk assessment submitted and the TF risk-mitigating solutions developed and considered in the strategic objectives.

43. Strengthening the capacities and powers of the investigation authorities through specific legislative development for the use of special investigative techniques with proper guarantees; the resulting evidence could be admitted by its courts. And developing parallel financial investigations within the framework of information exchanged through international cooperation.

44. Enhancing and deepening the dissemination of information and communication channels between reporting entities and the DGIOF, especially for DNFBPs and NPOs, on obligations relating to sanctions for financing of terrorism and proliferation.

45. Strengthening legislation, training, and NPOs supervision and sanction processes, and developing a detailed strategy to mitigate the risks identified for the prevention of TF.

46. Including all institutions or authorities that, pursuant to the implementation of the legislation applicable since 2013, are reporting entities under the AML/CFT regime.

47. Putting special emphasis on DNFBPs training so they are fully aware of and understand their new AML/CFT obligations since the entry into force of Decree-Law 317(2013), as a result of their new activities. However, although they still do not perform all the activities referred to in this Decree-Law, it is important for them to be able to identify and understand all ML/TF risks they could be exposed to.

48. It is a priority to implement a supervision system for DNFBPs and NPOs.

49. Within the scope of international cooperation, it would be desirable to develop the necessary standards and regulations to contribute to full compliance with international commitments on international cooperation and mutual legal assistance to which Cuba is a party to; especially in relation to special investigative techniques, and passive and simplified extradition mechanisms.

E. Table of Effective Implementation of Immediate Outcomes

Effectiveness	
1. Risk, Policy and Coordination	Moderate
<p>50. During the development of the NRA, the adequate application of the implemented methodology prevented the proper identification of risks directly associated with ML/TF crimes.</p> <p>51. In the AML/CFT National Strategy developed by the Cuban authorities, priority actions are established at a general level, however these do not clearly respond to each of the ML/TF risks identified; and therefore, not all actions are aimed at an adequate mitigation.</p> <p>52. Notwithstanding the above said, it was found that in general the authorities and sectors understand the risks the country is exposed to; this was verified by reviewing the information classified as confidential to which the assessment team had access. However, still greater efforts should be made for all authorities and financial institutions in the financial and DNFBP sector to understand the risks.</p>	
2. International Cooperation	Moderate
<p>53. Cuba has a sound legal framework to cooperate with other countries in the area of mutual legal assistance and other forms of cooperation.</p> <p>54. Cuban authorities have been developing joint actions for collaboration and exchange of information with foreign counterparts; they have signed treaties, agreements, and memoranda with its counterparts and international organizations, and, in their absence, they cooperate under the principle of reciprocity.</p> <p>55. However, some processes such as those related to the prioritization and timely issuance or execution of requests for mutual legal assistance and criteria on the referral to the competent authority (MINJUS, FGR or TSP), internal procedures for passive and simplified extradition, and mechanisms to respond to requests for cooperation in cases of non-conviction based confiscation are not entirely clear. Likewise, Cuba does not have special legal provisions relating to the special investigative techniques, and therefore their implementation procedures are not clear, both nationally and internationally, as well as the admissibility of evidence resulting from these techniques by their courts.</p> <p>56. Finally, after reviewing the handling of requests and the case examples provided during the process, it is estimated that so far there has been a moderate use of AML/CFT international information exchange; the volume of ML/TF assistance requested by Cuba is consistent with the number of</p>	

<p>investigations, prosecutions or judicial proceedings carried out by the national authorities in this matter. With respect to requests received from foreign authorities, the inputs are consistent with the context of the country or ML/TF risks and the level of impact detected.</p>	
3. Supervision	Substantial
<p>57. The supervision system on financial matters is consistent with FATF principles and international standards for banking supervision. The Cuban authorities have shown a reasonable number of supervisions and demonstrated that they take follow-up actions and apply corrective measures in specific cases. The sanctioning system could be strengthened; however, there are indirect mechanisms that generate a dissuasive effect on the regulated subjects.</p> <p>58. Despite involving limited risks already identified by authorities, supervision of DNFBPs should be clarified and proved to be effective for AML/CFT specifically. DNFBPs risk assessment in Cuba justifies its rating as substantial.</p>	
4. Preventive Measures	Moderate
<p>59. Overall, it should be noted that the country has made major efforts to adapt its national legislation in accordance with the criteria of the FATF Recommendations. Taking into consideration Cuba's context, and its financial and non-financial sectors, it is considered that authorities have made great efforts to lay the groundwork for an effective regime of ML/TF prevention and combat. In general, FIs and DNFBPs understand the obligations they are exposed to in order to comply with the country's strategy of prevention and fight against ML/TF crimes. However, the country still needs to create certain preventive measures in order to have a more robust system. Efforts also need to be made for all reporting entities, in particular DNFBPs, to identify and understand the ML/TF risks they are exposed to, even if they do not yet perform all activities and transactions authorized under Decree-Law 317 (2013).</p> <p>60. Finally, in spite of national authorities' effective internal controls to ensure that FIs and DNFBPs adequately comply with AML/CFT regulations, greater efforts are needed in terms of training. This is especially the case with the DNFBPs sector, as its role in the AML/CFT regime is too recent. This sector should be duly informed of how it can be used for the commission of ML/TF-related crimes, especially taking into account the new challenges the country is now facing as a result of the legislative update carried out in 2013 and 2014.</p>	
5. Legal Persons and Arrangements	Substantial
<p>61. Corporate regulations and practices in Cuba show proper risk management in relation to legal persons and arrangements, ensuring the identification of beneficial owners with a wide range of measures.</p> <p>62. The social model and the characteristics of the Cuban economy make the movement of capital—and hence the abuse of legal persons and arrangements for ML/TF purposes by criminals—less attractive.</p> <p>63. There are some issues that remain unclear, as it is the case of (agricultural and non-agricultural) cooperatives and NPOs. These issues arise in a context where some of these figures are in full bloom, which justifies the assessment as "substantial."</p>	
6. Financial Intelligence	Moderate

64. Although the DGIOF drafts financial intelligence reports that are submitted to the competent authorities for crime investigation and prosecution, it has not generated any analysis or financial intelligence report in relation to ML (except the Butterfly case) or TF. The DGIOF receives and analyses the STRs filed by reporting entities and national authorities on conduct that does not constitute an ML predicate offence. Taking into consideration the legislative update that was carried out in 2013 and 2014, where virtually all predicate offences identified by the FATF were included in the crime description of money laundering, a considerable increase in the number of ML/TF financial intelligence reports created by the DGIOF is expected. This, in turn, would have a direct impact on the potential increase of ML/TF investigations and sanctions.

65. The confidentiality of the information received and safeguarded by the DGIOF might be affected by the existence of a Quality Committee involving the BCC's supervision department, which is not part of the DGIOF. However, these people are subject to confidentiality regulations.

66. Similarly, a permanent exchange of information and requests made to the DGIOF by the competent authorities for the development of processes. However, the percentage of requests made by the PNR and the FGR, agencies responsible for the prosecution of predicate offences and ML/TF, has not been high enough compared to other requests received.

67. The relationship between the DGIOF and the reporting entities is direct and continuous; however, a greater emphasis should be placed on the feedback related to the improvement of reports to reduce the frequency of the DGIOF's requests for clarification to reporting entities on the information contained in the report.

7. ML Investigation and Prosecution

Moderate

68. Due to its context, Cuba has effectively mitigated ML cases. However, only two cases have been tried for this crime, while there have been many cases for ML predicate offences. Although since 2013 the Cuban Government has adopted several measures that are specifically designed to better prevent and combat ML, in the future Cuban authorities will need to continue making important efforts to implement recently adopted measures, as well as to regularly update their NRA and National AML/CFT Strategy to mitigate the identified risks. This is particularly important taking into account that the current Cuban context is the main reason why ML risks were successfully mitigated.

8. Confiscation

Substantial

69. Confiscation and forfeiture have been relevant tools to combat crime in general and the country has made significant efforts in this area. In the specific case of confiscation, various ML predicate offences have been punished with the deprivation of a relevant number of assets, in addition to penalties of imprisonment.

70. Nevertheless, forfeiture of ML-related assets has only occurred once, but successful measures for the confiscation and forfeiture of assets related to other money laundering predicate offences have been adopted. In this respect, similarly to the conclusions reached for Immediate Outcome 7, as a comprehensive AML/CFT legal and institutional framework has been developed in recent years and as there is a high-level political commitment by authorities, it is expected that in the coming years there will be a more direct and effective prosecution of ML and a significant increase in the forfeiture of property related to this crime.

<p>9. TF Investigation and Prosecution</p>	<p>Substantial</p>
<p>71. No TF cases have been investigated and prosecuted, so this section's specific analysis was restricted to the potential capacity of the institutions responsible for the prevention and fight against this crime to carry out the activities. Despite the absence of cases related to TF, it was verified that the current Cuban institutional and regulatory frameworks are consistent and help, in theory, combat the TF crime.</p> <p>72. Reporting entities, in particular the financial system, are aware of their obligation to report, the DGIOF is able to analyse and disseminate STRs, the DGPNR has the power and technical capacity to investigate, the Prosecutor's Office has a system for the prioritization of TF cases, and the Judiciary is empowered to enforce the established sanctions, which are proportionate and dissuasive.</p> <p>73. According to the authorities, there are specialized bodies in the MININT to fight and combat terrorist activities, including terrorist financing, which have sufficient material, technical, financial, and human resources to address this complex problem, which comes from abroad in the case of Cuba.</p> <p>74. Moreover, the AGR has structures from the central level to the base units in the borders, dedicated to the study and evaluation of the country's risks in this area, which are equipped with warning signs and the necessary means to detect any operation aimed at the financing of terrorism, systematically evaluating the results of this fight.</p>	
<p>10. TF Financial Sanctions and Preventive Measures</p>	<p>Substantial</p>
<p>75. The current Cuban institutional and regulatory frameworks for the identification of terrorists, terrorist groups or terrorist support networks designated by the UNSC or by third countries and the ability to promote actions to deprive entities of their assets are complete and consistent enough.</p> <p>76. Responsible entities, in particular, the MINREX, the MININT (DGPNR), the DGIOF and the BCC have the legal framework, knowledge and structure for the freezing of funds.</p> <p>77. Reporting entities, especially from the banking sector, know their obligations, automatically apply monitoring measures and are able to apply freezing and reporting actions. Enhanced measures are applied to both the opening of accounts and the supervision of transactions, regularly checking the names against the list sent by the DGIOF.</p>	
<p>11. PF Financial Sanctions</p>	<p>Moderate</p>
<p>78. Financial sanctions aimed at the PW are similar to those described in Immediate Outcome 10. Thus, in general, the procedures provided for in MINREX Res. 85/2014, in MININT Res.12/2014, in Inst. 31/2013, in Res. 51/2013, in Res. 73/2014 of the President of the BCC (DNFBPs) equally apply to PW financing.</p> <p>79. In compliance with Res. 51/2013, Inst. 31/2013, Inst. 26/2013, Res. 73/2014, among others, FIs and DNFBPs are required to perform actions aimed at preventing and combating FPWMD.</p> <p>80. Reporting entities, especially from the banking sector, know their obligations and automatically apply monitoring measures and are able to apply freezing and reporting actions. Enhanced measures are applied to both the opening of accounts and the supervision of transactions, regularly checking the names against the list sent by the DGIOF.</p>	

81. However, since it is a recently established obligation, the effective monitoring and supervision of the specific TF freezing obligation could not be demonstrated, especially in relation to DNFBPs, so demonstration of effectiveness is still pending.

F. Table of Technical Compliance with the FATF Recommendations

Compliance with the FATF Recommendations		
Recommendation	Rating	Factors that justify the rating
1. Assessing risks and applying a risk-based approach	LC	<ul style="list-style-type: none"> • In the NRA process, ML/TF risks were not properly identified, and mitigating actions do not respond to all the risks identified by Cuba. • DNFBPs are not required to apply enhanced due diligence measures in higher-risk cases.
2. Domestic Cooperation and Coordination	C	
3. Money Laundering Offence	LC	<ul style="list-style-type: none"> • Including such ML predicate offence as the crimes of maritime, air and property (other than works of art) piracy, and environmental crime.
4. Confiscation and Provisional Measures	LC	<ul style="list-style-type: none"> • Measures exist to protect the rights of bona fide third parties in the case of confiscation, although it is not clear if the same provision apply to forfeiture. • In addition, there are mechanisms for the disposition of property, but these should be more detailed.
5. Terrorist Financing Offence	C	
6. Targeted Financial Sanctions Related to Terrorism and Terrorist Financing	C	
7. Targeted Financial Sanctions Related to Proliferation	LC	<ul style="list-style-type: none"> • Despite express reference in Decree-Law 317 to TF procedures in the main title (subject) of Decree-Law 317, and in the title of Chapter VI, it is recommended that Sections 14 to 18 of this standard expressly include freezing procedures related to the implementation of the UNSCR 1718 and 1737.
8. Non-Profit Organizations	PC	<ul style="list-style-type: none"> • While the obligation of the Directorate of Associations to control is provided for, as well as the obligation to control the nine foundations by the Ministry of Culture, the control of forms of association and the establishment of a sanctioning regime are still necessary.
9. Financial Institutions Secrecy Laws	C	
10. Customer Due Diligence	LC	<ul style="list-style-type: none"> • The authorities should ensure that they meet all the criteria in this Recommendation for all FIs which are under the supervision of the BCC.

Compliance with the FATF Recommendations		
Recommendation	Rating	Factors that justify the rating
11. Record Keeping	C	
12. Politically Exposed Persons	C	
13. Correspondent Banking	C	
14. Money or Value Transfer Services	LC	<ul style="list-style-type: none"> • Verify that the rules applicable to the financial sector are applied to Cuba's Post Company, which currently develops the activity of money transfer through money orders.
15. New Technologies	C	
16. Wire Transfers	C	
17. Reliance on Third Parties	C	
18. Internal Controls and Foreign Branches and Subsidiaries	C	
19. Higher-Risk Countries	C	
20. Suspicious Transaction Report	C	
21. Tipping-Off and Confidentiality	C	
22. DNFBP: Customer Due Diligence	LC	<ul style="list-style-type: none"> • Lack of clarity in the regulations to ensure compliance with all CDD criteria and their AML/CFT monitoring for certain activities that lawyers, independent accountants, notaries and other legal professionals can, in theory, perform in accordance with Decree-Law 317 (2013).
23. DNFBP: Other Measures	LC	<ul style="list-style-type: none"> • Minor deficiencies identified in Recommendation 22 on some of the activities that lawyers, notaries, accountants and independent professionals could perform also have an impact on this recommendation, in particular with regard to the powers that are granted to them by Decree-Law 317.
24. Transparency and Beneficial Owner of Legal Persons	LC	<ul style="list-style-type: none"> • Develop a comprehensive risk analysis of all legal arrangements.
25. Transparency and Beneficial Owner of other Legal Arrangements	C	
26. Regulation and Supervision of Financial Institutions	LC	<ul style="list-style-type: none"> • There is an adequate supervision in the banking field, but there are sectors that are not currently under the supervision of the BCC.
27. Powers of Supervisors	LC	<ul style="list-style-type: none"> • The powers of regulators are mostly in line with international standards; however, there are some doubts regarding the level of fines which can be applied.

Compliance with the FATF Recommendations		
Recommendation	Rating	Factors that justify the rating
		<ul style="list-style-type: none"> Supervisors do not have AML/CFT supervision powers in the sector of remittances channelled through Cuba's Post Company.
28. Regulation and Supervision of DNFBPs	PC	<ul style="list-style-type: none"> It is unclear whether sectoral regulations in force on DNFBPs specifically include AML/CFT issues. This situation is verified in relation to notaries and lawyers. Supervision of DNFBPs does not show a sufficient degree of specificity on AML/CFT standards.
29. Financial Intelligence Units	LC	<ul style="list-style-type: none"> There are no computer systems for collecting, processing and keeping information
30. Responsibilities of Law Enforcement and Investigative Authorities	LC	<ul style="list-style-type: none"> There are no established procedures for the performance of parallel financial investigations.
31. Powers of Law Enforcement and Investigative Authorities	PC	<ul style="list-style-type: none"> Cuba has no special legal provisions on special investigative techniques such as undercover operations, interception of communications, access to computer systems, and controlled deliveries.
32. Cash Couriers	C	
33. Statistics	LC	<ul style="list-style-type: none"> Statistics are not updated and are not consistent at all times.
34. Guidance and Feedback	LC	<ul style="list-style-type: none"> While there is good coordination at the national level, a specific AML/CFT system to strengthen feedback has not been developed. It is not clear that existing methods use STRs as a basis, or the specific experience in the field or risk assessments identified by supervisors or the DGI OF.
35. Sanctions	PC	<ul style="list-style-type: none"> Formally, there is a wide range of sanctions, and the implementation of corrective measures on financial institutions has been verified. However, the range of fines is quantitatively limited. There is no clear range of sanctions for DNFBPs and NPOs.
36. International Instruments	LC	<ul style="list-style-type: none"> Current Cuban legislation has not taken all necessary legal measures to fully implement the Vienna, Palermo, and Merida Conventions, and the Convention for the Suppression of TF.
37. Mutual Legal Assistance	LC	<ul style="list-style-type: none"> The deficiencies identified in Recommendation 31 regarding the lack of legal provisions on special investigative techniques also affect this Recommendation.
38. Mutual Legal Assistance: Freezing and Confiscation	LC	<ul style="list-style-type: none"> There is no specific regulation on confiscation for a corresponding value or cases where the proceeds of crime have mixed with property acquired from legitimate sources; therefore, it is questionable that cooperation can be provided when there is a confiscation request.



Compliance with the FATF Recommendations		
Recommendation	Rating	Factors that justify the rating
39. Extradition	LC	<ul style="list-style-type: none">• Extradition is possible in Cuba; however, there is a regulatory gap in relation to passive extradition procedures and simplified extradition mechanisms.
40. Other Forms of International Cooperation	LC	<ul style="list-style-type: none">• Cuba has a broad framework of collaboration in other forms of cooperation, considering the possibility of providing assistance based on the principle of reciprocity, but there are procedures that are not entirely clear.



MUTUAL EVALUATION REPORT OF THE REPUBLIC OF CUBA

Prologue

82. This report summarizes the anti-money laundering and counter-terrorist financing (AML/CFT) measures in place in Cuba as at the date of the on-site visit. It analyses the country's level of compliance with the FATF Forty Recommendations, as well as the level of effectiveness of its AML/CFT regime, and makes recommendations on how some aspects of this system could be strengthened.

83. This evaluation was based on the FATF Forty Recommendations of 2012, and it was implemented using the FATF Methodology adopted in 2013. The evaluation was conducted based on information provided by Cuban authorities and information obtained from other sources by the assessment team until its on-site visit to Cuba on 1-12 September 2014.

84. The report was prepared by an assessment team consisting of: Néstor Daniel Robledo, Compliance Officer from the Central Bank of the **Argentine** Republic (financial expert); Marconi Melo, Prosecutor of the Federative Republic of **Brazil** (legal expert); Byron Valarezo, Director of the Financial Analysis Unit of the Republic of **Ecuador** (FIU expert); Silvia Flecha, Head of the Intelligence Centre Against Terrorism and Organised Crime of the Kingdom of **Spain** (operational expert); Alejandra Medina, Director of International Affairs of the Financial Intelligence Unit of the **United Mexican States** (FIU expert); José Luis Stein, Counsellor of the Secretariat of Finance and Public Credit on ML/TF matters of the **United Mexican States** (legal expert); as well as Alejandra Quevedo, Andrea Garzón and Esteban Fullin from the Secretariat of the **Financial Action Task Force of Latin America** (GAFILAT). The report was reviewed by Bárbara Friedrich, Director of the Money Laundering and Terrorist Financing Prevention Unit of the Ministry of Finance of the Federal Republic of **Germany**, and Carlos Díaz, Anti-Money Laundering Secretary of the Oriental Republic of **Uruguay**.

85. This is the first AML/CFT evaluation made to the Republic of Cuba, reason why there were no previous reports that might be considered, and a comprehensive and detailed analysis of all requirements for compliance with the FATF Recommendations was conducted.



I. ML/TF RISKS AND CONTEXT

86. The Republic of Cuba is the largest and most Western of the Greater Antilles and is located at the entrance of the Gulf of Mexico. Its southern coast borders the Caribbean Sea, and its northern coast borders the Atlantic Ocean and the Gulf of Mexico. It has an area of 109 884.01 km², 106 757.60 km² of land and 3 126.41 Km² of adjacent keys. Its capital is La Habana and it is divided into 15 provinces and 168 municipalities, including the special municipality of Isla de la Juventud.

87. According to data of the National Office of Statistics and Information (*Oficina Nacional de Estadísticas e Información*—ONED)¹ of Cuba, at the end of the year 2013 the country's population amounted to 11 210 064, of whom 18.9% lived in La Habana. According to information from this office, GDP amounted to 51.642 billion pesos, valued at constant 1997 prices, at the end of the year. The official exchange rate of the economy that governs the business sector maintained a fixed exchange rate between the Cuban convertible peso (CUC) and the US dollar.² Moreover, the exchange rate of the market used by people remained unchanged, 1 Cuban convertible peso (CUC) buys 24 Cuban pesos (CUP), and 25 CUP buy 1 CUC. The CUP is the currency normally used in transactions carried out between Cubans in national territory and for the payment of goods and services rendered by the State and state owned companies to Cubans.³ The CUC is used for buying consumer products and services in the network of establishments created to market products and services in this currency.

88. The Cuban Government is ruled by the Constitution of the Republic of Cuba approved in 1976, which constitutes the Supreme Law. The legal system in Cuba is based on the continental legal tradition, and its criminal process is based on a mixed system which distinguishes between the preliminary investigation and trial phases. As regards criminal law, it is noted that international agreements can be directly applied in accordance with Section 12 of the Constitution, Section 20 of the Civil Code, and Section 18.4 of the Criminal Code.

89. In general, most goods and services are supplied by state-owned entities or companies. However, since the 1990s a diversification of the corporate model has been underway, creating other forms of participation, including public-private partnerships, self-employment, and non-agricultural cooperatives. In addition, the legal standard that regulates foreign investments has been updated with the approval of the Foreign Investment Law (Law 118), which entered into force in June 2014.

90. The figure of self-employment should be noted; it consists of authorizing a private individual to provide a good or service to natural or legal persons without being employed by the State, by means of a contract between the parties. This figure was introduced in 1994, but it has become more popular since the end of 2010. This resulted from the adoption of additional measures to foster this figure and the Cuban economic model and add flexibility. According to the information provided by the Cuban authorities, the registry of taxpayers of the National Tax Administration Office (ONAT) indicates that at the end of 2013 there were approximately 400 000 self-employed workers in Cuba. The activities that may be developed under this figure, as well as non-agricultural cooperatives, are restricted. Although Cuban authorities believe they do not represent a relevant ML/TF risk now, they consider them relevant for supervision in their National AML/CFT Strategy.

¹Economic and Social Context. Cuba 2013 – National Office of Statistics. Downloaded from: www.one.cu/publicacion/08informacion/panorama2013/14.pdf

² In the business sector 1 CUP: 1 CUC.

³ It is important to recognize that the vast majority of the Cuban population is remunerated in CUP and that the main goods and services are offered in this currency.

A. *ML/TF Risks*

Threats

91. Cuban authorities indicated that in general crime rates in Cuba are low and that there are some cases of drug and human trafficking, but that the incidence of these crimes is occasional and linked to international criminals that operate mainly from abroad and try to use Cuba as a country of transit or destination of drugs. Another offence committed by these groups is the forgery of documents for immigration purposes.

92. Illegal drug activities are mainly linked with drug trafficking operations carried out in the surroundings of Cuba's territorial waters, which entail the arrival of drugs dragged by the currents towards Cuban coasts. Moreover, drugs are introduced into the country by air with help of Cubans established abroad and other countries. To a lesser extent, there are also some marijuana crops in Cuban territory. These crops are not linked to specific criminal groups, but rather these are independent individuals' crops.

93. According to Cuba, drugs introduced to the country by sea and air, as well as domestic marijuana crops, are sources of supply to the domestic market, characterized by the sale of marijuana and, less regularly cocaine, crack and synthetic cannabinoids.

94. As regards illegal firearm trafficking, the Cuban government pursues dealing and possession by individuals. This is considered to have a positive influence to maintain low levels of firearm possession by criminals.

95. The illegal trafficking in humans takes place from Cuba to the United States and the illicit proceeds of these offences are obtained and remain abroad. When the question was made, Cuban authorities indicated that they are not aware of illegal trafficking in humans to other countries other than the United States. However, it is considered possible that human trafficking occurs to countries other than the United States.

96. Predicate offences in this context are considered by Cuban authorities as a threat in their national AML/CFT risk strategy.

97. As it discussed below, the greatest ML risks and threats in Cuba are not only drug trafficking, but also embezzlement, bribery, and fraud because of their illegal proceeds, which can subsequently enter the country's economy.

98. As regards TF, the Cuban authorities indicate that the country has been victim of terrorist attacks but that the financing of these acts was foreign and that such financing has never been introduced into the Cuban economic system.

Vulnerabilities

99. Cuba has considered the ML and TF crimes in its legal system since the 1990s; however, it was in 2013 and 2014 that a boost was given to update and expand its AML/CFT legal framework, which is still being consolidated. Among the laws directly or indirectly related, the following should be highlighted: Law 62 on the Criminal Code; Law 93/2001 against Terrorist Acts; Law 5/1977 on the Criminal Procedure Code; Decree-Law 316/2013 on the Amendment to the Criminal Code and to the Law Against Terrorist Acts; Decree-Law 317/2013 for the Prevention and Detection of Operations in the Fight against ML/TF, PWMD and the Illegal Flow of Capital; and Decree 322/2013 on the DGIOF, its Functions and Structure.

100. These laws and regulations were intended to update the laws in terms of their compliance with the FATF Forty Recommendations and the relevant UNSCRs, among others. Moreover, several resolutions were issued by competent administrative authorities, including the President of the BCC, the Minister of Justice, the Minister of Domestic Affairs, the Minister of Foreign Affairs, and the Chief of the General Customs of the Republic. These resolutions are intended to provide the details of the provisions of the above laws and decree-laws. With this update, Cuba has largely strengthened its legal framework, thus generally reducing its vulnerability. However, some weaknesses still remain, mainly with respect to: some powers of the law enforcement agents, the implementation of parallel financial investigations, regulations, and capacities for the supervision and sanctioning of DNFBPs and NPOs. These issues, like others discussed in the Technical Compliance Annex, are Cuba's major vulnerabilities. However, it is noted that the Cuban authorities have identified these issues in their national risk assessment and included them as items to be approached in their National AML/CFT Strategy. In this sense, there is a reasonable expectation that these deficiencies can be addressed.

101. In addition, the country has updated regulations to implement the mechanism of freezing without delay of funds and assets of natural or legal persons listed by the UNSC or national or foreign authorities, as appropriate, pursuant to UNSCR 1267, 1373, 1718, 1737 and 1988, and successor resolutions.

102. In relation to the powers to fight these crimes, Cuba has an institutional framework and it should be noted that domestic inter-agency cooperation facilitates the processes to investigate, prosecute and try offences in general. Moreover, it should be noted that the assessment team noticed that reporting entities have a good understanding of existing ML/TF legislation and recognize that full implementation in some sectors is still pending. Raising all sectors' awareness about the meaning of ML/TF is the country's first step for all preventive measures to be implemented. Based on the above, Cuba has greatly strengthened its AML/CFT legal and institutional framework, which generally contributes to reducing vulnerability.

Risks Overview

103. As mentioned above, there are some threats and vulnerabilities, and based on some of the characteristics of Cuba's context that will be described later, there are different conditions that hinder the movement of capital to or from other countries, and there are low levels of incidence of crime with ML/TF impact. Moreover, there is a system to prevent and combat crime in general, which is implemented jointly by the relevant authorities and provides for considerable sanctions. This seems to have resulted in making Cuba an unattractive destination for ML/TF.

B. Materiality

104. The Cuban banking and financial system consists of nine commercial banks with 789 branches spread over the national territory, 15 non-banking FIs, of which the most important one is CADECA, with 198 branches and 99 exchange offices. None of the banks or non-banking FIs has branches abroad, and only one commercial bank has two representation offices abroad, which do not perform active or passive operations but rather representation activities on behalf of its head office. In the Cuban territory there are 13 representation offices of foreign banks and non-banking FIs, which are not authorized to render financial intermediation services.

105. Generally speaking, financial services are mostly state services and the absence of a securities exchange market reduces complexity. Although financial activity should be considered as bearing the highest risk, it should be noted that, compared with other countries, the risk starts at a lower level, since Cuba's participation in the international financial system is lower.

106. The insurance sector is partially developed. Although there is life insurance, it is not usually purchased. In addition, there is no insurance with advance premium payment or investment insurance. The sector focuses on property insurance. Additionally, insurance companies are state owned and have agreements with renowned foreign reinsurance companies.

107. Remittances are transferred mainly by financial institutions supervised by the BCC and with the obligation to implement AML/CFT regulations. To a lesser extent, transfers are made through money orders handled by Cuba's Post Company, a state-owned entity, controlled and monitored by the Ministry of Informatics and Communications and by the CGR. This group consists of 18 companies performing a wide range of activities, including the provision of basic postal services to all natural and legal persons established in Cuba. In this regard, it is noted that as at the date of the on-site visit, Cuba's Post Company was operating without the authorization of the BCC to provide the services of issuance and delivery of money orders. The company in question had rendered international money order services for about CUC 13 million during 2013, representing 0.025% of the total financing portfolio in the country.⁴

108. In relation to DNFBPs, in general, they have a limited autonomy and some activities are not yet developed in the country. Casinos and other games of chance have been prohibited since the enactment of Law 86/1959.

109. There are no private dealers in gold and precious stones, since this activity is run by the state and is concentrated in an entity called Coral Negro SA. There are self-employed individuals who are only authorized to repair jewellery, but not to deal with gold and precious stones.

110. Registry and notary activities are carried out by public servants. In Cuba there are 249 notary offices, including Provincial Protocol Archives (*Archivos Provinciales de Protocolos*), and a total of 577 notaries. Law 50/1984 on State Notary Offices and its regulation contained in Resolution 70/1992 of the Minister of Justice govern the general principles of notarial organization and performance. There are only a few notary offices in La Habana that render legal services to foreign natural and legal persons, established or in Cuba not, as well as to Cuban natural persons living abroad.

111. Self-employed accountants acting as bookkeepers are reporting entities under Decree-Law 317/2013. Lawyers are linked to the ONBC and their legal consultancy functions are limited. There is a small number of law firms located in La Habana that have the power to advise foreign natural and legal persons established in Cuba or not in investment-related activities.

112. Real estate agents are state run, need to be licensed and are audited and supervised by different bodies of the Central Administration of the State, such as the Ministry of Finances and Prices, the Ministry of Foreign Trade, the National Tax Administration Office, and the Office of the General Comptroller of the Republic.

113. In addition to the above, it should be added that the flow of capital to and from other countries—and the Cuban financial system in general—has different characteristics (for more details see the Technical Compliance Annex, criteria 1.6 and 22.1), which together make Cuba less attractive and, therefore, less vulnerable to be used for ML/TF purposes.

⁴ Cuban authorities subsequently informed that in accordance with Resolution 152 of the President of the Central Bank of Cuba, dated 17 December 2014, Cuba's Post Company was granted a licence for the provision of national and international payment and money orders services, so it was included as reporting entity subject to AML/CFT regulations.



C. Structural Elements

114. Cuba is governed by the Constitution of the Republic, which, as the supreme law, lays the political, economic and social foundations of the country and its government. The National Assembly of People's Power, their unicameral and representative body, is the supreme body of the State's power. The Council of State is the body of the National Assembly that represents it in between sessions. For national and international purposes, it represents the Cuban Government. The Council of Ministers, in accordance with Section 95 of the Constitution, is the highest executive and administrative body and constitutes the Government of Cuba.

115. Most of the companies are fully or partially state owned. In addition, the acquisition, transfer or donation of private property and international capital flows are restricted. There are economic, administrative and criminal sanctions that are strictly implemented.

116. Law 118 "Foreign Investment Law" provides for foreigners' investment in Cuba under different modalities, which has often been conducted through partnerships with state-owned Cuban companies. While the Foreign Investment Law allows foreign investment without partnership with Cuban companies, in practice, these cases have been limited.

117. In the case of joint investment between Cuban and foreign companies, this is carried out through international economic associations, defined as unions of national and foreign investors in Cuba for the production of goods, the provision of services or both, for profit purposes, including joint ventures and international economic association contracts. Joint ventures are Cuban business undertakings operating as corporations with nominative shares with the participation of Cuban and foreign shareholders. International economic association contracts are agreements between Cuban and foreign investors to conduct acts as appropriate under these agreements, without the creation of a legal person other than the parties (Sections 2 and 12-16 of Law 118).

118. Thus, most companies are state owned, so in addition to the controls applicable to audit purely private companies, they are subject to the same controls applicable to government agencies. As discussed below, this includes a comprehensive regime of anti-corruption measures.

119. Moreover, there is a process that allows foreign investors to invest in Cuba, which includes investigating the probity of those interested and concludes with an approval or rejection by the Council of State, the Council of Ministers and the head of the appropriate agency to the sector concerned authorized by the Central Administration of the State. The Cuban authorities have indicated that the process to approve or reject foreign investment is strictly implemented. Cuban authorities provided the assessment team with examples in which foreign investment projects were rejected as they involved companies with ties to criminal groups.

Case Number 1

Transaction Type:	Foreign investment in real estate development
Estimated amount of the operation:	USD 42 841 810
Agencies Involved:	Ministry of Domestic Affairs and Central Bank of Cuba
Result of the operation:	The Cuban company decided to cancel the partnership negotiation

At the beginning of 2004, a Cuban tourist business group started negotiations with a foreign company in order to create a real estate and tourism project in Cuba. As usual, the Business Committee of the Cuban company carried out measures to identify and verify the reliability and solvency of its potential foreign partner. In addition, the authority that investigated the case, verified the commercial and ethical integrity of the company in order to rule out potential links between the foreign capital and illegal activities abroad.

Once the investigation was made through international cooperation, it was discovered that the foreign company was under investigation in two countries for its ties to criminal organizations engaged in tobacco and drug trafficking and money laundering. At the same time, the BCC requested information on the solvency of the foreign investment institution to a bank in its country of origin. The bank confirmed the information regarding its link to criminal organizations. On 22 April 2013, the Cuban business group sent a notice to the foreign company concluding their negotiations.

Case Number 2

Transaction type:	Foreign investment in real estate development
Estimated amount of the operation:	UDS 462 000 000
Agencies Involved:	Ministry of Domestic Affairs of Cuba
Result of the operation:	The Cuban company decided to cancel the negotiation of partnership and act against those responsible

In 2011, a Cuban tourist business group started negotiations with a foreign company in order to create a real estate and tourism project in Cuba. The project was analysed by the Business Committee of the Cuban company. Also, the competent authority carried out actions to verify the commercial and ethical integrity of the foreign company, and it found that there were irregularities by its representatives, who had offered gifts to Cuban government officials. Consequently, the competent authority initiated an investigation that resulted in the arrest of both national and foreign participants. On 29 November 2012, the Cuban business group sent a notice to the foreign company concluding their negotiations.

Case Number 3

Transaction type:	Foreign investment in real estate development
Estimated amount of the operation:	USD 408 000 000
Agencies Involved:	Ministry of Domestic Affairs and Central Bank of Cuba
Result of the operation:	The Cuban company decided to cancel the partnership negotiation

In 2013, a Cuban tourist business group started negotiations with a foreign company in order to create a real estate and tourism project in Cuba. The project was analysed by the Business Committee of the Cuban company, which requested the corresponding bank guarantees. At the same time, the competent authority conducted measures to verify the commercial and ethical integrity of the foreign company. As a result of these investigations, inconsistencies were found in terms of the real ownership of the foreign company, and between its solvency and the amount it would contribute to the real estate and tourism project. On 27 June 2013, the Cuban business group sent a notice to the foreign company concluding their negotiations.

120. Based on the above, Cuba's economy is almost exclusively under the control of the government, and investing in the country requires strict administrative regulations and authorization processes, which includes a study of the origin of the assets as well as economic analysis. This seems to restrict foreigners' possibilities to invest in Cuba for the purposes of money laundering, terrorist financing, or other financial crimes, as the risk of being identified as criminals when seeking to constitute or maintain business in Cuba appears to be high. Cuba identified foreign investment in its NRA and included proposals of mitigation measures in its Strategy.

Private Ownership of Real Estate

121. In general, Law 65, General Housing Law, concerning natural persons' ownership of real estate, implicitly prohibits foreigners and non-resident Cubans from owning private property in Cuba. It refers only to private property owned by Cuban residents and foreigners with permanent residence, which may not exceed two properties per person, one as a home and one for holiday.

122. In view of the above, non-resident Cuban or foreign natural persons have very limited opportunities to purchase real estate for money laundering purposes. It is difficult for natural persons who are Cuban residents as well.

123. Moreover, pursuant to the provisions of the Foreign Investment Law, foreign investors operating as legal persons under any of the modalities referred to in this law may purchase real estate or other in rem rights. In this sense, while there is some flexibility for foreign investors, as indicated previously, there are barriers to the entry of their resources to Cuba, and they are subject to strict supervision, which also makes ML/TF under this modality less attractive.

International Capital Flow

124. Transfers from and to Cuba are mostly made through banks and non-banking FIs that are governed by the BCC rules and usually meet international standards, as indicated in the Technical Compliance Annex. In addition, FIs are under the supervision and control of the BCC and the CGR.

125. Cuba's Post Company, which has provided certain money transfer services since 2013, is used to a lesser extent. This activity is not representative of total remittance transfers to Cuba from other countries. In

this regard, as noted above, it should be noted that as at the date of the on-site visit, the entity performed these operations without the authorization of the BCC to render money transfer services.⁵

126. Foreign investors can transfer the profits from their legitimate business in Cuba to other countries. For these transfers, banks verify the legitimacy of the funds and the fulfilment of all the requirements under the regulations. This applies to foreign merchants, when they request to transfer funds to other countries.

127. It should be noted that transfers cannot be made from or to the country in USD, and some international FIs do not provide financial intermediation services, which generally restricts capital flows from or to Cuba.

D. Other Contextual Factors

There are significant audit and anti-corruption measures.

128. Legislation in the area of auditing and anti-corruption has existed in Cuba for some years now. Law 107/09 on Cuba's CGR, its regulation, Resolution 60/11 on Standards of the Internal Control System, and the General Self-Control Guide should be noted.

129. In compliance with Section 1 of Law 107/09, Cuba's CGR was created for the purpose of "helping the National Assembly of People's Power and the Council of State in the execution of the highest-level oversight on state and government agencies." In this sense, the CGR is responsible for "methodologically directing and supervising the national audit system; executing the actions deemed necessary to ensure the correct and transparent administration of public assets; [and] preventing and fighting against corruption," among other functions. (Section 1).

130. The Office of the Comptroller has influence upon virtually every government agency, legal and natural person in the country, including "bodies, national offices, national production or service rendering companies, agencies or entities, and budgeted units, which are bodies of the Central Administration of the State [...] banking institutions of the National Banking System [...] natural or legal persons subject to a tax liability generated in the national territory, that receive, manage, guard, use or have, under any title or concept, public funds, as well as public-private partnerships or companies, whatever their form" (Section 12).

131. Moreover, the actors above have the obligation to keep internal control systems (Section 15) "for the purposes of keeping, controlling, and assessing the effectiveness of the system implemented in their area of competence" (Section 16). The auditing functions of the CGR include, among others: "regulating, supervising and assessing international control systems and making necessary recommendations for its continuous improvement" (Section 31).

132. Resolution 60/11 was issued for the purpose of establishing basic compulsory regulations and principles for the CGR and those subject to its audit, supervision, and control actions. This regulation provides a "standard model of the Internal Control System (Section 1). It is noted that the model in question establishes a series of actions to be performed with a risk-based approach, with a methodology similar to that established by the FATF for the national risk assessment under Recommendation 1. Naturally, this process focuses on anti-corruption measures.

⁵ As indicated above, Cuban authorities recently informed that in accordance with Resolution 152 of the President of the Central Bank of Cuba, dated 17 December 2014, Cuba's Post Company was granted a licence for the provision of national and international payment and money orders services, so it became a reporting entity subject to AML/CFT regulations.

133. In addition, the CGR and the reporting entities should identify the external risks (economic-financial, environmental, political, social, technological, etc.) and internal risks (organizational structure, human resources, technology and service or production processes, etc.) that may affect the achievement of their objectives. Subsequently, they should evaluate and quantify the risks in processes, activities, and operations to perform a diagnosis and determine the necessary controls. Finally, they should take a series "of moral-ethical, technical-organizational, and control actions aimed at consciously eliminating or minimizing the causes and conditions of internal and external risks, as well as indiscipline and illegality" (Section 11). Taking into account that these measures have been implemented since 2009, conducting a risk analysis is not considered to be a new practice in any sector.

134. The audit and anti-corruption regime is much broader and complex, but it is considered that at least a basic understanding of the system is necessary. There is a self-control system related to the administration and legality of basically all reporting entities in Cuba, which covers all forms of foreign investment, implemented in compliance with the CGR provisions and under CGR supervision.

Other Contextual Factors

135. As previously described, Cuba has undertaken a series of particularly relevant measures since 2012 in order to strengthen its AML/CFT legal and institutional regime. These actions included the issuance and amendment of various laws and procedures, the creation of a coordinating committee to lead public policies on the matter, the creation of its financial intelligence unit, the development of a national risk analysis and a strategy to mitigate identified risks and threats, as well as the institutional strengthening of the relevant areas. The enactment of Decree-Law 316, 317 and 322 should be highlighted.

E. Definition of the Scope of Higher-Risk Issues

136. As described in further detail in section 5 of this document and in Criteria 1.6 and 22.1 of the Technical Compliance Annex, certain activities and sectors that should be considered as reporting entities pursuant to the FATF do not exist in Cuba. For example, there are no securities exchange markets, investment insurance, casinos, or dealers in metals and precious stones.

137. However, other activities and sectors that the FATF considers to be high risk do exist, but in Cuba they are considered to be low risk given their great restrictions, such as insurance, sale of real estate and activities related with lawyers, notaries and accountants. Taking these characteristics into account, the following issues are prioritized since they are considered to bear a higher risk in Cuba; therefore, special emphasis has been placed on these activities throughout the process:

138. **Commercial Banks and Related Activities:** Compared to other countries it is a restricted sector; however, in Cuba it is the largest sector providing the largest number of services, so it can be used for ML/TF purposes.

Foreign Investment: In the current process of updating the economic model, the DNFBPs sector, particularly notaries, lawyers and real estate agents, among others, may represent greater risks. This is because the implementation of AML/CFT measures and supervision of these sectors is recent.

139. It should be noted that the above items are identified as important in Cuba's national risk assessment and resulting strategy

II. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings

140. The NRA and the development of a National AML/CFT Strategy constitute the first exercise of this nature carried out by Cuba. However, in the development of the NRA it could be observed that it is not only aimed at the identification of ML/TF risks facing the country, but it identifies other general risks.

141. Cuba has developed a National AML/CFT Strategy. However, the priority actions to be developed do not seem to respond entirely to the ML/TF risks identified, which hinders adequate mitigation.

142. FIs have carried out their own risk analyses and have developed their own AML/CFT strategies; however, the specific identification of ML/TF risks of money orders, lawyers and NPOs is still missing. To date accountants' risk strategy is unknown. The country should work in this field given the possibility that in the future this sector may participate in some of the activities provided for in DL 317.

143. Finally, the coordination between national authorities should be highlighted since it has allowed the Coordinating Committee to work positively in the development of policies and strategies in this field.

A. Background and Context

Overview of the National AML/CFT Strategy

144. In July 2014, Cuban authorities approved and disseminated the National AML/CFT Strategy public report. This strategy is the product of the work developed by the Coordinating Committee and is based upon the following strategic objectives:

- *"Strengthening national cooperation and coordination between authorities for the development and implementation of policies and ML/TF prevention, detection and combat activities.*
- *Monitoring and ensuring compliance with, and updating of domestic strategies and regulations to prevent and fight these crimes on the basis of the risks identified by FIs and other reporting entities.*
- *Contributing to the strengthening and development of the relationship with international bodies and organizations related to the prevention and fight against ML/TF (National AML/CFT Strategy, p. 31).*

145. In order to fulfil the above-mentioned strategic objectives, fifteen (15) priority activities to be carried out in 2014-2016 were identified. However, not all of these activities address and respond to the fourteen (14) ML/TF risks identified by Cuba in the public document. This is because in order to design the fifteen (15) mitigating activities, other elements identified by Cuba in the confidential version of the NRA were taken into account. The assessors could not access to this version since, as indicated by the authorities, it contains sensitive information for the country.

146. In addition, it is worth noting that different authorities of the Cuban government have developed their own institutional strategies to combat crime, in particular ML/TF: the PNR of MININT, the FGR, the AGR and the BCC.

147. The strategy of the PNR of the MININT takes as its starting point the international increase of criminal conduct such as trafficking in drugs, arms and illicit capital and corruption, which constitute a threat to the

sovereignty and national security. The PNR focuses on the internal and external context, and identifies the main features and impacts of these crimes in Cuba, and the methods used to combat them. The Strategy also establishes the integration with other administration government organizations and bodies. For example, the national strategy to control anti-drug policy development is under the control of the National Drugs Commission (*Comisión Nacional de Drogas—CND*).

148. Similarly, the strategy of the AGR considers the international context, the evolution of organized crime and the impact of certain criminal activities in the Cuban context, also identifying risk elements that are based on the analysis of the information of passengers, air and sea cargos, documents of the International Maritime Organization (IMO) and the PNR of the MININT. The strategy also identifies the tools that have been used to combat crime, as well as priority areas.

149. The strategy of the FGR describes legislative and regulatory tools and how illegal conduct is approached.

150. In the case of the BCC, the assessment team was informed of several biennial strategies for the prevention and combat of corruption and criminal acts in the national banking and financial system, as well as the latest strategy on the system for combating ML/TF and PWMD criminal activities or other similarly serious offences. These strategies provide the main details about threats, weaknesses, strengths, and opportunities for the banking and financial system, as well as the sources of information used for the corresponding analyses.

(b) The Institutional Framework

151. Cuba presents a comprehensive institutional structure and framework for the development of a suitable AML/CFT regime. With the recent addition of Cuba to GAFILAT, a high-level commitment in the fight against ML/TF and other crimes that affect the economic order is evident. The following are the main institutions involved in this system:

Competent Authority	Summary of Key Functions
<i>General Prosecutor's Office</i>	Its main purpose is the control and preservation of legality by ensuring that the Constitution, laws and other legal provisions are strictly complied with by state agencies, economic and social entities and citizens; and the representation of the State in the promotion and exercise of public legal action.
<i>Office of the General Comptroller of the Republic</i>	Assistant to the National Assembly of People's Power and the Council of State in the execution of the highest supervision over the state and government bodies; moreover, it proposes the comprehensive policy of the state in the field of preservation of public finances and economic and administrative control, which has the power to direct, execute and enforce after endorsement. Moreover, it is responsible for methodologically directing and supervising the national audit system; executing the actions it deems necessary to ensure the correct and transparent administration of public assets; and it leads the prevention and fight against corruption.
<i>People's Courts System</i>	The courts constitute a system of state bodies with functional independence from all other systems and only report to the National Assembly of People's Power and the Council of State. They administer justice on the basis of the equality of all citizens before the law and the court; only the competent courts, in accordance with the law, impose penalties for acts which constitute offences.

<i>MININT</i>	It is the agency of the Central Administration of the State which, among other functions, is in charge of ensuring the State's security and the domestic order. It includes, among others, the Directorate General of the Revolutionary National Police, bodies of crime investigation and combat, Border Troops, and the prison system.
<i>General Customs of the Republic</i>	The system of customs bodies belongs to the state administration, and it is under the umbrella of the Council of Ministers. Its main functions include: regulating customs control, preventing, detecting, and addressing border fraud and smuggling, as well as contributing to national and international environmental protection.
<i>MINJUS</i>	It is the agency of the Central Administration of the State in charge of directing, executing and controlling the country's legal policy, the systematization of laws and the assessment of its effectiveness; it methodologically directs and controls notarial and registry activity, and legal consultancy offices. It is in charge of the National Registry of Associations, as well as the legal disclosure and the OG of the Republic.
<i>MINREX</i>	It is the agency of the Central Administration of the State that develops diplomatic, political, consular, economic, cultural, and cooperation relations with other countries. It proposes policies and, after their endorsement, executes and controls policies with other countries, regions and international organizations. It is responsible for the direction, preparation, negotiation, signing, implementation, and custody of international agreements, and it ensures compliance with the agreements signed by the Republic of Cuba, as well as the appropriate international obligations.
<i>BCC</i>	Among the functions granted by law, there are those relating to financial stability and prevention, for which purpose it acts as the agency that guides, regulates and supervises FIs and representation offices established in the country. It is the governing authority in the establishment of guidelines necessary to prevent the use of the Cuban banking and financial System for the legitimization of the proceeds of crime, including ML, TF, and the movement of similar funds. Within its structure there is the Directorate General of Financial Transactions Investigation, which operates as the financial intelligence central unit in the country.
<i>BCC Directorate General of Financial Transactions Investigation</i>	It has autonomy to receive suspicious transaction reports, analyse them and communicate the appropriate information to the competent authorities and other foreign entities. It collects, processes and analyses the information, it, and identifies vulnerabilities and risks associated with behaviours, patterns or trends in criminal activity and proposes mitigation strategies. It is in charge of the Secretariat of the Coordinating Committee for the prevention and fight against ML/TF and other similarly serious conduct.

(c) *Cooperation and Coordination Agreements*

Creation of a Coordinating Committee

152. Section 19 of DL 317 created the Coordinating Committee, chaired by the President of the BCC and comprised by other representatives of this institution, the FGR, the MINJUS, the MINREX, the MININT,

the AGR, the ONAT, and other experts of the agencies of the Central Administration of the State, as necessary.

153. The Coordinating Committee combines the policies and actions to combat ML/TF/PWMD, as well as other similarly serious related conduct. Its duties are (i) identifying and evaluating national risks that may result in the illegal flow of capital in the Cuban banking and financial system, and (ii) proposing the strategy for their prevention, detection and combat. The strategy is presented by the President of the BCC to the Council of Ministers for approval, as regularly as appropriate (Section 20).

154. Since its inception, the Coordinating Committee has regularly met, keeping records of the proceedings, commitments made and their follow-up. In particular, and as mentioned above, the Coordinating Committee has been the driving force behind the development of the NRA and the National AML/CFT Strategy, which involved the competent authorities. Likewise, the Committee has relied on other actors when necessary, as it was the case, for example, with banking sector participation in some of its meetings for the development of the NRA.

155. In addition, at the inter-agency level, collaboration and cooperation agreements have been signed for the exchange of information between relevant authorities. For example, there are agreements for the exchange of information between the DGIOF, ONAT, MINJUS, MINREX, AGR, as well as with the Real Estate Registry and the Chamber of Commerce, among others.

(d) *Country's Risk Assessments*

156. In July 2014, the Cuban authorities concluded the process of their NRA with the publication of the National AML/CFT Strategy public report. The NRA development process took place during a six-month period during which a unique methodology, based on methodological elements included in the ML/TF NRA Guide and on contributions from other international organizations, was designed and used. This resulted in a matrix of Strengths, Weaknesses, Opportunities, and Threats (SWOT) for the identification of ML/TF risks. The main factors identified in the national ML/TF risks assessment, i.e. the strengths, weaknesses, opportunities and threats, as well as the results in their interrelationships, were analysed in several meetings of the Coordinating Committee. The NRA process concluded with the identification of fourteen (14) main national risks which are detailed as follows in the National Strategy public document:

- The use of the geographical position of Cuba for the development of drug trafficking operations can lead to the transit of drugs or their arrival to the shores.
- There are tax havens in the Caribbean area.
- Incidence of travellers and people who are vulnerable to participation in drug trafficking activities.
- Potential foreign legal or illegal capital investment interest to launder assets or to participate in terrorist financing activities.
- Collection of the proceeds of crime from other countries.
- Incidence of corruption on an international scale.
- Corruption, generated by foreign customers of national entities.

- The violation of the international AML/CFT systems can lead to the introduction of the proceeds of crime into the country.
- Incipient black market prone to the performance of activities related to ML predicate offences.
- Possibility of infiltration of technologies which promote and stimulate the commission of ML, its predicate offences and TF.
- Embargo imposed by the US government and the unilateral inclusion of Cuba in the list of state sponsors of terrorism.
- Limited information from foreign jurisdictions in relation to ML/TF risks.
- Insufficient application of automated statistics systems for ML and predicate offences.
- Insufficient application of state-of-the-art technologies due to high costs and the economic blockade, including financial inclusion blockade for lack of access to media, equipment and connectivity.

157. The assessors had access to the minutes of Coordinating Committee's meetings where the Methodological Guide was prepared and implemented. Also, they had access to the comprehensive table of the SWOT matrix, a detailed confidential document which contains an analysis of the four factors mentioned above that were the main input for the identification of risks.

158. Based on the review of the information provided for the elaboration of the National AML/CFT Strategy, both public and confidential, in particular on the implementation of the methodological elements reviewed in the comprehensive table of the SWOT matrix, it is verified that there is an ML/TF vulnerabilities assessment; however, there are no sufficient elements in the NRA process to show the proper identification of specific ML/TF threats. Upon making a review of the threats, from the twenty-three (23) threats identified at least eleven (11) of them are not ML/TF threats in terms of the concept of threat used in the methodological guide⁶.

159. The Methodological Guide provides that the analysis of TF threats should consider threats the country has been exposed to, terrorist events suffered, as well as information about the foreign exchange market and behaviour, the informal remittance system, cross-border money and value transfer. Within specific strategies of the PNR and the AGR there is evidence of the analysis of this type of information; however, the analysis of TF threats in the NRA process is limited.

160. Upon reviewing the NRA process, it should be noted that eleven (11) of the fourteen (14) risks described are previously identified as threats, which indicates that there is a relationship between risk and threat, although these are different concepts according to the authorities. The assessment team thinks that this has an impact on the adequate understanding of ML/TF risks. Last, some of the risks identified are not related to ML/TF but are general country risks.

161. Authorities said they conducted exercises for matrix development by state entities, which is reflected in the strategies developed by the law enforcement agencies and the BCC, which were submitted to the

⁶ A threat is a person or group of people, object or activity with the potential to cause harm, for example, to the State, the society, the economy, etc. In the ML/TF context, this includes criminals, terrorist groups, their facilitators and their funds, as well as past, present, and future ML/TF activities. Threat is described above as one of the factors related to risk. Generally, it is an essential starting point to develop the understanding of ML/TF risk.

assessment team, as mentioned above. However, it is not clear how this information was taken into account, or how it was rated in the process of risk identification reflected in the comprehensive matrix table.

B. Technical Compliance (R1, R2, R33)

162. **Recommendation 1 is rated Largely Compliant.** By means of a Methodological Guide developed by Cuba, the Coordinating Committee, together with reporting entities, has developed the National AML/CFT Strategy, establishing an action plan to be implemented in three years, subject to an annual follow-up process. However, there are inconsistencies between ML/TF risks identified from the methodology used, and the mitigating actions for such risks, which bear a cascading effect on the Recommendation. The prioritization of major risks that need to be mitigated and minor risks where simplified measures can be applied is not clear.

163. Cuban legislation provides for the risk-based supervision of reporting entities. Moreover, it sets forth reporting entities' obligation to identify and assess vulnerabilities that can arise in each sector, and to ensure that adopted measures are proportionate and help reasonably reduce the risks identified. For such purposes, they design and implement their own strategies, which are communicated to the entities' senior authorities and all the staff. In compliance with regulations, all these processes shall be duly documented, supervised and updated.

164. In case of greater risks, FIs should implement appropriate measures to manage and mitigate risks. This does not seem to be the case with DNFBPs. In the case of FIs and DNFBPs, they have the obligation to apply simplified measures when minor risks of ML/TF and related conduct are identified. In this case, previous approval to enforce these measures should be requested.

165. **Recommendation 2 is rated Compliant.** Cuba has developed the National AML/CFT Strategy which sets out the objectives and actions defined for AML/CFT purposes. The Strategy is subject to an annual follow-up and is updated every three years. Section 19 of the DL 317 creates the Coordinating Committee, chaired by the President of the BCC and in his absence by the Superintendent. The Coordinating Committee also involves representatives of the FGR, MINJUS, MINREX, MININT, AGR, ONAT, DGIOF, and other experts from the Central Administration of the State, when necessary. Section 20 of the Decree and Res. 41/2014 provide for the functions of this Committee.

166. **Recommendation 33 is rated Largely Compliant.** Cuba presented a series of regulations stipulating that the different agencies, in particular the People's Courts, FGR, PNR, MINREX, DGIOF, among others, shall develop and maintain updated statistics. However, Cuba should generate mechanisms for statistics to be up-to-date and consistent at all times.

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

167. The process undergone by Cuba to develop its NRA should be noted: the country started by developing its own methodology based on the FATF ML/TF NRA guide and the SWOT methodology, where ML/TF strengths, weaknesses, opportunities, and threats are analysed. Once this methodology was completed and approved, Cuba continued with the NRA implementation process, which was completed with the publication of the National AML/CFT Strategy public report. All institutions that make up the Coordinating Committee were involved in this process, as mentioned above. FIs and DNFBPs attended several meetings too. This is Cuba's first exercise of this kind.

168. However, in the development of the NRA there seem to be some weaknesses in the process of application of the Methodological Guide which prevented adequate identification of ML/TF risks,

particularly in relation to gathering information for the conclusions in the risk matrix and in relation to the identification of threats. This difficulty in clearly identifying ML/TF risks then translates into some inconsistencies in the activities proposed within the National AML/CFT Strategy for mitigating such risks.

169. With respect to the information used, experts' criteria were used, which is of utmost importance. However, despite the minutes of the Coordinating Committees reflect the analysis of statistics from the different government agencies, there is no evidence of the use of other types of information (strategic intelligence, typologies, etc.) that would somehow support experts' criteria. Authorities said that apart from expert meetings with the Coordinating Committee, additional exercises were carried out (other matrixes), but these were not reflected in the National AML/CFT Strategy public document or in the confidential document on the application of the Methodological Guide. However, the assessment team did not have the opportunity to review this information.

170. Therefore, it is not clear how the information that allowed authorities to reach the conclusions on the risks identified and the mitigating actions was used. For example, the NRA indicates that compliance with the regulations for borders control should be strengthened with the use of technologies appropriate to the inherent risks, but it is not clear what these inherent risks are.

171. Additionally, there seems that there are no sufficient elements to demonstrate the adequate identification of ML/TF threats during the NRA process, which affected the identification of ML/TF risks. The information provided in relation to threats does not specify the analysis of what the specific ML/TF threats would be. As it was mentioned before, from the twenty-three (23) identified threats, eleven (11) are not related to ML/TF, so there seems to be a confusion between what a country's general risk analysis is and what ML/TF risks are.

172. Available information is considered to be the first step to learn about Cuba's situation in the fight against ML/TF. The information used for the development of the NRA was obtained through meetings attended by the delegates from public institutions involved in the fight against ML/TF. The minutes of the Coordinating Committee show the evolution of the process and expert discussions, the discussion on statistical information that took place in the meetings but not the generation of input for adequate understanding of ML/TF threats and their interrelation with the vulnerabilities identified, as well as their consistency with the action plan to be implemented.

173. The public National Strategy identifies fifteen (15) priority actions considered strategic. These will be implemented through thirty-five (35) specific actions, which are expected to be conducted over a period of two (2) years. Although some of the priority actions identified are of importance for the country, and although their implementation will contribute to the strengthening of the Cuban AML/CFT regime, not all of them are related to the risks identified by the authorities. For example, one of the risks indicated in the analysis is the "*incipient black market prone to the performance of activities related to ML predicate offences.*" In the schedule of activities of the NRA, there is no clear action to mitigate this risk, given that for each identified risk the authorities have pointed out that all priority actions will mitigate each risk. Finally, given that the National Strategy is too recent, a judgment on how identified risks will be mitigated cannot be made.

174. According to the information provided by the authorities and to the interviews held during the on-site visit, the assessment team found that there are certain peculiarities in the Cuban context, which were mentioned in the first section of this report, which together make Cuba less attractive, and thus less vulnerable, to be used for ML purposes. However, this analysis is not reflected in the documents of the NRA, and these findings are not translated into the National Strategy.

Financial Institutions and DNFBPs

175. Meetings were held between authorities and FIs. FIs participated in the NRA process by gathering information and determining the country's risk level. Once the NRA process was concluded, the National AML/CFT Strategy was published and announced to all sectors. The meetings held with FIs show that they have a good understanding of the AML/CFT regulations issued by the Cuban government. Moreover, senior authorities of FIs seem to be strongly committed with compliance with these regulations.

176. In the fulfilment of their obligations, commercial banks have identified their ML/TF risks, which vary depending on the kind of bank. Each bank has designed a strategy to identify its main ML/TF risks, and an action plan to mitigate them. In relation to non-banking financial institutions, FINCIMEX (a remittance company) has a strategy identifying the main ML/TF risks it is exposed to, which includes a strategy to monitor situations that may pose risks. This does not seem to be the case with Cuba's Post Company, which provides international money transfer services to Cuba through money orders. Although this sector represents a minor risk due to the specific value of the activity it performs, it cannot be guaranteed that this will continue to be the case in the future. As at the date of the on-site visit, Cuba's Post Company was not a reporting entity for ML/TF in spite of being a money transfer service provider.

177. Notaries have a deep understanding of their AML/CFT obligations. However, in the case of lawyers and accountants, it is not clear whether efforts have been made to identify the ML/TF risks they may be exposed to.

178. For the purposes of gathering information, the authorities of the competent institutions and self-regulatory bodies appointed permanent delegates, who are in charge of maintaining a two-way information link between the Coordinating Committee and the institutions involved. The schedule established for future actions to mitigate ML/TF risks lays down the links between the Coordinating Committee and the entities affected by these measures. Additionally, it sets out the responsibilities of the Coordinating Committee for specific actions.

179. According to the information provided at meetings with the authorities, FIs and representatives from the non-financial sector, the results of the NRA derived from the National AML/CFT Strategy have been widely disseminated among the Cuban FIs involved in this process. Since the National AML/CFT Strategy was published only recently, no performance indicators or results have been generated to allow us to assess how its results are incorporated into reporting entities' risk analysis processes. However, it is noted that this issue is a priority action identified by the country among its mitigation actions for the risks identified in the NRA.

General Conclusions of Immediate Outcome 1

180. The assessment team recognizes that the NRA process and the development of the National AML/CFT Strategy reflect the commitment of authorities in the fight against ML/TF, which constitutes a considerable effort made by the country.

181. However, during the NRA process the Methodological Guide was not properly used for the identification of risks, which limited adequate identification of ML/TF risks. As mentioned, at the time of identifying ML/TF threats, at least eleven (11) of them are not ML threats. There is no differentiation between the meaning of country risk and of ML/TF risk. Although the Coordinating Committee has allowed Cuban authorities to work in a coordinated manner in the development of policies and strategies, and although its role has been essential in the process of strengthening the AML/CFT regime, the National AML/CFT Strategy developed with priority actions do not clearly respond to all the ML/TF risks identified. Given that the National Strategy is too recent, a judgment on how identified risks will be mitigated with the priority actions established cannot be made.

182. Within the NRA and consequently in the National Strategy there is no evidence of a context and materiality analysis, which considering Cuba's specific characteristics, is of great importance in defining the country's exposure to ML/TF risks.

183. *In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 1*

D. Recommendations on National AML/CFT Policies and Coordination

184. Reviewing the application of the Methodological Guide to allow adequate identification of threats.

185. Incorporating the use of quantitative data in the development of the NRA.

186. Maintaining consolidated statistics, strategic and typologies analyses to be used in the development of the NRA.

187. Including inputs from the institutions that have developed their own analyses and strategies. Modifying the National AML/CFT Strategy so that mitigating actions actually lead to mitigating the ML/TF risks identified.

III. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

188. The DGIOF produces financial intelligence based on STRs, cash transaction reports, and additional information from reporting entities and from several Cuban agencies where necessary. However, the intelligence produced has only taken place in the context of ML predicate offences, since no ML or TF STRs have been received from FIs nor intelligence reports in this matter have been generated, except on one occasion in 2011.

189. DGIOF reports related to money laundering predicate offences and other crimes that have been disseminated to competent authorities (PNR, FGR and the Office of the Comptroller) are useful. With STRs from FIs and with intelligence reports as starting points, authorities have conducted investigations that concluded in convictions for ML predicate offences, but not for specific cases of ML or TF. There were twenty-nine (29) intelligence reports submitted to the assessors that are not related to ML.

190. In the Butterfly case (2011), the DIOF produced the corresponding financial intelligence report and brought experts to the oral proceedings. However, the DGIOF receives and analyses STRs on crimes that are not ML predicate offences.

191. Authorities should make greater efforts to increase the number of cases tried for the crime of ML and develop ML parallel financial investigations to the investigations on predicate offences.

192. The country has a mechanism for the confiscation and forfeiture of assets; however, efforts should be strengthened to increase the number of forfeitures of ML-related assets.

A. Background and Context

Legal System and Crimes

193. As discussed above, the Cuban government is ruled by the Constitution of the Republic of Cuba approved in 1976, which constitutes the Supreme Law. The legal system in Cuba is based on the continental legal tradition, and its criminal process is based on a mixed system which distinguishes between the preliminary investigation and trial phases.

194. As for the ML crime, the Cuban Criminal Code has criminalized this offence since 1999, although it was not until recently that it was amended to incorporate the majority of the elements referred to in FATF Recommendation 3. In addition, the Criminal Code and the Code of Criminal Procedure include the specific faculty of competent authorities to confiscate the proceeds of crime, including those related to ML in terms of FATF Recommendation 4. Details on both items are provided in the corresponding sections below.

195. In addition, the Cuban State has developed a strict regime against crime, with significant anti-corruption measures and competent authorities duly empowered, trained and coordinated to perform the tasks of prevention, investigation, pursuit, and prosecution. Moreover, there are severe criminal, administrative and economic sanctions, which seem to be rigorously implemented.

The competent authorities are duly empowered, trained and coordinated.

196. The AGR has been subject to an important process of technological adaptation, with an investment that, according to Cuban authorities, has exceeded USD 8 million in the last two years. The Customs Office has prioritized the purchase of new equipment to reduce possible risks related to ML, terrorism, drug trafficking, and smuggling. At the same time, it has developed information technology tools to be able to respond in the shortest possible time.

197. Moreover, the PNR is the legally responsible agency to investigate and combat ML/TF offences. The files of investigative processes (cases) are processed in the PNR in compliance with the Code of Criminal Procedure, which establishes joint actions of criminal investigation and operations agencies, criminalistics, and other experts and experts appointed by law, which produce the corresponding files made up by evidence and documents on the investigated criminal acts and set forth the terms of the investigation. Additionally, according the authorities, the PNR has resources and means of investigation and information technology, transport and weapons, among others, to carry out its functions.

198. The BCC DGIOF is responsible for developing financial intelligence in Cuba. Its legal framework has been strengthened by Decrees Law 317/2013 and 322/2013, which granted it the necessary power to receive information from different sources that is subsequently used to develop strategic and operational analysis. Also, it has the power to present cases to the PNR and the AGR for their further investigation, as well as to provide comprehensive cooperation to foreign counterparts. The DGIOF is under a consolidation process and it is expected that it may improve its interconnection through secure channels with other countries, with the expected access of the country to the Egmont Group, and the subsequent access to the Egmont Secure Web, for the purpose of exchanging relevant information.

199. While improving the technological needs is essential for the reception, management, coordination and response to investigation needs, training of human resources that integrate the various institutions involved in the fight against ML/TF. This preparation is carried out both through actions nationwide as well as by foreign counterparts. In this regard, Cuban authorities indicated that between 1995 and 2014, 107 training courses were delivered on the subject (66 in Cuba and 41 overseas), with the collaboration of relevant agencies from Canada, Spain, France, the Netherlands, Italy, and the United Kingdom, as well as Interpol.

200. In this sense, 1487 members of the Anti-Drug Ministerial System of the MININT, the AGR, the Central Bank of Cuba, and other agencies of the Central Administration of the State, were trained on anti-money laundering matters, analysis of intelligence and use of special investigative techniques, among others.

Statistics on the Incidence of Crime

201. Below are provided relevant statistics on some ML predicate offences:

Predicate Offences	Causes Initiated in			
	2011	2012	2013	As of July 2014
Human Trafficking	18	21	14	23
Drug Trafficking	426	458	510	550
Embezzlement	913	743	683	483
Bribery	217	299	255	168
Influence Peddling	8	--	6	2
Fraud	156	178	186	238

Illicit Enrichment	2	1	--	--
TOTAL	1 740	1 700	1 654	1 464

Predicate Offences	Persons Prosecuted			
	2011	2012	2013	As of July 2014
Human Trafficking	75	48	48	49
Drug Trafficking	652	670	802	771
Embezzlement	1 534	1 201	1 050	880
Bribery	402	433	436	311
Influence Peddling	4	8	3	2
Fraud	232	242	219	258
Illicit Enrichment	3	1	1	--
TOTAL	2 902	2 603	2 559	2 271

Predicate Offences	Persons Sanctioned			
	2011	2012	2013	As of July 2014
Human Trafficking	75	45	45	47
Drug Trafficking	590	615	697	551
Embezzlement	1 411	1 119	1 001	815
Bribery	377	404	408	294
Influence Peddling	4	5	3	2
Fraud	218	224	201	239
Illicit Enrichment	3	1	1	--
TOTAL	2 715	2 449	2 421	2 130

202. Now, the information provided indicates that drug trafficking, embezzlement, bribery, and fraud are among the most common crimes in Cuba. In this sense, Cuban authorities have indicated that drug trafficking cases in the country are linked to conduct such as:

- a. Drug consignments that reach the shores of Cuba as a result of the activity of international drug traffickers that, when spotted by Border Troops or surveillance services, leave these consignments in Cuban territorial waters;
- b. Activities of criminal groups abroad to try to send drug consignments to various destinations, using containers in transit or transshipment in Cuba;
- c. Introduction of drugs for internal commercialization, mainly through the José Martí International Airport, generally using "mules"; and
- d. To a lesser extent, internal trafficking operations have been detected.

203. Moreover, Cuban authorities have pointed out that embezzlement has been fundamentally linked to State agency's officials who, being responsible for and having the custody of State property, have appropriated them by means of forgery of public, banking and business documents and violating established internal control regulations. In addition, authorities pointed out that bribery is associated to the bribery of public officials or civil servants by nationals or foreigners to obtain benefits or advantages from the violation of the functions inherent to the positions of these individuals; and that fraud has been related to conduct between private individuals and, to a lesser extent, State entities.

Sanctions

204. Laws against ML predicate offences provide for severe imprisonment sanctions and other measures. These are effective dissuasive measures for most of the crimes. By way of example, the following information is provided:

ML Predicate Offences	Relevant Sections of the Criminal Code	Imprisonment Sanctions
Production, sale, demand, traffic and distribution of drugs, narcotics, psychotropic substances, and others with similar effects	190, 192 and 193	2 to 30 years
Embezzlement	336	6 months to 20 years
Bribery	152	4 to 20 years
Influence Peddling	151	3 to 15 years
Fraud	334	3 months to 10 years
Illicit Enrichment	150	2 to 8 years
Human Trafficking	347 and 348	7 years to life imprisonment

205. In addition to the above, Section 346.1 of Decree-Law 316/2013, Amendment to the Criminal Code and the Law Against Terrorist Acts, sets forth that any person committing ML as a result of the predicate offences listed in that Section shall be sanctioned to 5 to 12 years' imprisonment and 7 to 12 years' imprisonment if the perpetrator is part of an organized crime group. Additionally, the accessory penalty of forfeiture or confiscation of assets shall be applied. Relevant information about the number of sanctions ordered in relation to ML predicate offences under analysis is provided below:

Predicate Offences	Imprisonment				Internment Sanctions				Other Penalties			
	2011	2012	2013	As of July 2014	2011	2012	2013	As of July 2014	2011	2012	2013	As of July 2014
Human Trafficking	68	36	39	45	73	39	43	47	2	6	2	--
Drug Trafficking	558	580	671	606	577	593	693	637	50	58	69	96
Embezzlement	804	607	500	459	1 085	803	688	593	326	316	313	222
Bribery	143	111	132	126	177	183	172	151	200	221	236	143
Influence Peddling	2	1	3	1	3	2	3	--	1	3	--	1
Fraud	142	145	125	131	171	179	156	161	47	45	45	78



Illicit Enrichment	3	1	--	--	3	1	--	--	--	--	1	--
TOTAL	1 7 20	1 48 1	1 47 0	1 36 8	2 08 9	1 80 0	1 75 5	1 58 9	626	649	666	540

206. With regard to the last table, it should be noted that the information contained in "Imprisonment" refers to persons who have been penalized in the usual manner. Also, the information under "Internment Penalties" refers to persons who are serving prison sentences or are performing community service in specialized correctional centres, usually in agricultural camps. Finally, the information contained in "Other Sanctions" refers to sanctions that do not require imprisonment, such as correctional work without imprisonment, deprivation of liberty and fines, among others.

207. This information clearly shows that crimes are investigated, prosecuted and sanctioned according to the law.

Effective Forfeiture Scheme

208. As discussed in detail in Immediate Outcome 8, Cuba has a robust regime of confiscation and forfeiture of assets, which can be used to deprive offenders from almost all their property. This, together with severe imprisonment sanctions, definitely discourages the commission of crime in Cuba. In this sense, the measures in force seem to be efficient, proportionate and dissuasive.

B. Technical Compliance (R3, R4, R29-32)

Money Laundering and Confiscation:

209. **Recommendation 3 is rated Largely compliant.** ML is included in Section 346 of Law 62 on the Criminal Code. It was amended on 19 December 2013, pursuant to the provisions set forth in Section 3 of DL 316. In this sense, the current wording of the criminal type meets most of the criteria of FATF Recommendation 3. However, it fails to criminalize maritime piracy offences, the counterfeiting of goods (piracy) and environmental crimes as ML predicate offences. Also, it is not clear whether the inference from objective facts is enough to determine the intent to commit ML and the illicit origin of the resources in question. Nevertheless, in the judgments of ML cases provided, it is apparent that judges clearly make inferences from other facts to rule on the liability of the defendant.

210. **Recommendation 4 is rated Largely compliant.** Sections 43 and 44 of the Criminal Code provide for confiscation and forfeiture of property, respectively. Confiscation consists of depriving the offender of the assets used in or intended for use in the commission of an offence, or the proceeds of crime. Furthermore, confiscation consists in depriving the criminal of some or all of his assets, regardless of whether or not they are related to the commission of the offence. This last concept is broad enough to cover the deprivation of property of corresponding value. Forfeiture is applicable to ML offences. In this regard, the Investigating Officer, the Court or the Prosecutor can order, at any stage of the proceedings, the seizure of the defendant's assets that are necessary to guarantee, where appropriate, the enforcement of the judgment in terms of civil liability. Also, these sections regulate how the deposited movable assets shall be transferred to the State, once the forfeiture, confiscation, and the rules for deposit, disposition, preservation, and return, where applicable, have been established. The General Housing Law applies to immovable assets and lays down the provisions for the disposition of property held by the State. Both processes cover the basics, but more details could be provided for greater transparency.

Legal and operational application

211. **Recommendation 29 is rated Largely compliant.** The DGIOF, within the BCC, is the national centre in charge of receiving, centralizing and analysing suspicious transaction reports (STRs) submitted by the reporting entities and requesting additional information related to ML, ML predicate offences, TF, or PW. It also has the responsibility of notifying the competent authorities of cases of suspicion of the illegality of the source of the assets involved, both ex officio and at the request of the authorities. Besides receiving the STRs from the reporting entities, the DGIOF can also receive reports on the financial transactions in cash exceeding the limit set by the BCC, as well as the information from other competent authorities for the exercise of their functions. The DGIOF is in charge, inter alia, of performing the operational and strategic analysis. Information is disseminated through secure and protected channels and can only be used within the limits set by existing laws. The DGIOF is currently introducing software for information collection, processing and preservation. In addition, the DGIOF has the competence of independently interacting with other authorities and of directly acting upon the assets and funds that are allocated to it by the BCC. The membership application for the Egmont Group was submitted in 28 March 2014.

212. **Recommendation 30 is rated Largely Compliant.** The Criminal Procedure provides for the powers and procedures of investigation of the PNR, which is a member of the Coordinating Committee. Authorities are empowered to conduct investigations involving assets and imposing their seizure or attachment. PNR centralizes the information exchange and coordinates actions among bodies for criminal investigation and combat of the MININT with the DGIOF. The general provisions and the procedure for conducting joint financial investigations requested by or to the DGIOF are laid down. There is a legal framework that allows parallel financial investigations; however, the processes are not clear. The PNR has the faculty to impose, to the knowledge of a criminal offence, the precautionary measures provided for (including property), and to undertake the appropriate proceedings (seizure of the proceeds and instrumentalities of crime, the inspection of the place or its reconstruction, among others), which can be ordered by the investigating officer or prosecutor, without a Court order. In addition, the police, investigating officer or prosecutor shall collect the weapons, instrumentalities or any proceeds of crime that may be related to the offence. Furthermore, documents, papers or any other items found shall be collected too if needed for the result of the investigation. According to the criminal proceeding, the seized assets may be disposed of during the process and only the court, when making a judgment, decides on their destination. In this sense, they may be confiscated, forfeited or returned to its rightful owner or holder, who can access the property only in this case.

213. **Recommendation 31 is rated Partially compliant.** Competent authorities and courts, in their respective cases, have access to any reports, data and background information as required for the crime investigation. The Criminal Procedure provides for the powers and procedures of investigation of the PNR. Furthermore, police powers and actions to be taken when detecting the criminal act are described, as well as the investigative actions to be carried out by investigating officers to verify the offence. Although Cuba ratified the Vienna and Palermo Conventions, it has no special legal provisions on special investigative techniques⁷. The Criminal Procedure provides that courts and competent authorities may require, from any agency or entity, including the DGIOF and FIs, information, reports, data, and others for the crime investigation. The tracking of assets by the authorities does not require prior notice to the owner, only the decision of the competent authority is required. In addition, agreements for the exchange of information on other assets have been adopted, which speeds up the identification of assets. Similarly, the MININT has automated records of the owners of vessels, vehicles and firearms, to which investigators have access.

⁷On 1 April 2015, the Governing Council of the Supreme People's Court issued Decision 443, which clarifies the requirements and guarantees to observe for implementing a "controlled delivery", as a special investigative technique, under international conventions combating illicit trafficking in narcotic drugs and psychotropic substances, organized transnational crime, and corruption. It also establishes its significance as evidence in criminal processes.

Recommendation 32 is rated Compliant. In Cuba there is a regulatory framework for taking statement from travellers and a clear process of sanctions, in compliance with FATF Standards.

C. Effectiveness: Immediate Outcome 6 (Financial Intelligence)

214. The Directorate General of Financial Transactions Investigation (DGIOF), within the BCC, is the national centre in charge of receiving, centralizing and analysing STRs submitted by reporting entities. As provided for in DL 322/2013, STRs and all accompanying documentation is forwarded to the Legal Division for its decision, and then the report on financial intelligence is prepared and submitted to the Case Committee, which analyses, and where appropriate, requests its completion or reformulation. After completion of the steps above, the Director provides for its dissemination to the competent authorities. The information contained in the STRs is disseminated to the PNR, the FGR and the CGR, where appropriate.

215. There are a number of sources of information to which both the DGIOF and law enforcement authorities have access. Besides receiving the STRs from the reporting entities, the DGIOF also receives from them reports on the financial transactions in cash, as well additional information. Furthermore, the DGIOF receives information provided by the AGR, the ONAT, the Superintendence of Insurance, or other bodies or agencies that are necessary, where it is specifically requested; and reports and data about the improper use of banking services, as well as the alleged criminal acts and manifestations of corruption in the Cuban banking and financial system.

216. The PNR, which is responsible for investigations and combat of ML/TF offences and its predicate offences, together with the Prosecutor's Office have acknowledged that the information they receive from the DGIOF is useful. Despite the recent update of DGIOF regulations, there is a clear coordination between this body and law enforcement authorities.

217. However, the capacity of the DGIOF to produce quality intelligence may be affected by the existence of a Quality Committee⁸, comprised by units of the BCC unconnected with the DGIOF, which has an incidence in the study and classification of reports, since this Committee meets before the report is submitted to the appropriate law enforcement authorities. Also, while according to FATF methodology there may be FIU independence, even when it belonged to another State Agency, the participation of BCC delegates from the supervising area in many aspects of the DGIOF could affect the security of the information protected. Also, the judgments about intelligence reports made by bodies outside the DGIOF are not clear.⁹

218. In this evaluation process, concentration is effective and at the time of the on-site visit, it was evident that the existence of a Quality Committee could undermine the confidentiality of the DGIOF, which was remedied but only after the visit. The First Special Section of DL 317/2013 ensures the coordination and vests the competent authorities with the faculty to carry out investigations in all criminal types, including ML/TF. The authorities that carry out these tasks are the following: MININT, FGR, TSP, CGR, ONAT, and the DGIOF.

219. With regard to received and disseminated STRs, in the 2011-2014 period the DGIOF received 501 STRs, disaggregated as follows:

⁸ The DGIOF amended Directive 1 of 2013, providing for the participation of the Superintendence in the Quality Committee, with the issuance of Directive 3 of 2014. With this reform, the Superintendence legal expert was removed from the Quality Committee. Although assessors' concern was addressed, the regulatory amendment was made after the on-site visit, so this information cannot be considered in the ratings of this report.

⁹ It is noted once more that this issue has already been solved, since after the on-site visit in December 2014; the authorities amended the Directive 1 of 2013; thus only allowing the participation of DGIOF in the Quality Committee.

YEAR	SUSPICIOUS TRANSACTION REPORTS RECEIVED			INFORMATION DISSEMINATED TO THE AUTHORITIES		PROSECUTED CASES (PREDICATE OFFENCES)	
	Banks	NBFI (*)	Total	Total	% total number received:	Total	% total number disseminated
2011	88	38	126	34	26.9	15	44.1%
2012	97	35	132	53	40.4	30	56.6%
2013	95	38	133	46	34.5	20	43.5%
2014	85	25	110	61	55.4%	47	77%
TOTAL	365	136	501	194	38.7	112	57.7%

(*) NBFI Non-Banking Financial institutions

220. The information communicated and exchanged with authorities is associated with the offences of embezzlement, bribery, forgery of documents, illegal economic activity, trafficking in currency, and fraud. This information was disseminated to the FGN, PNR and CGN, as appropriate. In the 2011-2013 period, conviction only took place in 6 (six) of all the predicate offences registered.

221. However, as shown in the previous table and in the light of the interviews held with the authorities, it can be inferred that the cases received by the DGIOF, disseminated by it to the competent authorities, and then processed by the Administration of Justice, do not correspond to ML/TF cases and crimes but, in general, to predicate offences. Moreover, relevant reports on ML/TF have not been developed. It is worth noting that the table above does not include statistics of STRs received by other reporting entities that do not belong to the financial system, since Resolution 73/2014 was issued in July 2014.

Year	Offences from STRs		TOTAL
	Predicate Offences	Other not Predicate Offences	
2011	31	3	34
2012	42	11	53
2013	30	16	46
2014	19	7	26

STRs received in 2014			
Non-Banking and Banking Financial Institutions	Predicate Offences	Not Predicate Offences	Total
Bank 1	19	10	43
Bank 2	13	2	26
Bank 3	7	0	9
General Customs of the Republic	6	0	23
Bank 4	1	0	1
Bank 5	0	1	4
Bank 6	0	0	2
Cases processed by the DGIOF	1	1	2

TOTAL	47 predicate offences	14 not predicate offences	110 STRs received
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222. Moreover, it should be noted that according to the information provided by the DGIOF, this body seems to be receiving STRs related to not predicate offences (as shown in the following table). This may serve to prove the existence of deficiencies in the quality of STRs for the analysis of financial intelligence related to ML/TF offences, since available DGIOF resources are used to investigate offences unrelated to MT/TF.

223. In addition to the power granted by law to DGIOF to request information, steps have been taken for the signing of inter-institutional agreements for the provision of information from other authorities, such as: the Investigative Technical Police; the ONAT, Civil Registries, the Directorate of Foreign and Immigrant Identification, the Central Registry of Sanctions, the Real Estate Registry and the Ministry of Labour and Social Security. These agreements improved the scope of information that the DGIOF can use in its analysis.

224. As an example of inter-agency cooperation, and despite there are no statistics on received and disseminated STRs related to ML, there is a clear support of the DGIOF in the development of the Butterfly case, in which the DGIOF cooperated with criminal authorities through the provision of information to facilitate the freezing of assets of the defendants.

225. In addition, the DGIOF has exchanged information with the competent authorities, who have issued requests for information to it in 1 643 cases, as shown in the table below:

Type of Request	2011	2012	2013	2014	Total
Request for Information	283	185	183	335	986
Freezing	110	138	100	85	433
Unfreezing	49	41	27	49	166
Note Circulation	8	4	5	9	26
Certification of Regulation	12	10	1	2	25
Card Blocking	--	--	--	2	2
Judicial Deposit Transfers	--	--	--	1	1
Cash Back	--	--	--	4	4
Total	462	378	316	487	1 643

226. As can be noted, there is a fluent exchange of information, and, in particular, the following requirements are highlighted: Offences against State Security (DCSE) (595), the Directorate of Criminal Investigations and Operations (DIVICO) (119), the Military Prosecutor's Office MINFAR (319), and the Investigative Technical Police (PTI) (263). However, the number of requests made by the PNR and the FGR has not been large enough: 25 and 28, respectively. Of the total commissions received at the DGIOF, 1 122 proceeded from the police and the criminal instruction bodies of the Ministry of Domestic Affairs, 388 of the General Prosecutor's Office and 133 of the Courts of Justice, among other authorities. Of these, 973 were information requirements on bank accounts and financial operations and 670 orders to freeze accounts or transactions. Through the information requirements, the competent authorities obtain data on whether the prosecuted

person has bank accounts, and if so, the activity of such accounts, including all transfers into and out of the country.

227. In addition, in terms of information protection and confidentiality, all information considered of national security is protected in BCC archives with due care. Received STRs, intelligence reports and other types of physical information are safeguarded in the DGIOF with an adequate order. Moreover, access to these files requires express authorization of the Director of the DGIOF. The authorities informed that they were in the process of implementing software for information protection, processing and analysis. This software was finally purchased on 3 June 2014. As regards its operation, this software is used for the receiving and sending of information through secure and encrypted channels between reporting entities and the DGIOF. Additionally, two other programmes were bought for managing documents, disseminating the lists published by the UNSC and searching listed persons. Likewise, they are in the process of purchasing new facilities, where there will be a space destined to safeguarding its own information, using the procedures that are granted to it by law for the management of confidential information. As part of its Investment and Priorities Strategy, the DGIOF will establish an office for the treatment of sensitive and classified official documentation. Strengthening the physical and IT infrastructure and involved significant investment by the Cuban Government.

228. With respect to secure methods for information exchange, some agreements signed by the DGIOF, the BCC, the DGPNR, and the AGR lay down the formats that requests for information need to observe for their submission through secure channels, based on DL 199/1999 and Resolution 127 (24 July 2007) of the Ministry of Informatics and Communications. Whereas the first regulation refers to those responsible for the country's computer security, as well as to the classification and declassification of official documents, noting the necessity of creating cryptographic protection; the latter refers to the development of programmes, security regulations and procedures.

229. Finally, with regard to the obligation of the FIU to generate strategic studies, it is important to mention that, although this obligation is covered by DL 317 and DL 322, as at the date of the on-site visit, Cuba's DGIOF had not generated its own strategic studies and had only disseminated the typologies reports developed and produced by GAFILAT and FATF to reporting entities.

General Conclusions of Immediate Outcome 6

230. It is important to note the efforts made by the DGIOF to comply with its obligations in terms of AML/CFT and the actions implemented to establish a work relationship with the reporting entities and competent national authorities. However, it should be noted that no analysis or intelligence report has been developed in relation to ML (except in the Butterfly case) or TF, which may be due, to some extent, to the limited range of predicate offences before the 2013 amendment, which did not include the complete list of FATF. This, in turn, suggests a more reduced possibility of generating STRs for these offences and reveals a more limited number of cases showing knowledge of ML conduct. Also, there is a need to improve the quality of STRs in the development of risk identification (as stated by the authorities). In this sense, the DGIOF seems to be receiving STRs on conduct that does not seem to be related to ML predicate offences.

231. It is important to note, from the information reviewed and the interviews with the authorities, the permanent exchange of information and requests made to the DGIOF by the competent authorities for the development of processes.

232. *In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 6*

D. Effectiveness: Immediate Outcome 7 (ML Investigation and Prosecution)

233. With regard to the Cuban context previously analysed, everything seems to indicate that there is a relatively low incidence of crime. In particular, in the case of ML, Cuba is considered unattractive for its various prohibitions to or restrictions on foreign investment, the purchase and transfer of property, the movement of funds in and out of the country, as well as the existence of a well-developed and coordinated regime for the prevention and combat of crime in general.

234. Due to the recent amendment of the Criminal Code (nine months as at the time of the on-site visit), in absolute terms it was not possible to increase the number of ML convictions. However, the authorities informed the assessors, at the request, of 11 (eleven) ML investigations underway.

235. As at the date of the on-site visit, there were 11 ML investigations registered in Cuba. Of these, four are in the preparatory phase prior to the oral proceedings. This has allowed holding 35 people criminally liable for the direct commission of the offence (perpetrators) or for their necessary cooperation in the commission of ML; as well as having secured through procedural measures USD 371 000, CUC 80 000, CUP 63 000, 73 vehicles, 35 houses, 2 farms, jewellery valued at CUC 8 325, and other high-value property. All of this, compared to previous years, shows the evolution in the investigation and prosecution of ML cases. Two investigations led to two complaints for this offence, which were processed and prosecuted, while some investigative files are still in progress. A case was tried in 2007, and the other in 2011. Details on the second case are provided below.

236. The decision to analyse a possible money laundering case depends on the evidence obtained by the police during the investigation, on the basis of the STRs submitted, or any other information obtained. ML Investigations are initiated by the Ministry of Domestic Affairs, when any of the following situations occurs:

- Information received from any of the Cuban intelligence sources that provide reasonable suspicion (in accordance with international standards) on the existence of ML;
- From ongoing investigations on any ML predicate offence, which is evidence of increased personal wealth;
- When foreign authorities or competent international organizations provide information or request cooperation for the investigation of an ML offence or any predicate offences; and
- When the DGIOF produces financial intelligence based on the information received from reporting entities.

237. The Ministry of Domestic Affairs, in collaboration with the PNR, the DGIOF and any other competent authority, in accordance with their agreements on collaboration and information exchange, initiates an investigative file and needs to determine, within 60 days, whether the ML offence or any predicate offence was committed. If so, sanctions are determined and adopted.

238. Details about the ML case that was reported (during the period of the assessment study) are provided below:

Butterfly Case

As stated in the judgment, this case is about a French citizen linked to foreign criminal organizations involved in drug trafficking outside Cuba. The offender was also involved in money laundering in Cuba and abroad.

The French citizen was accused of having sold a vessel to two French drug traffickers under suspicious conditions. Afterward, the two men were arrested offshore, near Cape Verde, by French and Spanish police. On the vessel, they were transporting 2.9 tons of cocaine. This is also linked to other people related to the Frenchman.

This offender was also accused of carrying out financial operations structured in order to conceal illegal assets. Specifically, he was accused of operating a total of 25 accounts in Cuban banks and some more in foreign banks on non-economic grounds between 1997 and 2009. In the 2000-2009 period one of the accounts showed income of over a million dollars. Furthermore, he acquired companies, vessels, cars, houses, artworks, and other property in Cuba, France, the Bahamas, and Canada.

The investigation was jointly carried out by French authorities and Cuba's FGR. In 2011, the judge in charge ruled that the main defendant should be sentenced to 15 years imprisonment, due to the offences for which he was found guilty: ML (10 years), tax evasion (five years), trafficking of currency, metals and precious stones (three years), and illicit economic activities (two years). In addition, his assets were confiscated. Eight individuals, six of whom were Cuban bank and government officials, were sentenced for having collaborated in the offence or for having failed to comply with their obligations, thus allowing the French citizen to carry out illegal financial operations within Cuban territory, instead of rejecting or reporting them to the competent authorities.

239. In the light of this case, and in accordance with the relevant legislation, the following conclusions can be drawn. It is clear that in Cuba, ML offences can be judged autonomously, i.e. regardless of whether there is a sentence for the relevant predicate offence. Also, ML cases can be judged in Cuba even when the predicate offence was committed abroad. In the reported case, the sentences of imprisonment and forfeiture were categorical. In this sense, the penalties for ML offences that have been enforced seem to be efficient, proportionate and dissuasive.

240. However, in terms of the number of ML investigations and prosecuted cases, there is still room for further improvement. According to the information included in different parts of this report, it is difficult to understand why only 11 investigations and 2 cases on ML have been carried out, as more than 1 600 cases of ML predicate offences per year have been reported, and more than 120 suspicious transaction reports have been prepared by the DGIOF since 2011. There seem to be different reasons for this, but there are mainly two. First, the Criminal Code incorporated most of the ML predicate offences established by FATF by the end of 2013. Before then, ML offences could only be prosecuted with restrictions, since the focus was placed on drug, weapon and human trafficking. Second, Cuban authorities were probably satisfied with the indirect results against ML, since the apparently effective combating of predicate offences did not lead to parallel financial investigations for ML. In this sense, they must have believed there was no need to prosecute ML offences more directly.

241. In relation to the penalization of predicate offences, Cuba highlighted the low materiality of cases and the ability to process and prosecute them and to confiscate the assets.¹⁰

242. On the facts presented during the on-site visit, Cuban authorities did not have sufficient powers (or chose not to fully exercise them) to pursue ML offences with the same determination or results as with other predicate offences, which were firmly sanctioned, including confiscation of the relevant property, as explained in Section 8 of Immediate Outcome.

243. Nowadays, Cuban authorities have broader powers to pursue ML; in accordance with the FATF Recommendations.

244. The Cuban Government has also amended its National AML/CFT Strategy to include the amendment to criminalization of ML provided for in Section 346 of the Criminal Code, in order to cover within the predicate offences all the offences envisaged by the FATF, which are still not covered by the relevant national legislation; namely, maritime piracy, counterfeiting of goods (product piracy) and environmental damage.

General Conclusions of Immediate Outcome 7

245. In conclusion, the Cuban current context has allowed the authorities of this country to be, to some extent, effective in mitigating ML. However, as at the date of the on-site visit, ML combat has not been decisive. A proof of this is the fact that only two ML cases have been tried since this offence was criminalized in 1999, while there have been many cases of ML predicate offences since then. The silver lining is that since 2013 the Cuban Government has adopted several measures that are specifically designed to better prevent and combat ML. There is also a political commitment at the highest level which has recently prioritized the institutional importance given to the combat of ML offences, which was widely supported by the assessment team during the on-site visit to Cuba.

246. *In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 7.*

E. Effectiveness: Immediate Outcome 8 (Confiscation)

247. Cuba seems to have a robust regime of confiscation and forfeiture of assets. The difference between these two is that the confiscated property is derived from the offence committed (confiscation), whereas the forfeited property may not be derived from an offence (forfeiture). In particular, Section 43 of the Criminal Code establishes that "Confiscation of the proceeds or instrumentalities of the offence consists of depriving the sanctioned person of the assets or objects used in or intended for use in committing the offence that end, as well as the direct or indirect proceeds of the offence." Moreover, Section 44 of the Criminal Code provides that "forfeiture consists of totally or partially depriving the sanctioned person of the property and the resulting transfer of such property to the State".

¹⁰Thus, measures were taken to combat drug-related cases, which was one of the four predicate offences. In this regard, 2 773 people were penalized in the period studied by the assessors. Of these, 2 500 (90%) were penalized with internment (imprisonment and correctional work with internment), 263 with confiscation, and 2 with forfeiture of assets.

Moreover, of the 212 people prosecuted for human trafficking, which was another predicate offence, 202 (95.2%) were penalized with imprisonment and 29 with forfeiture of assets.

248. Both mechanisms, the precautionary measure to deprive offenders of their property or the permanent deprivation by court order, are effective tools that Cuban authorities have applied several times. The table below includes official information from the Cuban Judiciary on the number of confiscations and final forfeitures carried out in the last years:

Accessory Penalties								
Predicate Offences	Confiscation				Forfeiture			
	2011	2012	2013	As of July 2014	2011	2012	2013	As of July 2014
Human Trafficking	18	4	2	5	--	--	--	--
Drug Trafficking	16	106	18	123	--	2	--	--
Embezzlement	15	12	5	15	--	--	--	4
Bribery	13	37	7	6	--	--	--	--
Influence Peddling	--	--	--	41	--	--	--	--
Fraud	1	8	3	6	--	--	--	--
Illicit Enrichment	--	--	--	--	--	--	--	1
TOTAL	63	167	35	196	--	2	--	5

249. As can be seen, there are more cases of confiscation than forfeiture. The confiscation has been mainly carried out in cases related to drug trafficking, but also in predicate offences, except for fraud. For its part, confiscation has rarely been applied in cases of drug trafficking, embezzlement and illicit enrichment. It should also be noted that the greatest number of confiscation and forfeiture procedures were recorded in the first half of 2014.¹¹

250. In this regard, Cuban authorities have noted that confiscation has been more frequent than forfeiture because in most cases the confiscated physical material and assets are used as evidence to prove the commission of the offence itself. Therefore, the confiscation of assets is a penalty that leaves outside its reach very few assets or objects that may be somehow connected with the crime. However, the accessory penalty of forfeiture can only be applied in State security offences, offences against property rights and against the domestic economy, and as a mandatory or voluntary measure in the cases covered by the special section of the Criminal Code, as appropriate. Among others, forfeiture is an accessory penalty applicable in ML/TF offences, illicit enrichment, influence peddling, bribery, illegal harvesting, illicit negotiations, drug trafficking, procuring, human trafficking, and tax evasion.

251. These confiscation statistics should be added to the actions undertaken by the AGR. Pursuant to Resolution 17/2002 issued by the BCC, individuals carrying amounts exceeding USD 5 000 or the equivalent in other currencies, either in cash, cheques or any other means of payment when entering Cuban territory or leaving it are requested to declare it to AGR officials. Non-compliance with this Resolution may result in the confiscation of unreported or falsely reported amounts. The legal basis for the confiscation of unreported

¹¹ According to Cuban authorities, year-to-year variations correspond to the greater or lesser materiality of offences, especially in relation to drug trafficking.

amounts can be found in Section 17 of the DL 22/1979 and DL 277/2005. In this regard, Cuban authorities provided relevant statistics and information on various cases. Below are some statistics:

Amounts Confiscated by Customs						
Type of Currency	2010	2011	2012	2013	As of July 2014	Total
USD	476 560	1 258 746	366 664	220 531	47 494	2 369 995
CUP	180 384	97 301	47 682	178 699	170 275	674 341
CUC	38 119	39 294	75 074	63 669	40 530	256 687
EUR	143 760	21 295	71 395	7 970	8 180	252 600
CAD	0	0	0	100 000	0	100 000
Mexican Pesos	350	0	22 000	0	13 870	36 220
Counterfeit USD	0	200	5 400	0	0	5 600
Number of Violations	483	540	469	174	275	1 941

252. In this regard, 1 941 cases of confiscation carried out by Customs officials were reported from 2010 to July 2014. These cases represent considerable amounts of money.

253. Based on the above, Cuba is considered to be more focused on confiscation than on forfeiture of criminal property, (of equal or higher value) as part of a state policy against crime in general. This includes confiscations regarding falsely declared or not declared cross-border movements to Customs authorities.

254. In terms of ML, forfeiture is more relevant, as Section 346 of the Criminal Code describes as its legal consequence. In this sense, this Section provides that "persons found liable for ML offences are also subject to the accessory penalties of forfeiture of assets."

255. Furthermore, it has a broader scope, considering that it may entail depriving the offender of all of his assets. Cuban authorities provided copies of some judicial sentences, in which forfeiture was determined. This information indicates that forfeiture has been strictly implemented, depriving convicted criminals of all or most of their assets. Each judgment includes a wide inventory of confiscated assets, in which movable and immovable property is listed, as well as any other property. Where applied, forfeiture has been a sound measure.

256. With regard to ML offences, in the Butterfly case described before, the forfeiture of the relevant assets was ordered. Three of the defendants were deprived of their property, which included cash by EUR 1 316 666.88 and CUC 71 111.82; Cuban bank accounts with up to EUR 2 966 205.44; USD 1 123 108.26; CAD 480 653.35; EUR 831 86 USD 1 827.75; 10 vessels, 16 cars and a motorcycle; laptops, hard drives, memories, digital cameras, mobile phones and GPS equipment; as well as many other types of items. In this case, the measure was effective.

257. Once property is held by the State, the forfeited assets are administered and transferred under Decree 313 in the case of movable property, and the General Housing Law for immovable property.

258. Decree 313, on the Deposit, Preservation and Disposition of the Property Occupied in Criminal and Confiscatory Proceedings (21 August 2013) identifies the agencies that are responsible for the deposit,

preservation and disposition of the movable property that have been forfeited, which is defined according to the nature of the property concerned.

259. The relevant agencies are (i) the BCC in terms of "money in cash, security titles, credit instruments and other related instruments; gold, silver or any other precious metals, in coins or in any form, or any goods made with precious metals or precious stones such as clothing items, jewellery, accessories or objects made with precious stones or metals or made with one of these alone"; (ii) the MININT, in terms of "weaponry, explosives, means of initiation and pyrotechnic devices, illicit drugs, safety boxes, alarms and similar objects, as well as technical means of interest for State security and domestic order"; (iii) the Ministry of Energy and Mining, in terms of "emergency power plants, liquefied petroleum gas, fuel and lubricants, high voltage power cables and angular transmission line towers"; (IV) the Ministry of Communications, in terms of "data equipment and technology, communications equipment and other related devices"; (V) *the Ministry of Culture, in terms of "cultural property and works of art with heritage value or museum potential or any other property of cultural interest for the country"*; (vi) the Ministry of Public Health, in terms of "drugs and other health products and substances"; (vii) the Ministry of Industries, in terms of "motor vehicles, trailers and semi-trailers, wedges, parts, pieces and accessories and industrial gas cylinders"; (viii) the Ministry of Agriculture, in terms of "animals, agricultural and forestry production, animal-drawn carts, wagons, inputs and agricultural machinery, parts and pieces"; and (ix) the Ministry of Foreign Trade, in terms of "any other goods not specified above" (Section 3).

260. Once the system of asset management is decentralized, the analysis of the system's effectiveness demands for the verification of the way of functioning of each institution. In any case, it is noticeable that no state agency has been established to be responsible for these tasks and to collaborate with other relevant agencies due to the nature of the property seized. Holding different agencies responsible for this task can be difficult, it may duplicate efforts and it may also lead to inconsistencies, thus affecting the role of the State.

261. Depositary agencies should maintain under their control all irreplaceable property; that is to say, those items which cannot be replaced with others of similar characteristics, until the competent authority orders its final destination. Meanwhile, property should be adequately guarded and preserved. In the case of replaceable property, these should be immediately traded, the total amount of sell corresponding to the State. In case the competent authority later decided the restitution of the assets already traded, restitution to or compensation of the beneficiary shall be carried out in accordance with the provisions of the Ministry of Finance and Prices (Sections 5 to 8). Res. 71/2013 and 283/2013 issued by the BCC and the Ministry of Finance and Prices, respectively, provide more details on the procedures described above.

262. Moreover, the General Housing Law seeks, inter alia, "to lay down the rules for the transfer of ownership of state-built houses or uninhabited property" (Section 1). The category "available" includes all forfeited property. Uninhabited property, when there is nobody entitled to occupy it, may be transferred to persons selected to use them as their permanent residence by the corresponding Local Public Body, which shall comply with the policies and the order of priorities established by the Council of Ministers as proposed by the National Housing Institute Sections 37 and 38) Once the destination of the immovable property is determined, the *Banco Popular de Ahorro*, on behalf of the State, shall transfer the housing ownership through a purchase agreement.

263. In this regard, it should be noted that there are no specific provisions in relation to the sharing of confiscated or forfeited assets with foreign countries, so bilateral agreements have been signed on this matter. In addition, the principle of reciprocity has been applied to these cases. For example, Cuba and Canada signed an agreement in July 2003.

264. To conclude, it can be said that forfeiture and confiscation have been relevant tools to combat crime in general. This is particularly true in the case of the confiscation. In the specific case of confiscation, various ML predicate offences have been punished with the deprivation of a relevant number of assets. This is certainly an effective, proportionate and dissuasive measure against crimes.

265. For Cuban nationals it is very difficult to obtain movable and immovable assets, so the possibility of losing property is a major deterrent to crime. Furthermore, foreign investors in Cuba, who are required to make large investments in order to be accepted by Cuban authorities, may not want to risk their assets by getting involved in ML operations in or outside Cuba.

266. In general, Cuban authorities have a substantial level of effectiveness in Immediate Outcome 8, as from the information provided it can be concluded that the Cuban Government is strengthening actions to deprive offenders of the assets and instrumentalities of the offence. Likewise, efforts have been made to implement confiscation in falsely declared cross-border movements.

267. Nevertheless, the forfeiture of ML-related assets has occurred only once. This is not surprising, considering that, as indicated in Immediate Outcome 7, only two ML cases have been prosecuted.

268. Considering that a comprehensive AML/CFT legal and institutional framework has been developed in recent years and that there is a high-level political commitment, it is expected that in the coming years there will be a more direct and effective prosecution of ML and a significant increase in the forfeiture of property related to this crime.

In general, Cuba shows a substantial level of effectiveness in Immediate Outcome 8.

F. Recommendations about the legal system and operational issues

269. The DGIOF should improve the analysis of the information contained in STRs and any additional information received from reporting entities to be able to generate ML/TF intelligence.

270. Joint work should be undertaken with reporting entities to improve STRs.

271. Authorities should make greater efforts to increase the number of cases tried for the crime of ML.

272. Authorities should develop ML parallel financial investigations to the investigations on predicate offences.

273. Adopted measures should be implemented in the short term to strengthen the regime for the prevention and combat of ML/TF, as planned in the NRA.

274. Efforts should be strengthened to increase the number of confiscation and forfeiture orders in ML-related cases.

IV. TERRORIST FINANCING AND FINANCING OF PROLIFERATION OF MDW

Key Findings

275. The current Cuban institutional and regulatory framework is consistent, and it helps, in theory, combat the TF crime. Reporting entities, in particular the financial system, are aware of their obligation to report, the DGIOF is able to analyse and disseminate STRs, the DGPNR has the power and technical capacity to investigate, the FGR has a system for the prioritization of TF cases, and the Judiciary is empowered to enforce the established sanctions, which are proportionate and dissuasive.

276. As regards the identification of terrorists, terrorist groups or terrorist support networks designated by the UNSC or by third countries, the Cuban system displays a high level of consistency and function interconnection, which help, in theory, to promote actions to deprive entities from financing. Responsible entities, in particular, the MINREX, the MININT (DGPNR), the DGIOF and the BCC have the legal framework, knowledge and structure for the freezing and eventual confiscation or forfeiture of funds.

277. Under DL 317/2013, Res. 51/2013, Inst. 31/2013, Inst. 26/2013, among others referred to in the technical questionnaire, FIs and DNFBPs are required to execute actions aimed at preventing and combating TF.

278. Reporting entities, especially from the banking sector, know their obligations and automatically apply monitoring measures of the persons designated by the UNSC and are able to apply freezing and reporting actions. Enhanced measures are applied both for the opening of accounts and for the supervision of transactions, regularly checking the names against the list sent by the DGIOF.

279. The freezing system established for complying with the financial sanctions aimed at the PW is similar to that described for the TF based on UNSCR 1267, UNSCR 1373 and successive resolutions. Thus, the procedures provided for in MINREX Res. 85/2014, MININT Res. 12/2014, MININT Res. 12/2014, Inst. 31/2013, Res. 51/2013 and Res. 73/2014 of the President of the BCC (DNFBPs), equally apply to PW financing.

A. Background and Context

280. Terrorism and terrorist financing are regarded by Cuba as issues of strategic importance. In this sense, more than 700 acts of terrorism were reported in the country in the last 55 years, leaving more than 3 000 dead and more than 2 000 disabled people, in addition to the serious material damage caused. The most significant terrorist attacks in Cuban history include the shooting down of a Cuban DC-10 airliner in 1976 that claimed the life of 73 passengers, acts against Cuban authorities and diplomatic premises and the attack on hotels and tourist sites, including the world-famous attack on the Copacabana Hotel bar in 1997, which resulted in the death of the Italian tourist, Fabio Di Celmo.

281. In this context of counter-terrorism, both the NRP and the FGR have units specializing in national security offences, in which terrorism and terrorist financing are included. In addition, in the risk analysis of the above institutions and Cuban Customs, terrorism and terrorist financing are among the most important components of their matrix analysis.

282. In relation to TF, Cuba is a signatory to the Convention for the Suppression of the Financing of Terrorism and ratified it in November 2001. In this regard, TF was criminalized under Sections 25 and 26 of Law 93/2001. Subsequently, on 7 December 2013, under DL 316/2013 the criminalization of TF was amended to comply with FATF Recommendation 5 (see the Technical Compliance Annex for a detailed analysis of the criminal type).

283. Law 93 adequately covers all offences set forth in the conventions and included in the Annex to the Convention for the Suppression of the Financing of Terrorism.

284. Despite the criminalization of TF in 2001, no cases were reported of persons prosecuted for these offences. This is due to the fact that terrorist acts in Cuban territory happened before 2001, when the first criminal provisions on TF were adopted.

285. Cuban production system has marked peculiarities that constrain the possible use of the financial system, DNFBPs or NPOs for TF activities. The financial system is only composed of public enterprises subject to the banking supervision and control of the Office of the Comptroller General. Bank employees are public officials and, therefore, also subject to state control standards.

286. DNFBPs have limited autonomy, and registration and notarial activities are carried out by public servants. Moreover, neither of the activities shows the incidence of variable remuneration in relation to the value of the transaction. Lawyers are linked to the ONBC and their legal consultancy functions are limited to foreign investment activities which have, in turn, specific controls that hinder their use for TF offences.

287. With regard to the targeted financial sanctions related to terrorism and TF, Cuba has recently developed a consistent system based on the established legal framework (DL 317/2013) and the regulatory functions assigned to the Ministry of Foreign Affairs (Res. 85/2014), MININT (Res. 12/2014), the Financial Intelligence Unit (DGIOF) (DL 322/2013), the BCC (Inst. 31/2013, Res. 73/2014), and others.

288. In relation to the targeted financial sanctions related to PW, the procedure adopted by Cuba is similar to that observed for compliance with other UNSCRs, with all the potential actions.

289. It is worth noting that Chapter VI (Sections 14-18) of DL 317 does not expressly include freezing procedures related to the implementation of UNSCR 1718 and 1737. However, both the main title (purpose) of DL 317 and the title of Chapter VI specifically refers to PW, thus verifying the existence of a legal framework authorizing the regulation of sanctions related to this issue, through MININT Inst. 12 and MINREX Res. 85, BCC Inst. 31BIS/2014 and Res. 73/2014 (DNFBPs), which explicitly include procedures concerning the implementation of financial sanctions, according to UNSCR 1718/2006, UNSCR 1737/2006 and successive resolutions.

290. In relation to NPOs (associations), there is a complete process of authorization and control. The reception of foreign funds requires an analysis of the compatibility of the purposes of the Cuban association and foreign NPO and should be made by bank transfer. In addition, the delivery of funds from a Cuban association to a foreign NGO is forbidden, which minimizes potential financing to terrorist organizations abroad through this gateway.

291. It should be noted that the process of identification of TF risks in the associations is currently at an incorporation stage. Cuban legislation provides for the verification of accounting books and grants access to documentation to the police and the Prosecutor's Office.

292. Moreover, as previously stated, a Coordinating Committee was created in Cuba under DL 317/2013. It is composed of the President of the BCC and representatives of the FGR, MINJUS, MINREX, MININT, AGR, ONAT, and other experts of the agencies of the Central Administration of the State, as necessary. Its functions include the identification and assessment of national risks in terms of ML, TF and PW, the preparation of a national risk assessment and the development of a strategy for their prevention, detection, and combat.

293. As mentioned above, this Committee developed a first national risk assessment and submitted the National Strategy in July 2014.

294. There have been no investigated and prosecuted TF cases. And no funds subject to targeted financial sanctions related to terrorism and TF have been detected.

295. Through letters rogatory, according to FGR Res. 27/2013, related to methodological directions for the processing and control of letters rogatory, the FGR may request information from state bodies and agencies in order to assist with foreign cooperation requests.

B. Technical Compliance (R5-8)

296. **Recommendation 5 is rated Compliant.** In light of the amendments to Law 93 introduced by DL 316, the criminalization of TF was adapted to comply with international standards.

297. **Recommendation 6 is rated Compliant.** In view of the amendments introduced by DL 317 and the adoption of procedures provided in MINREX Res. 85/2014, MININT Res. 12/2014, Res. 51/2013, Res. 73/2014 of the President of the BCC (DNFBPs) and Inst. 31/2013, as amended by Inst. 31BIS/2014, the implementation of a consistent coercive system from the regulatory perspective should be noted.

298. **Recommendation 7 is rated Largely compliant.** The freezing system deriving from financial sanctions aimed at PW is similar to the one established in Res. 6. Thus, in general, the procedures provided for in MINREX Res. 85/2014, in MININT Res.12/2014, in Inst. 31/2013, in Res. 51/2013, in Res. 73/2014 of the President of the BCC (DNFBPs) equally apply to PF. It should be noted that Sections 14-18 of DL 317 do not expressly include freezing procedures related to the implementation of UNSCR 1718 and UNSCR 1737. However, both the main title (purpose) of DL 317 and the title of Chapter VI specifically refer to the procedures related to FPWMD. Thus, it should be noted that there is a general legal basis for procedural rules above.

299. **Recommendation 8 is rated Partially compliant.** The creation of associations in Cuba entails a detailed process of authorization. Entities are regularly overseen and are required to keep a full list of members. This information needs to be kept and updated in accordance with the law on associations and its provisions. In addition, the introduction of enhanced DD rules by virtue of Section 13 of Inst. 26/2013 also contributes to greater transparency in the activity. However, improvement is still needed in the control of forms of association, and a sanctioning regime needs to be established.

C. Effectiveness: Immediate Outcome 9 (TF Investigation and Prosecution)

300. As discussed above, no TF cases have been investigated and prosecuted, so the specific analysis of this section is restricted to the potential capacity of the institutions responsible for TF prevention and fight to carry out the activities.

301. As informed by Cuba, most terrorist attacks on Cuban territory happened before 2001, when Law 93 was enacted (20 December 2001). In addition, authorities argue that in the cases investigated there was no evidence of the use of Cuban financial system for the financing of the attacks.

302. As explained in the Technical Compliance Annex, Recommendation 5, Cuba signed the Convention for the Suppression of FT and ratified it in November 2001, thus criminalizing TF. Section 25 of the Law 93 Against Terrorist Acts (20 December 2001), as amended by DL 316/2013, in compliance with Article 2.1 (a) and (b) of the International Convention for the Suppression of the Financing of Terrorism, imposes sanctions upon anyone who, directly or indirectly, collects, provides, transports, or keeps money by any means with the purpose (intention) of using it, or in the knowledge that it is to be used, in full or in part, to commit terrorist acts.

303. Under DL 317/2013, FIs and DNFBPs are required to report TF suspicious transactions or other similarly serious conduct, for which there are monitoring systems and direct and secure channels for the filing of STRs with the DGIOF.

304. The DGPNR has an organic unit of the PNR dedicated to combating TF and investigates these offences using its own resources. Moreover, the DGPNR is in charge of conducting these investigations and ensuring the investigation of other files of investigative processes derived from the activity conducted by other national authorities, such as Cuban Customs.

305. Also, other operating structures support the measures to combat terrorism and TF, in particular:

306. The General Directorate of Criminal investigation and Operations, where there is a specialized unit in the Department of Instruction of Offences against State Security, for the investigation and legal prosecution of terrorist offences.

307. The Directorate of Criminalistics and the Special Tactics Group, which has the technical means and qualified staff for expert work, prevention and investigation of terrorist acts.

308. The Agency for Information and Reference on Terrorism and International Offences, which gathers information on individuals suspected of belonging to international terrorist groups intending to travel to Cuba. This agency follows up potential plans or actions intended to engage Cuba in these criminal activities. It carries out prevention actions in Cuban representations abroad; in particular, among Cuban officials related to agencies that promote tourism, in order to detect nationals from risk countries interested in travelling to the country.

309. Directorate of Protection. This body, together with the Ministry of Science, Technology and the Environment (CITMA), provides for the development of tools and supporting infrastructure to address and combat acts of nuclear terrorism.

310. Another agency within the organizational structure is the Central Unit of Criminal Intelligence, INTERPOL-Cuba being one of its divisions, which is in charge of cooperating with INTERPOL at regional and international levels.

311. According to the information received, these bodies have led investigations on terrorism-related issues since the 1990s.

312. After completion of the preparatory phase of investigation and preparation of the file, the case is then directly controlled by the assigned prosecutor (FGR member), who is responsible for formulating the closing arguments and bringing the case to court.

313. The FGR has put in effect Res. 29/2014 which, inter alia, provides for the investigation and thorough control of the STRs received that are related to terrorism and TF. Moreover, the Resolution requires the investigation of STRs and to systematically control events related to TF or FPWMD.

314. The process is initiated by the preliminary proceedings to the opening of the oral phase (Section 104 and successive resolutions sections of the Law on the Code of Criminal Procedure). The Prosecutor exercises control over the preparatory phase, which is performed by the Investigating Officer. If the Prosecutor believes that the file submitted by the Investigating Officer is complete, it can then be produced before the Court to request the opening of the oral phase (Section 264). Criminal proceedings concerning offences prosecutable ex officio are carried out by the Prosecutor (Section 273). The oral trial is public unless reasons of state security, morality, public order or the respect owed to the person or person's family members affected by the offence require hearing the case in camera (Section 305).

315. The competent court is the Municipal People's Court of First Instance for the offences committed in their respective territories, which shall be punished with up to eight years of imprisonment. Provincial People's Courts of First Instance are competent for the criminal acts committed in their respective territories, which shall be punished with a minimum of eight years of imprisonment or death (Sections 8 and 9 of the Law on the Code of Criminal Procedure), as is the case with Section 25 of Law 93.

316. Also, after the complaint is made, the Prosecutor controls the process and instructs the Investigating Officer to guarantee the proper course of proceedings aimed at gathering all the supporting evidence, seizing the assets derived from the offence and taking the case to the Court. These proceedings could also be performed by the Prosecutor, if deemed necessary.

317. In relation to the access to the relevant financial intelligence and other required information for TF investigations, Section 41 of the Law on the Code of Criminal Procedure provides that the authorities should request financial information to the DGIOF, which in turn requests this information to FIs and forwards it to the authorities within five days, unless the request provides for a shorter period.

318. Although penalties for TF offences have never been applied, in theory, the penalties of imprisonment from four up to 30 years provided for in Sections 25 and 26 of Law 93, as amended by DL 316, can be said to be proportionate and dissuasive criminal sanctions.

319. Sections 43 and 44 of the Criminal Code provide for confiscation and forfeiture of property, respectively. Confiscation consists of depriving the offender of the assets used in or intended for use in the commission of an offence, or the proceeds of crime. Furthermore, confiscation consists in depriving the criminal of some or all of his assets, regardless of whether or not they are directly related to the commission of the offence. Both instruments can be used to commit a TF offence.

320. Authorities have reported terrorism and terrorist financing as issues of strategic importance to Cuba. This is emphasized by the terrorist attacks within Cuban territory or on Cuban authorities and facilities. The diagnosis of Cuban national risk analysis indicates some related risks, in particular: possible interest of foreign illicit investors to participate in TF operations, the collection of the proceeds of crime from other countries, the violation of the international AML/CFT systems which can lead to the introduction of the proceeds of crime into the country, the possibility of infiltration of technologies which promote TF.

321. Two TF-related issues should be noted in the strategic objectives designated in the National AML/CFT Strategy: 1. Strengthening national cooperation and coordination between authorities for the development and implementation of policies and activities for ML/TF prevention, detection and combat, 2. Monitoring and ensuring compliance with, and updating of domestic strategies based on the risks identified by FIs and other reporting entities.

322. It is worth mentioning the need of Cuban authorities to sustain the effort of regularly updating the national risk analysis and of efficiently disseminating the issue of TF prevention, to reach reporting entities of the non-financial sector and to plan a detailed strategy to mitigate identified risks.

General Conclusions of Immediate Outcome 9

323. As set out above, the absence of TF cases calls for an analysis of the system's efficiency to prevent and react to the incidence of the offences.

324. In this context, current Cuban institutional and regulatory framework is consistent, and it helps, in theory, combat the TF crime. Reporting entities, in particular the financial system, are aware of their obligation to report, the DGIOF is able to analyse and disseminate STRs, the DGPNR has the power and technical capacity to investigate, the Prosecutor's Office has a system for the prioritization of TF cases, and the Judiciary is empowered to enforce the established sanctions, which are proportionate and dissuasive.

325. *In general, Cuba shows a substantial level of effectiveness in Immediate Outcome 9*

D. Effectiveness: Immediate Outcome 10 (Financial Sanctions and TF Preventive Measures)

326. No cases of funds subject to targeted financial sanctions related to terrorism and TF have been investigated, so the specific analysis of this section is restricted to the potential capacity of the institutions responsible for TF prevention and fight to carry out the activities.

327. With regard to the targeted financial sanctions related to terrorism and TF, Cuba has recently developed a consistent system based on the established legal framework (DL 317/2013) and the regulatory functions assigned to the Ministry of Foreign Affairs (Res. 85/2014), MININT (Res. 12/2014), the Financial Intelligence Unit (DGIOF) (DL 322/2013), and the BCC (Inst. 31/2013, Res. 73/2014).

328. DL 317/2013 establishes that the funds and other assets derived or generated by persons or entities designated by UNSCR 1267 and successive resolutions, as well as those designated by virtue of UNSCR 1373, which penalize individuals and entities linked to Al-Qaida and the Taliban, will be frozen without delay and without prior notice.

329. Section 15 of DL 317 determines that reporting entities are responsible of preventing or impeding any financial transaction and of ensuring that no funds be directly or indirectly used for the benefit of the designated persons pursuant to UNSCR 1267/99, UNSCR 1373/2001 and successive resolutions.

330. In addition, and pursuant to regulations, lists are also sent to each of the reporting entities through their respective regulator (MINJUS in the case of the Notaries, Real Estate Registry, lawyers and associations).

331. In practice, to ensure promptness, UNSC designations are notified directly by the MINREX to the DGPNR and the DGIOF, which in turn notifies FIs and DNFBPs. National designations are notified by DGPNR to the DGPNR, to speed up the mechanism. Once notified, FIs and DNFBPs freeze property without delay, in accordance with DL 317. In addition, this Decree provides that updates on the designation of persons or entities or their de-listing from UNSC lists shall be published in the OG of the Republic of Cuba.

332. Requests from third countries that are received for the freezing of assets of terrorism-related individuals or entities are processed after verification of the existence of a reasonable basis.

333. DL 317 also sets forth the competence of the MINREX to carry out the proceedings before the relevant Committee of the United Nations Security Council as appropriate to comply with Res. 1267/1999 and successive resolutions and requesting countries under UNSCR 1373/2001. In addition, the powers of the MINREX to regulate the implementation of the DL are set forth in the second final provision.

Powers of the MINREX

334. Res. 85/2014 approved the Regulation for the Cooperation between States and the Relationship between the Security Council and National Entities with Regard to the Prevention and Combat of ML, TF, PW and the Illegal Flow of Capital.

335. This Regulation establishes that the DGAMDI is the Ministry unit responsible for processing communications of national entities with the UNSC (Res. 1267 and successive resolutions) and Member States (Res. 1373 and successive resolutions).

336. In this context, the DGAMDI is in charge of circulating, without delay, these lists to the national entities in the Coordinating Committee for the prevention and fight against ML/TF, in accordance with Section 6 of this Resolution.

337. Regarding proposed designation of persons and entities or their de-listing from UNSC lists, Res. 85 establishes that all Cuban requests should be received from the MININT or be forwarded to it if received directly from any other competent national body (the powers of the MININT are described below).

338. In relation to UNSCR 1373, in accordance with Res. 85/2014, the DGAMDI is in charge of the submission to third countries, without delay, of the freezing requests received by MININT from the authorities of the requested country, through Cuban diplomatic and consular missions abroad.

339. In addition, Sections 17-26 of Chapter VII of MINREX Res. 85/2014 sets out the procedure carried out by the MINREX to request access to funds both to the UNSC and third countries and the internal procedure once the MINREX has been notified of requests for access to frozen funds.

Powers of the MININT-DGPNR

340. In addition, MININT Res. 12/2014 appoints the DGPNR to centralize information exchange and coordinate actions among bodies for criminal investigation and combat of the MININT with the DGIOF and BCC. Thus: [...] 2. It coordinates, as appropriate, the participation of the bodies for criminal investigation and combat of the MININT concerning the enforcement of measures and actions under the established financial sanctions regimes through UNSCR 1267/1999, UNSCR 1988/2011 and successive resolutions, [...], and those related to the implementation of UNSCR 1373/2001.

341. In addition, the Procedure annexed to Res. 12/2014 provides that the DGPNR is empowered to act as a competent authority to propose, to the relevant committees, the designation of persons or entities pursuant to UNSCR 1267/1989 and UNSCR 1988 and to centralize the actions of bodies for criminal investigation and combat of the MININT for compliance with and implementation of this procedure in Cuba. These proposals are then processed through the MINREX.

342. In this context, the same procedure sets out the criteria to include persons and entities in the lists of UNSCR 1267/1999, UNSCR 1988/2011, [...] and successive resolutions; [...] which are based on the designation criteria established by the UNSC for the lists related to terrorism and TF and are applied to the evidentiary standards of motifs or reasonable basis, without requiring a criminal process (see the Technical Compliance Annex for listed criteria).

343. As regards UNSCR 1373, Section 9 of the Regulation states that "during the process of identification and designation of persons and entities by virtue of UNSCR 1373, the DGPNR centralizes and compiles the relevant information or documentation submitted by the remaining bodies for criminal investigation and combat of the MININT, the Directorate General of Financial Transactions Investigation, other competent authorities and regulatory bodies, as stipulated in DL 317/2013."

344. In addition, Section 4 of the Procedure provides that the criteria for designation "under UNSCR 1373/2001 [are]: a) Any person or entity that commits or attempts to commit terrorist acts or that participates as an accomplice or contributes to the commission of terrorist acts; b) Any entity that is directly or indirectly owned or controlled by any designated person or entity pursuant to a); or c) Any person or entity acting on behalf of, or at the direction of, any designated person or entity pursuant to 2.a."

345. In addition, regulations establish that in both cases [internal request or request from another country], the DGPNR should immediately evaluate if the request complies with the provisions of Sections 4 and 6 of the Procedure; or if it is necessary to request any relevant additional information to the requesting authority. If no additional information is requested to the competent foreign authority, requests are processed through the MINREX.

346. In addition, Section 10 of the Procedure establishes that once it has been found that there are reasonable grounds or basis to designate persons and entities pursuant to UNSCR 1373/2001, the DGPNR issues the administrative act to include the designated person or entity in the national list and communicates this to the MINREX, the DGIOF and the MINJUS for publication in the OG.

347. When a person or entity is designated in compliance with Section 10, a request to freeze funds or other assets may be made to MINREX, or any other procedure to comply with UNSCR 1373 (2001), for a third country. This request should provide, to the extent possible, all available data for identification and support of the designation in the national list.

348. Cuba confirmed that no requests to third countries have been sent yet pursuant to UNSC 1373, but that the DGPNR is currently drafting a national list for this purpose.

349. The DGPNR is also in charge of submitting de-listing requests, in accordance with approved procedures, of designated persons and entities pursuant to UNSCR 1267, UNSCR 1988 [...] and successive resolutions, when these persons and entities, in the view of the country, do not or no longer meet the criteria for designation.

350. Sections 19-24 of Chapter IV of MINREX Procedure set out the mechanism to request access to funds and other assets frozen under UNSCR 1267, UNSCR 1988 and successive resolutions, to defray basic or extraordinary expenses, where appropriate, in compliance with the procedures set forth in UNSCR 1452/2002 and UNSCR 1373.

351. The same procedure is applied when, at the request of one party, claims or requests are filed with the DGPNR to object the designation of persons or entities in UNSCR lists.

352. Upon DGPNR approval of the proposals for the de-listing of persons or entities from UNSCRs lists pursuant to relevant resolutions, the proposals shall be forwarded through the MINREX to the respective UNSC Committees. In addition, homonyms or similar name cases shall be communicated in the same way, where the resulting elements of verifications indicate the presence of one of these cases.

353. The procedure also has mechanisms to request the review of the national designation before the authority which ordered it, within thirty (30) business days from the date of notification, and accompanied by the relevant supporting writings and evidence. [...]. The decision is liable to appeal before the Minister of Domestic Affairs and shall establish legal action in a contentious-administrative proceeding brought before the competent Court. The filing of any appeal does not suspend or prevent the effects of the administrative act. [...]

354. The DGPNR shall immediately process the cessation of measures where a decision is favourable to the person concerned in any of the appeals lodged to object to the designation of a person or entity in the national list, as provided for in the procedure.

Powers of the DGIOF

355. Chapter VI of DL 317 sets forth the freezing mechanism without delay and without prior notice, from the moment that MINREX or the DGPNR inform the DGIOF (which immediately notifies the freezing order) and the MINJUS, for the publication of the lists in the OG.

356. Section 3 of BCC Inst. 31/2003 complements the regulatory framework by stipulating that "FIs are required to freeze, without delay and without prior notice, the funds or other assets of any designated person or entity and to keep up-to-date on the lists identifying such designations, which are published by virtue of the relevant UNSCRs."

357. Section 4 of Inst. 31/2013, as amended by Inst. 31BIS/2014, determines that FIs shall have full knowledge of the lists of persons and entities designated by the DGIOF.

358. In an interview with the financial sector it was possible to verify that reporting entities have an understanding of the identification obligation on the basis of the UNSC lists, and that the banking sector in particular has an automated verification system and secure communication channels.

359. Section 9 of Inst. 31/2013 of BCC Superintendent determines the obligation to report: "Once FIs proceed to the freezing of funds without delay of any person or entity designated pursuant to UNSCR 1267/1999; UNSCR 1373/2001; UNSCR 1718/2006; UNSCR 1737/2006; UNSCR 1988/2011, and successive resolutions, FIs are obliged to immediately report the operation and the action undertaken, as well as other available background information, including attempted transactions or halted operations, to the BCC DGIOF."

360. Regulations also provide for the protection of the rights of bona fide third parties acting in good faith that may arise or be claimed during the freezing of funds and procedures related to the authorized operations.

NPOs

361. After the issuing of Inst. 26/2013, Cuba provided for the adequacy of non-financial entities that can be abused for the financing of terrorism. Thus, Section 13 provides that "enhanced DD shall be applied to NPOs, as explained in Section 39, to prevent them from being used: 1. By terrorist organizations that pose as legitimate entities. 2. To exploit legitimate entities as conduits for terrorist financing, including for the

purpose of escaping asset freezing measures. 3. To conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes."

362. It is worth noting that pursuant to Section 7 of the Law on Associations 54/1985, the creation of these entities is subject to express authorization of the MINJUS, which shall keep a Registry of Associations (Section 16) for the control, supervision and inspection of the associations, in accordance with the provisions in the regulations under this Law.

363. Additionally, Section 41 of MINJUS Res. 53/1986 instructs that "associations shall send the original documents to the Registry of Associations where they are registered", which manifests the capacity of the Registry to produce timely information about the activities, size and other characteristics of the entities. In addition, [MINJUS dependent] liaison bodies ensure that associations use resources in compliance with the aims and objectives that determined their creation.

364. Similarly, the First Special Section of the Law on Associations, subsections ch) and d), sets out that "the MINJUS is in charge of the technical, regulatory and methodological direction of the registry activities of associations, and to this end, it has the following responsibilities: ch) to developing, promoting and, as appropriate, implementing plans, regular and special training courses and technical training for the staff of the Registries of Associations; d) convening methodological meetings, seminars and other events of technical aspects of this activity."

365. The Regulation of the Law on Associations also contains a specific item on verification of accounting books and of incomes and expenditures. Section 12 of Res. 53/1986 the following data are requested for the creation of an association: a) Name of the association, its purposes and (...) b) Head office c) Name and surname, age, citizenship, nationality, occupation, and address of founders and initiators. d) Funds that will be available to the association for the accomplishment of its purposes. e) Number of participating people. It is worth noting that, in the case of Cuba, Section 41 of the Regulation of the Law on Associations requires the identification of not only the leaders but also all the members of associations. Their activities are subject to the direct control of the Registry of Associations and, indirectly, of the MINJUS, under the terms of MINJUS Res. 44/2005.

366. At the time of the creation of the association, and as part of its purposes, in addition to recording the statements of the future members with regard to the intended use of the benefits derived from it, it should verify the veracity and feasibility of the statements.

367. Cuban regulations contain guidelines requiring associations to keep documentation for twenty-five years. Additionally, Section 51 of MINJUS Res. 53/1986, Regulation of the Law on Associations, provides that "the books and pages they contain are permanent and may not be destroyed in any circumstances, regardless of their condition."

368. Under the powers granted by Decree-Law 317, Decree 322 and MINJUS-DGIOF labour agreements, DGIOF is empowered to access the required information contained in MINJUS files.

369. In relation to the oversight and inspection of the activities of associations, Chapter IV of Res. 44/2005 establishes that the officer who carries out the inspection shall establish an action plan for the correction of the identified deficiencies with the appropriate date.

370. In addition, during the on-site visit, Cuban authorities stated that, should the overseen association fail to comply with the action plan, MINJUS may apply measures including the cassation of the operating authorization of the entity.

371. Section 19 of Chapter V of the Law on Associations defines that "the MINJUS may impose on the associations and their directors the administrative penalties established in the special legislation on the matter, where any of the above infringed the provisions of the law or the statutes or internal regulations and the regulations on relations referred to in Section 13. The measures shall be adapted taking into account the offence committed, the seriousness of the events and the injury caused."

372. Section 41 of Law 5 on the Code of Criminal Procedure establishes that bodies, agencies, organizations and other entities, including economic entities of any kind, are required to provide Courts, prosecutors, investigating officers or the police, in their respective cases, with any reports, data and background information required by them for the investigation of the offence, within twenty business days.

373. The creation of associations in Cuba is governed by defined criteria or a process of authorization. Entities are regularly overseen and are required to keep a full list of members. This information needs to be kept and updated in accordance with the Law on Associations and its provisions. In addition, the introduction of enhanced DD rules by virtue of Section 13 of Inst. 26/2013 also contributes to a greater transparency of the activity.

374. Cuban associations have restrictions to receive donations from abroad, which should be sent through the banking system. Donations from Cuban associations abroad are not allowed, given the domestic funding restrictions in force.

375. Issues regarding the risk of TF within the associations are currently in process of incorporation; therefore, it is not clear whether the risk analysis is currently incorporated in the assessments. It is worth noting that the regulations above do not apply to other NPOs, such as foundations. Thus, the implementation of the system still has some gaps.

376. Measures for the freezing, confiscation and forfeiture of assets related to TF.

377. DL 317 establishes that the funds and other assets derived or generated by persons or entities designated by UNSCR 1267 and successive resolutions, as well as those designated by virtue of UNSCR 1373, which penalize individuals and entities linked to Al-Qaida and the Taliban, will be frozen without delay and without prior notice. When the proposal for designation is being considered internally, the procedure does not require prior notice to the owner; only the decision of the competent authority is necessary.

378. It is worth noting once more that the freezing procedure has never been applied to punish terrorists, given the lack of coincidence between the persons and entities designated by the UNSC and the verifications carried out by the reporting entities.

General Conclusions of Immediate Outcome 10

379. With regard to the determination of whether the measures are in accordance with the risks identified, Cuban authorities reported that the issue of terrorism and TF is in line with the high priority given by Cuba to counter-terrorism, in all its forms and manifestations.

380. With regard to NPOs, in general, they undergo detailed procedures of registration and monitoring by supervisors and are aware of the potential TF threats. However, sanctions should be strengthened.

381. In fact, current Cuban institutional and regulatory frameworks for the identification of terrorists, terrorist groups or terrorist support networks designated by the UNSC or by third countries and the ability to promote actions to deprive entities of their assets are complete and consistent enough.

382. Responsible entities, in particular, the MINREX, the MININT (DGPNR), the DGIOF and the BCC have the legal framework, knowledge and structure for the freezing and eventual confiscation or forfeiture of funds.

383. In compliance with DL 317/2013, Res. 51/2013, Inst. 31/2013 and Inst. 26/2013, among others, FIs and DNFBPs are required to execute actions aimed at preventing and combating TF.

384. Reporting entities, especially from the banking sector, know their obligations and automatically apply monitoring measures and are able to apply freezing and reporting actions. Enhanced measures are applied both for the opening of accounts and for the supervision of transactions, regularly checking the names against the list sent by the DGIOF.

385. , there are specialized bodies in the MININT to fight and combat terrorist activities, including terrorist financing, which have sufficient material, technical, financial, and human resources to address this complex problem, which comes from abroad in the case of Cuba.

386. Moreover, the AGR has structures from the central level to the base units in the borders, dedicated to the study and evaluation of the country's risks in this area, which are equipped with warning signs and the necessary means to detect any operation aimed at TF, systematically evaluating the results of this fight.

387. *In general, Cuba shows a substantial level of effectiveness in Immediate Outcome 10*

Effectiveness: Immediate Outcome 11 (Financial Sanctions to PF)

388. The Cuban legal system presents rules for the restriction and monitoring of hazardous chemical, nuclear or biological materials. In this context, Cuba has developed a National Nuclear Security Support Plan with the support of the International Atomic Energy Agency (IAEA). New equipment for the detection of radioactive materials has been deployed for control in border areas and customs staff has been trained for its use.

389. In addition, there are regulations that apply to the border control of hazardous materials. In this context, Section 101 of DL 162/1996 sets forth that the unloading of easily ignitable or rapid decomposition goods, as well as explosive materials, radioactive, hazardous and dangerous chemical substances and others requiring special handling, shall be carried out at docks authorized for this purpose by the competent authorities and in compliance with the relevant provisions.

390. In addition, and in accordance with DL 162/1996, operating companies cannot deliver or ship goods under Customs control until these operations are duly authorized by this body. With regard to cases subject to restrictions and special requirements, an authorization issued by a competent body (Sections 47 to 50) shall be submitted to Customs. That is to say that with respect to nuclear issues, operations could not be carried out without prior authorization from the National Nuclear Safety Centre, which is the relevant Cuban regulatory body.

391. Additionally, in order to prevent any attempt of illicit trafficking of nuclear or radioactive materials, Cuban Customs has incorporated technical means which guarantee the border detection of these materials. In this sense, detectors of ionizing radiation have been installed, within the framework of a project of collaboration with the International Atomic Energy Agency. Currently, walk-through radiation portal monitors have already been installed both at the International Cargo Customs (ACI) and in the Mariel area, in order to achieve greater efficiency in terms of customs control for the detection of goods radioactivity during import and export operations.

392. It is worth noting the rules laid down in the Regulation on the Protection of Hazardous Substances of DL 225, which establish the requirements, regulations, and technical and security standards which are essential for the manufacture, import, export, storage, transportation, consumption, destruction, and deactivation, and marketing of industrial explosives, means of initiation, chemical precursors, and toxic chemicals.

393. This regulation expressly rules on the requirements for the import and/or export of chemical products. Section 33 determines that in order to carry out the import or export of any hazardous substance, responsible agencies and entities shall previously submit to Customs authorities the corresponding authorization issued by the Ministry of Domestic Affairs. Moreover, and in the case of imports, the authorization shall be signed by an official duly authorized for the clearance of goods.

394. Also, the Criminal Code provides for sanctions related to the use of hazardous materials.¹²

395. Likewise, and in specific relation to nuclear material, Cuba establishes control mechanisms to carry out the import or export of such materials, components of nuclear plants and ionizing radiation sources.

396. In this context, Decree 208 establishes the State System of Accounting and Control of Nuclear Materials in Cuba, which provides the basis for the regulatory provisions governing the accounting, control, inspection, measurement, inventory, record, report, and verification of existing nuclear material in the country were determined. This Decree establishes the National Nuclear Safety Centre as the body in charge of the operation, supervision and control of the System's provisions.

397. Resolution 62/96 of the Ministry of Science, Technology and the Environment (CITMA) establishes the Regulations for Nuclear Materials Control and Accounting, which contains the regulations concerning the National System for Control and Accounting of Nuclear Materials (SNCC), including the licences and authorizations required for the use, production or transportation of nuclear materials, important components or both (Sections 5 and 6 of Chapter III).

398. In addition, CITMA Res. 334/2011 established the Regulation on the Notification and Authorization of Practices and Activities Associated with the use of Ionizing Radiation Sources, which includes the relevant technical and administrative requirements. This specifically refers to the obligation to apply for import and export permits or authorizations, and to the requirements that should be met pursuant to Sections 45-48.

399. The evaluation team had access to the UNSC S/2014/147 Report, in which the Security Council requested the Expert Group under Resolution 1874/2009 to submit a final report with its findings and observations.

400. After reviewing the Report, the evaluators noted the conclusions referring to the failure to comply with the ban obligations on the direct or indirect supply, sale or transfer of weapons, and the prohibition of technical training, advice, or services associated with weapons, not establishing, in principle, non-compliance associated with targeted financial sanctions.

¹²SECTION 186. 1. Three to eight years of imprisonment shall be imposed on anyone who:

a) without proper authorization, put into operation facilities or means of transport that use nuclear materials, radioactive substances or other sources of ionizing radiation;

401. Cuban authorities presented the existing procedures to control their activities and business relations and prevent them from being used to support nuclear programmes in the Democratic People's Republic of Korea.

402. In this context, Cuba reported that the bilateral trade relations between Cuba and the DPRK are based in barter trade, i.e. goods are exchanged up to their corresponding value and without the transfer of financial resources.

403. At the bilateral level, Cuba and the DPRK sign a Protocol on Commodity Exchange every year. In this regard, it is important to note that imported North Korean goods are subject to inspection at origin. The progress in trade relations between the two countries is reviewed at follow-up meetings with the participation of the respective diplomatic missions and the Ministry of Foreign Trade of each party.

404. It is important to note that FATF Immediate Outcome 11 basically focuses on the targeted financial sanctions and preventive measures that are necessary in the context of the detention of the flow of funds or other assets to proliferators or the proliferation or use of such funds.

405. Financial sanctions aimed at the PW are similar to the ones described in Immediate Outcome 10. Thus, in general, the procedures provided for in MINREX Res. 85/2014, in MININT Res.12/2014, in Inst. 31/2013, in Res. 51/2013, in Res. 73/2014 of the President of the BCC (DNFBPs) equally apply to PW financing.

406. Thus, the specific analysis of this section is restricted to the stages of dissemination of the lists of reporting entities and to the potential capacity of the institutions responsible for the prevention and fight of crime to take rapid and effective freezing actions.

Legal and Regulatory framework

407. With regard to the targeted financial sanctions related to FPWMD, Cuba has recently developed a complex system through the definition of procedure rules and the functions assigned to the Ministry of Foreign Affairs (Res. 85/2014), MININT (Res. 12/2014), the Financial Intelligence Unit (DGIOF, DL 322/2013) and the BCC (Inst. 31/2013 and Res. 73/1024).

408. It should be noted that Sections 14-18 of DL 317, which establish freezing procedures related to the implementation of UNSCR 1267 and UNSCR 1373 (and successive resolutions) do not include UNSCR 1718 and UNSCR 1737. This deficiency is partly mitigated by existing references, both the main title of DL 317 (purpose) and the title of Chapter VI, which specifically refer to the procedures related to PF. Thus, despite the need to adjust to this legal text in order to ensure greater security and transparency in the freezing proceeding, the existence of a general legal basis for the issuing of the procedure rules above is noted.

409. In practice, UNSC designations in relation to PW financing are notified directly by the MINREX to the DGPNR and the DGIOF, which in turn notifies FIs and DNFBPs.

410. Updates on the designation of persons or entities or their de-listing from UNSC lists are directly submitted by DGIOF to the reporting entities and then published in the OG of the Republic of Cuba. During the on-site visit, the evaluation team had access to the form of dissemination of the lists by the DGIOF. Also, the assessors interviewed the reporting entities to check the reception of the respective lists by reporting entities.

Powers of the MINREX-MINREX

411. Res. 85/2014 approved the Regulation for the Cooperation between States and the Relationship between the Security Council and National Entities with Regard to the Prevention and Combat of ML, TF, PW and the Illegal Flow of Capital.

412. This Regulation establishes that the Directorate General of International Law and Multilateral Affairs (DGAMDI) is the unit of the Ministry responsible for processing communications of national entities with the UNSC.

413. In this context, the DGAMDI is in charge of circulating, without delay, these lists to the national entities in the Coordinating Committee for the prevention and fight against ML/TF, in accordance with Section 6 of this Resolution.

414. In addition, Sections 17-26 of Chapter VII of MINREX Res. 85/2014 sets out the procedure carried out by the MINREX to request access to funds both to the UNSC and the internal procedure once the MINREX has been notified in relation to requests for access to frozen funds. Indeed, the list of persons has been sent to the DGIOF which, according to its powers, disseminates the lists to FIs and DNFBPs.

Powers of the MININT-DGPNR

415. MININT Res. 12/2014 appoints the DGPNR to centralize information exchange and coordinate actions among bodies for criminal investigation and combat of the MININT with the DGIOF and BCC. Thus: [...] 2. It coordinates, as appropriate, the participation of the bodies for criminal investigation and combat of the MININT concerning the enforcement of measures and actions by virtue of the established financial sanctions regimes by means of UNSCR 1718/2006, UNSCR 1737/2006 and successive resolutions.

416. In addition, the Procedure annexed to Res. 12/2014 provides that the DGPNR is empowered to act as a competent authority to propose to the relevant committees the designation of persons or entities pursuant to UNSCR 1718/2006, UNSCR/2006 and successive resolutions, to centralize the actions of bodies for criminal investigation and combat of the MININT to comply with the implementation of this procedure in Cuba. These proposals are then processed through the MINREX.

417. In this context, the same procedure establishes that proposals for designation to the Committees by virtue of UNSCR 1718, UNSCR 1737 and successive resolutions, shall contain as much detail as possible about the reliable and positive identification of persons and entities, and specific information that support the determination that the person or entity meets the criteria for designation in accordance with the established procedures as appropriate to each Resolution.

418. The DGPNR is also in charge of submitting de-listing requests, in accordance with approved procedures, of designated persons and entities in accordance with UNSCR 1718, UNSCR 1737 [...] and successive resolutions, when these persons and entities, in the view of the country, do not or no longer meet the criteria for designation (Section 25).

419. Sections 19-21 of Chapter IV of MINREX Procedure set out the mechanism to request access to frozen funds and other assets to defray basic or extraordinary expenses, where appropriate, in compliance with the procedures set forth in UNSCR 1452/2002, UNSCR 1718/2006, UNSCR 1737/2006 or successive resolutions or amendments.

420. Once the proposals for the de-listing of persons or entities from UNSCR lists are approved by the DGPNR, pursuant to relevant resolutions, these proposals will be forwarded through the MINREX to the respective UNSC Committees. In addition, through the same channel, homonyms or similar name cases will be communicated, where the resulting elements of verifications indicate the presence of one of these cases.

Powers of the DGIOF

421. Section 3 of BCC Inst. 31/2003 stipulates that "FIs are required to freeze, without delay and without prior notice, the funds or other assets of any designated person or entity and to keep updated with regard to the lists identifying such designations, which are published by virtue of the relevant UNSCRs."

422. Section 4 of the Inst. 31/2013, as amended by Inst. 31BIS/2014, determines that FIs shall have full knowledge of the lists of persons and entities designated by the DGIOF.

423. Section 9 of the Inst. 31/2013 determines the obligation to report: "Once FIs proceed to the freezing of funds without delay of any person or entity designated pursuant to UNSCR 1267/1999; UNSCR 1373/2001; UNSCR 1718/2006; UNSCR 1737/2006; UNSCR 1988/2011, and successive resolutions, FIs are obliged to immediately report to the BCC DGIOF the operation and the action undertaken, as well as other available background information, including attempted transactions or halted operations." During the on-site visit, the evaluators revised the form of dissemination of the lists by the DGIOF to the reporting entities and verified compliance with the obligation to disseminate the information, in particular, to the financial sector.

424. Regulations also provide for the protection of the rights of bona fide third parties acting in good faith that may arise or be claimed during the freezing of funds and procedures related to the authorized operations.

425. In order to revise the knowledge and the effective dissemination of the lists to FIs, the assessors interviewed members of the financial sectors and they learned that the lists related to UNSCR 1267/1999; UNSCR 1718/2006; UNSCR1737/2006; UNSCR 1988/2011, and successive resolutions had been submitted by the DGIOF. Reporting entities, especially from the banking sector, know their obligations and automatically applied monitoring measures and showed that they were able to apply freezing and reporting actions. Enhanced measures are applied both for the opening of accounts and for the supervision of transactions, regularly checking the names against the list sent by the DGIOF.

426. BCC Res. 73/2014 provides that the BCC DGIOF shall notify DNFBPs on the updating of the lists by virtue of UNSCR 1718/2006, UNSC 1737/2006, and successive resolutions. In addition, these instruments require FIs and DNFBPs to notify the DGIOF, without delay, of any performed freezing operation and other attempted transactions. During the on-site visit, the assessors revised the form of forwarding the lists to DNFBPs and verified DGIOF compliance with the obligation to disseminate the lists.

427. It is worth noting that Section 3 of Res. 73/2014 (DNFBPs) states that "administrative sanctions shall be imposed on the reporting entities that fail to comply with the provisions of this Resolution, in consistency with the applicable law, regardless of the appropriate criminal and civil actions." Applied sanctions are coordinated and reported to the BCC DGIOF by the regulatory and oversight bodies, as appropriate."

428. Also, regarding DNFBPs, Res. 105/2008 establishes the Regulations of the Governing Board of the Ministry of Justice, which, in Section 8.i, sets forth its function of controlling the Directorate of Notaries, the Land, Real Estate and Commercial Registry Directorate, the ONBC and the Directorate of Associations.

429. At a meeting, representatives of the Directorate of Notaries and Registries, the Land, Real Estate and Commercial Registry Directorate and of the collective law firms showed an understanding of the obligation of verification of the lists submitted by the DGIOF and presented a training process supervised by the MINJUS.

430. With regard to sanctions to FIs and their administrators, Section 4 of BCC Res. 108/2013 provides that "the following conduct shall be considered violations: [...] b) Non-compliance with the directions received from the DGIOF, within its scope of authority. [...] d) Non-compliance with regulations on prudential action or any other action that contravenes the rules of money laundering, financing of terrorism and related conduct.

431. It should be noted that (c), which establishes the non-compliance with the obligation of FIs of freezing assets as a violation, does not specifically include UNSCR 1718 and UNSCR 1737. Thus, any sanction would be based on non-compliance with the directions of the DGIOF or with Inst. 31/2013, which provides for the obligation of FIs of freezing assets.

432. Also, since no specific cases of PF were reported, this deficiency could generate, in theory, difficulties during the application of sanctions; thus affecting the potential effectiveness of the anti-PF system.

433. As regards monitoring, Inst. 31 BIS/2014 establishes that it shall be carried out by the Supervisors of the Central Bank of Cuba: **THIRD:** Compliance with this Instruction will be monitored in the branches and provincial directorates by the Regional Directors, and in headquarters of financial institutions by the Supervisors of the Central Bank of Cuba. In addition, 2014-2016 Schedule of Activities to mitigate national ML/TF risks includes in Measure 8 the monitoring of the enforcement of procedures related to Cuban commitment with international bodies and agencies; in particular, those related to the UNSC.

434. However, since it is a recently established obligation, the effective monitoring and supervision of the specific TF freezing obligation could not be demonstrated, especially in relation to DNFBPs, so demonstration of effectiveness is still pending.

Measures for the Freezing, Confiscation and Forfeiture of Assets Related to FPWMD

435. Cuba has specific legal provisions for the confiscation and forfeiture of property. As previously discussed, the difference between these two is that the confiscated property is derived from the offence committed (confiscation), whereas the forfeited property may not be derived from an offence (forfeiture). In particular, Section 43 of the Criminal Code establishes that "Confiscation of the proceeds or instrumentalities of the offence consists of depriving the sanctioned person of the assets or objects used in or intended for use in committing the offence that end, as well as the direct or indirect proceeds of the offence." Moreover, Section 44 of the Criminal Code provides that "forfeiture consists of totally or partially depriving the sanctioned person of the property and the resulting transfer of such property to the State".

436. Both mechanisms, either to precautionary deprive offenders of the property or permanently deprive them of such property by court order are important and effective tools for Cuban authorities.

437. It is worth noting once more that this freezing, confiscation and forfeiture procedures have never been applied to sanction TF of PW, given the lack of coincidence between the persons and entities designated by the UNSC and the verifications carried out by the reporting entities.

General Conclusions of Immediate Outcome 11

438. Sections 14-18 of DL 317 establish the freezing procedures related to the implementation of UNSCR 1267 and UNSCR 1373 (and successive resolutions) but they do not include the UNSCR 1718 and UNSCR 1737. This deficiency is partly mitigated by existing references, both the main title of DL 317 (purpose) and the title of Chapter VI, which specifically refer to the procedures related to PF. Thus, despite the need to adjust to this legal text in order to ensure greater security and transparency in the freezing proceeding, the existence of a general legal basis for the issuing of the procedure rules above is noted.

439. FIs and DNFBPs are required by Res. 51/2013, Inst. 31/2013, Inst. 26/2013, Res. 73/2014, among others, to execute actions aimed at preventing and combating FPWMD.

440. Reporting entities, especially from the banking sector, know their obligations and automatically apply monitoring measures and are able to apply freezing and reporting actions. Enhanced measures are applied to both the opening of accounts and the supervision of transactions, regularly checking the names against the lists sent by the DGIOF.

441. However, since it is a recently established obligation, the effective monitoring and supervision of the specific TF freezing obligation could not be demonstrated, especially in relation to DNFBPs, so demonstration of effectiveness is still pending.

442. With regard to sanctions to FIs and their administrators, Section 4 of BCC Res. 108/2013 provides that "the following conduct shall be considered violations: [...] b) Non-compliance with the directions received from the DGIOF, within its scope of authority. [...] d) Non-compliance with regulations on prudential action or any other action that contravenes the rules of money laundering, financing of terrorism and related conduct.

443. The absence of clear provisions in relation to UNSCR 1718 and UNSCR 1737 in Section 4.c of BCC Res. 108/2013, which establishes the non-compliance with the obligation of FIs of freezing assets as a violation, could generate, in theory, difficulties during the application of sanctions; thus affecting the potential effectiveness of the freezing system related to PF.

444. In addition, there are specialized bodies in the MININT to fight and combat terrorist activities, including terrorist financing, which have sufficient material, technical, financial, and human resources to address this complex problem, which comes from abroad in the case of Cuba.

445. Moreover, the AGR has structures from the central level to the base units in the borders, dedicated to the study and evaluation of the country's risks in this area, which are equipped with warning signs and the necessary means to detect any operation aimed at TF, systematically evaluating the results of this fight.

446. Despite the above deficiencies, the current Cuban institutional framework for the identification of terrorists, terrorist groups or terrorist support networks designated by the UNSC by virtue of UNSCR 1718 and UNSCR 1737 and the ability to promote actions to deprive entities of their funds is moderately effective. Responsible entities, in particular, the MINREX, the MININT (DGPNR), the DGIOF and the BCC have the knowledge and structure for the freezing and eventual confiscation or forfeiture of funds. However, deficiencies in the targeted regulations and the absence of proved effectiveness in the monitoring and supervision activities indicate a moderate level of compliance.

In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 11.

Recommendations on Terrorist Financing and the Financing of Proliferation of Weapons of Mass Destruction

447. Promoting the regulatory amendment of the freezing obligations in relation to the PF under DL 317 and the sanctions regime established by BCC Res 108/2013, in order to grant greater legal security to both processes.

448. Keeping the effort to continue improving mitigation actions to TF risks identified and targeted sanctions, based on certain differences found between the national risk assessment submitted and the TF risk-mitigating solutions developed and contemplated in the strategic objectives.

449. Enhancing and deepening the dissemination of information and communication channels between reporting entities and the DGIOF, especially for DNFBNs and associations, on obligations relating to sanctions for PW.

450. Conducting progressive ongoing monitoring and supervision of the activities related to the obligation of freezing PF-related assets and of enhancing preventive measures to ensure compliance with the targeted financial sanctions related to the respective UNSCRs.

451. Expanding training on TF/FPWMD prevention to the non-financial sector and planning a detailed strategy to mitigate identified risks.

V. PREVENTIVE MEASURES

Key Findings

452. Overall, great efforts have been made to align national AML/CFT legislation with international standards. Due to the characteristics of the Cuban context and of its financial and non-financial sector, the risk of the sector being used to commit crimes of ML/TF may be lower than other countries.

453. FIs and the DNFBPs are generally aware of their AML/CFT obligations; which facilitates national coordination and coordination between authorities and FIs and DNFBPs for the identification of ML/TF risks the country is exposed to. However, since the DNFBP sector was recently included in the regime of prevention and fight against ML/TF, efforts still need to be made to integrate this sector and ensure appropriate implementation of all the obligations recently conferred to it. In addition, efforts should be made for all members in this sector, particularly lawyers, to identify and thoroughly analyse the ML/TF risks they are exposed to due to their activities.

454. Similarly, it is necessary to further conduct and strengthen AML/CFT training in both the financial and non-financial sectors.

455. Overall, there is appropriate implementation of preventive measures, but there are areas that should be improved, such as the implementation of more effective mechanisms for the identification of international PEPs and an improvement in the quality of the reports submitted to the financial intelligence unit.

456. It is noted that FIs thoroughly understand their AML/CFT obligations and identify their risks. However, there are some areas that should be enhanced, such as the inclusion of Cuba's Post Company as a reporting entity for ML/TF as it provides international money transfer services to Cuba.

A. Background and Context

Financial Sector and DNFBPs

457. Cuba has a relatively limited financial system. It is composed of nine commercial banks with 789 branches distributed nationwide. In addition, there are 15 non-banking FIs, one of which operates as an exchange office (CADECA), one as a trust (Compañía Fiduciaria SA) and as a remittance company (FINCIMEX SA); the rest of the non-banking institutions are financial companies for promoting national economic activities. All Cuban FIs are state institutions and none of the Cuban financial system institutions has branches or subsidiaries abroad. Only one commercial bank has two representation offices abroad without capacity to conduct liability and asset transactions. There are 13 representation offices of foreign banking and non-banking FIs in Cuba, but without the capacity to perform financial intermediation. It should be noted that most financial services are state owned, which greatly reduces the complexity of the sector.

458. Cuba's insurance sector is controlled by state-owned companies and has a limited development. There is no insurance with advance premium payment or investment, and life insurance is not used. As regards securities exchange market and transfer services, Cuba does not have a securities exchange market, and remittance activities are carried out by banks and two state-owned non-banking FIs operating as remittance companies: FINCIMEX and Cuba's Post Company consisting of 18 companies, only six of which provide money order services, representing 0.025% of the country's total financing portfolio. In addition, FIs are

allowed to conduct international transactions, but transactions are limited due to the difficulty to perform operations in dollars. Thus, authorities believe the country represents a low risk of being used in ML/TF.

459. Within the financial sector, there is only one trust, which can only act as a formation agent of legal persons and as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal arrangements.

460. Similarly, the sector of Designated Non-Financial Businesses and Professions (DNFBPs) is also small as most of the country's activities considered high risk by FATF are only performed by the Government. Casinos have been banned in Cuba since 1959, when Law 1959 was enacted. Similarly, the purchase and sale of metals and precious stones is also an activity permitted only to the Government and concentrated in a single company operating as a producer and trader of Cuban jewellery.

461. Real estate agents are state entities grouped in companies providing services for real estate development and promoting office accommodation and rental services. As mentioned above, Law 65, General Housing Law, refers to Cuban residents' private property, which may not exceed two homes per person, one as a residence and one for holiday. Res. 551 of 2013 of the Ministry of Economy and Planning establishes that natural persons residing in the country can access real estate entities' rental services, for use as homes, offices, retail stores, and warehouses. Foreigners interested in investing in Cuba can only do so for tourism purposes, and the real estate sale service is pending enforcement in amendments to the new Foreign Investment Law 118/2014.

462. Only notaries can only intervene in the purchase and sale of real estate between natural persons. Notary services in Cuba are provided by the Government, and there are 577 notaries working in 249 notary offices, their main activity being to attest to extrajudicial legal acts. There are 2 138 lawyers, who are grouped in the ONBC and provide advice, assistance and representation to both Cuban and foreign natural and legal persons. There are a limited number of law firms providing advice to foreign customers.

463. There are 1 248 independent accountants, who only can work as self-employed bookkeepers, and their activities are restricted to providing support for accounting work. Given the limited activities of these professions, the sector is considered to be low risk of being used for ML/TF purposes in the country. In addition, this sector receives training on the risks posed by their activity for money laundering. However, it should be noted that it is still unknown whether the sector has an ML/TF risk strategy.

(b) Preventive Measures

464. Since 2013 Cuba has worked on the revision of the legislation applicable to the regime of prevention and fight against ML/TF in order to harmonize it with FATF international standards. Nevertheless, since 1997 the country has had rules in place to prevent the financial system from being used to commit crimes related to ML, TF and the illegal flow of capital. In December 2013 these standards were raised to DL (the highest rank in Cuba), and they are updated to comply with FATF requirements.

465. Thus, Law Decrees 316 and 317 have updated the criminal types of ML and FT and set out the requirements that should be observed by FIs and the DNFBPs in terms of the obligation to report suspicious transactions, provide the information requested to them by competent authorities, take appropriate measures for a customer's DD, and the obligation of the reporting entities to identify assess and mitigate risks related to ML, TF and the proliferation of weapons of mass destruction. In general, the same obligations regarding ML/TF prevention are imposed for both FIs and DNFBPs.

466. The measures established in the above mentioned DL 317 are implemented through the following regulations: BCC Res. 51/2013 and BCC Res. 73/2014; BCC Inst. 26/2014, BCC Inst. 26 BIS/2013, BCC Inst. 51/2013, BCC Inst. 6/2014; and BCC Circulars 1 and 4, 2014.

467. DL 317 lists reporting entities in terms of prevention and detection of ML/TF and PWMD crimes, and Section 2.5 states that reporting entities may be included in the regime by relevant authorities, as appropriate. Thus, the only sector not yet formally regulated under the terms established by the DL is the money order sector. It should be noted that country authorities reported that the inclusion of this sector as a reporting entity for the regime of prevention and fight against ML/TF is underway, but as at the date of the on-site visit (September 2014) this process had not been completed.

468. All FIs and DNFBPs are not only audited and inspected by the appropriate state agency, but they are also externally audited for corruption by the CGR, in accordance with the provisions of Law 107/2009, which lays down the duties of the Office of the Comptroller General of the Republic.

(c) Risk-Based Exemptions or Extensions of Preventive Measures

469. It is important to highlight that because of the Cuban context there are financial and non-financial activities to which the measures contained in the FATF Recommendations do not apply. These activities are the following (see Technical Compliance Annex for details and the basis of each, see Criteria 1.6 and 22.1)

Financial activity	
Issuing and managing means of payment (cheques and traveller's cheques)	
Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.)	
Trading in exchange, interest rate and index instruments	
Trading in transferable securities	
Trading in commodity futures trading	
Underwriting and placement of life insurance and other investment-related insurance	
Designated non-financial businesses	
Casinos	
Real estate agents	
Dealers in precious metals and dealers in precious stones	
Trust and company service providers when they prepare for or carry out transactions for a client concerning the following activities:	Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement
	Acting as (or arranging for another person to act as) a nominee shareholder for another person
	Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement
	Trust

470. Similarly, as at the date of the on-site visit Cuba had not included any other profession or activity in addition to those referred to in the FATF Recommendations as given the internal situation in the country no other profession or activity has been identified that could pose a hazard to the AML/CFT system.

B. Technical Compliance (R9-23)

471. **Recommendation 9 is rated Compliant.** There is a regulatory framework in Cuba that prevents banking secrecy from being used as a resource to inhibit the implementation of the FATF Standards.

472. **Recommendation 10 is rated Largely compliant.** With the regulations issued in 2013 and 2014, related to FIs' CDD obligations, the country technically covered most of the criteria of R10. As at the date of the on-site visit, Cuba's Post Company did not have a licence for the provision of national and international payment and money order services, which it had been conducting since 2013, so the effective implementation of CDD measures in this sector could not be verified.

473. **Recommendation 11 is rated Compliant.** Cuba requires reporting entities that any information related to CDD and transactions should be kept for at least five years after the termination of the business relationship. In addition, this information should be available to authorities when they require it.

Additional measures for customers and specific activities

474. **Recommendation 12 is rated Compliant.** The AML/CFT legislation adopted in Cuba in 2013 and 2014 includes the requirements included in recommendation 12 on FIs' obligation to identify and appropriately monitoring domestic and foreign politically exposed persons. In Cuba there are no life insurance policies as products, so the criterion for verification of the beneficial owner of the life insurance policy being a PEP is not applied.

475. **Recommendation 13 is rated Compliant.** In Cuba, the legislation on AML/CFT applicable to correspondent banking complies with Recommendation 13, as FIs are required to check that corresponding banking institutions they are related to have implemented the requirements in the FATF Recommendations to prevent and combat ML/TF.

476. **Recommendation 14 is rated Largely compliant.** Under the Cuban legislation, all money and value transfer service providers, as well as the agents used, should be registered to operate and be monitored for compliance with the AML/CFT measures in the country. However, since 2013 Cuba's Post Company has been operating in money transfers through the money order service and still does not have the authorization of the BCC. Although the country is in the process of incorporating Cuba's Post Company as a reporting entity for AML/CFT, as at the date of the on-site visit it was operating without the authorization of the BCC.¹³ In this sense, it is not clear that the entity is being properly monitored for AML/CFT compliance.

477. **Recommendation 15 is rated Compliant.** Cuban legislation requires FIs risk to identify, through ML/TF analysis, the development of new products or the use of new technologies that may pose a risk for the AML/CFT system. The analysis should be performed prior to the use of new products and technologies to implement appropriate mitigation measures of the identified risks as appropriate.

478. **Recommendation 16 is rated Compliant.** Cuba's regulation concerning wire transfers complies with the requirements in Recommendation 16. FIs are required to ensure that the information contained in cross-border wire transfers includes originator and beneficiary information. The regulation also notes the obligations of FIs acting as intermediaries and beneficiaries for the provision of this service.

¹³ It should be noted that despite the deficiency observed during the on-site visit, on 17 December 2014 the Minister President of the Central Bank of Cuba issued Resolution. 152, which grants a licence to Cuba's Post Company for the provision of national and international money order services and includes it as a reporting party subject to the provisions of Decree-Law 317.

Reliance, Controls and Financial Groups

479. **Recommendation 17 is rated Compliant.** Currently, FIs in Cuba are not permitted to rely on third-party financial institutions to implement CDD measures, and where this is approved by the BCC, FIs are required to apply the appropriate rule, which includes the criteria of Recommendation 17.

480. **Recommendation 18 is rated Compliant.** FIs in Cuba do not have foreign branches or subsidiaries. Only one of the banks has two representation offices in Europe, which cannot perform financial intermediation. In addition, recent legislation passed in 2013 provides that FIs with foreign branches and subsidiaries should comply with all the requirements in Recommendation 18.

481. **Recommendation 19 is rated Compliant.** FIs are required to apply enhanced DD to the financial relationships and transactions with natural and legal persons from the high-risk countries identified by FATF, and FIs have the ability to apply financial countermeasures to address the identified risks. Similarly, there is a mechanism in place to inform FIs and keep them up-to-date on the countries considered to be higher risk.

Suspicious Transaction Report

482. **Recommendation 20 is rated Compliant.** The AML/CFT legislation adopted in 2013 reinforces FIs' obligations to issue an STR in accordance with the criteria of Recommendation 20. Reports should be issued whenever there is suspicion or reasonable grounds to believe that an activity is associated with ML/TF regardless of the amount of the transaction and whether or not it was conducted.

483. **Recommendation 21 is rated Compliant.** In accordance with the legislation of Cuba, FIs and all employees are exempt from any criminal or administrative liability for having fulfilled their duties when issuing an STR for the FIU. Similarly, they are prohibited from disclose the filing of an STR to third parties.

Designated Non-Financial Businesses and Professions

484. **Recommendation 22 is rated Largely compliant.** Basically, Cuba's AML/CFT legislation applies equally to both the financial sector and DNFBPs. It is important to clarify that not all categories of DNFBPs defined by FATF apply in Cuba, because some of them do not exist, others are exercised by the State, and individuals are prohibited from to conducting them. Although CDD legislation covers the criteria of Recommendation 22, some doubts remain about AML/CFT monitoring for certain activities that may be performed by lawyers, independent accountants, notaries, and other legal professionals.

485. **Recommendation 23 is rated Largely compliant.** The 2013 and 2014 legislation on new DNFBP obligations applicable in Cuba include the requirements of Recommendation 23 concerning DNFBPs' obligation to file suspicious transaction reports with the FIU, requirements on the identification of high-risk countries and confidentiality. However, minor deficiencies identified in Recommendation 22 on some of the activities carried out by lawyers, notaries, accountants, and independent professionals are also associated with this recommendation.

C. Effectiveness: Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF obligations and actions to mitigate the identified risks

General Characteristics of the System

486. Since 1997, the Cuban banking system has issued rules to prevent criminal abuse of the financial system for ML, TF and the illegal flow of capital. These rules have been adjusted to international standards, and they became laws in 2013. In 2008, Cuba made a first attempt to identify risks in the banking system and developed the Strategy to Prevent and Combat Crime and Corruption in the National Banking System. Although this exercise did not involve a risk-based methodology including all FIs in the Cuban system, it was a first approach to the identification of threats, opportunities, strengths and weaknesses of the sector. This exercise resulted in the development of a work plan aimed at reducing crime and corruption, with organizational and ideological changes inherent to the banking system to facilitate system monitoring and reduce crime.

487. As discussed above, Cuba completed an NRA in 2014 and circulated the public version of the document in July 2014. As a result of the assessment, the authorities prepared a schedule of activities indicating the actions that should be conducted by the country to mitigate the identified risks within two years. It is important to mention that AML/CFT reporting entities were involved in the analysis and design of the national risk assessment.

488. It should be noted that the assessment team had access to the risk assessments conducted by most FIs, which served as a key element for the development of the national assessment. All FIs, as well as some DNFBPs, in Cuba are state owned.

489. Although the banking and non-financial system in Cuba had been required to prevent and combat ML/TF crimes since 1999, with obligations appearing in various policy instruments, it was only in December 2013 that all obligations were listed in DL 317, so many of these obligations are in the process of implementation, as required under international standards. However, it is worth providing a sector-by-sector discussion of the understanding for the implementation of AML/CFT measures and appropriate monitoring.

Banking and Non-Banking Financial Sector

490. Commercial banks have identified their ML/TF, which vary depending on the type of bank, as some banks only provide financial support to domestic companies, one bank only covers the market of diplomatic individuals and foreigners, and others work with Cuban entities and natural persons in general. Thus, each bank has designed its strategy to identify its main ML/TF risks, which should be done in compliance with applicable rules. The methodology for risk identification varies across institutions due to the differences in type and market. In addition, each bank has its own plan to mitigate identified risks. In general, it was found that commercial banks have a deep understanding of their AML/CFT obligations. There is a direct, ongoing relationship with the supervising agency, the BCC, which improves the communication system between national authorities and banking institutions.

491. Only three of the country's 15 non-banking FIs are relevant to AML/CFT, as the others focus on the promotion of national activities. FINCIMEX is the state agency responsible for performing remittance activities and is only empowered to collect foreign funds entering Cuba under a licence issued by the BCC. FINCIMEX has contracts with a limited number of companies in Canada, United States, Spain, Switzerland, and Panama, and it has a strategy which identifies the main ML/TF risks it is exposed to. Like banks, it has a strategy to monitor the situations that may be generating risks, with the legal obligation to verify AML/CFT compliance for companies remitting funds to Cuba. The institution shows an understanding of its obligations to be introduced into the National AML/CFT Strategy.

492. For money transfer services, it is noted that as at the date of the on-site visit Cuba's Post Company is performing money transfer activities to Cuba through money orders. The authorities explained that money orders represent a low risk for the country, and although the activity accounts for a lower percentage of the

total financing portfolio in the country (0.025%) and this sector is required to respect national AML/CFT legislation, it is important to mention that it is still not formally recognized as a reporting entity in accordance with the provisions of DL 317. In this regard, it was found that as at the date of the on-site visit the sector did not have the same level of understanding as the other reporting entities in the prevention and fight against ML/TF crimes. Therefore, the assessment team has doubts about the sector's level of understanding of its obligations and knowledge of AML/CFT risks. Similarly, it does not have measures in place to mitigate these risks, and in general it is not required, like other sectors, to implement DL 317.

Notaries, lawyers and accountants

493. As regards applicable DNFBPs in Cuba, lawyers are grouped in the ONBC. This organization has its own supervision system, which is approved annually. In terms of AML/CFT compliance, this sector was recently included as a reporting entity under DL 317 (December 2013). It can perform few transactions, as most DNFBPs listed in the FATF Recommendations do not apply in Cuba—these activities that are only conducted by the Government.

494. Nevertheless, ONBC Agreement 1603 (April 2014) announced AML/CFT obligations to all lawyers in the country. Similarly, the MINJUS issued Res. 175/14, laying down the obligations of lawyers, notaries and legal consultants under DL 317. The ONBC has a plan for risk prevention containing a brief reference to the risk of the sector being used in ML/TF, under another type of risk. It is important to highlight that the lawyers sector has a deep understanding of its AML/CFT obligations. However, as at the date of the on-site visit the sector was believed to require greater efforts for a more specific detailed identification of its risks of being used for ML/TF, which is expected to be brought about by the enforcement of DL 317 and related measures for strengthening efforts in the prevention and fight against ML/TF.

495. Notaries, for their part, are MINJUS public servants. Like lawyers, they became AML/CFT reporting entities under DL 317, with a set of obligations they should comply with. BCC Res. 73/2014 and MINJUS Res. 175/14 set out notaries' obligations under DL 317. In view of this, the directorate of notaries conducted an exercise to identify and evaluate these risks and developed a risk prevention plan.

496. It is estimated that after reviewing the plan, the identified risks are appropriate to the sector's context and related threats it is exposed to. Similarly, it developed a plan with measures to be implemented to mitigate these risks. Taking into consideration that these measures began to be implemented in 2014, as at the date of the on-site visit there was no opportunity to assess the level of progress of those measures. However, it is estimated that the notaries' sector has the knowledge and resources needed to mitigate its risks, so a successful measure implementation is expected.

497. As mentioned above, independent accountants can only work as self-employed bookkeepers, restricting its work to support for accounting work, so is estimated that their activity does not represent an ML/TF risk. This sector has been an AML/CFT reporting party since the publication of DL 317 (December 2013) and is supervised by the Ministry of Labour.

498. Overall, although lawyers, notaries and accountants have a good understanding of their ML/TF obligations under Decree-Law 317 (2014), these professionals are reporting entities whenever they conduct transactions for a customer related to: purchase and sale of real estate; creation, operation or management of companies or other forms of management authorized by law. Although currently not all the concerned transactions are performed but only some of them, interviews with those sectors did not reveal a clear understanding or knowledge of the ML/TF risks to be faced as a result of this activity.

Application of Customer Due Diligence and Record-Keeping Measures

499. FIs in Cuba develop extensive knowledge and CDD measures according to the FATF Recommendations. As a general rule, FIs cannot develop simplified CDD measures; they require prior authorization from the President of the BCC (as at the date of the on-site visit only two CDD requests have been authorized). No FI can start a business relationship with a customer if the requested requirements to open an account are not complete. It is estimated that FIs and DNFBPs are aware and understand the importance of measures to identify the beneficial owner of a transaction.

500. In this regard, it should be noted that FI staff are adequately trained on AML/CFT, such as compliance officers from banking institutions, who are qualified to verify that institutions comply with their AML/CFT obligations. FIs and DNFBPs reject any activity or service with incomplete or out-of-date CDD requirements. Similarly, institutions keep any information related to customer transactions and CDD documents for at least five years following the termination of the business relationship.

501. To meet CDD obligations, FIs use a risk-based approach depending on the type of customer, operation, product, and geographical area. Similarly, due to the different nature type of banking FIs, they associate a customer's risk level with the risks identified in the institution. In addition, it is clear that FIs have the tools needed to identify which cases require enhanced CDD.

Application of Enhanced Measures

502. Overall, FIs and DNFBPs have a good understanding of the customers and specific activities that present an ML/TF risk, given their nature. In the case of domestic PEPs, both sectors know and identify those people considered to be politically exposed persons at the national level due to their activity, and they perform enhanced CDD measures before starting any business relationship. However, in the case of individuals considered to be foreign PEPs, there is a lower level of accuracy. Unlike with domestic PEPs, it is unclear how FIs and DNFBPs about learn variations in this sector. As at the date of the on-site visit there was not an updated list or mechanism to provide ongoing timely information to these sectors concerning the composition of the people who would be considered as foreign PEPs. Only one case was identified—the commercial bank covering the market for diplomatic agents and foreigners, which had better mechanisms for identification of foreign PEPs given its niche market.

503. In the case of correspondent banking, FIs are required by regulations to verify the adequacy of CDD measures of the correspondent banking they have business relationships with and their compliance with the criteria set out in the FATF recommendations. The country maintains correspondent relationships with foreign banks in accordance with the FATF Recommendations and the Basel and Wolfsberg Group Principles.

504. The measures implemented for the use of new technologies require them to be reviewed and analysed for an assessment of their ML/TF risk potential before they can be used by FIs.

505. As regards wire transfers, as mentioned above, regular and enhanced CDD requirements are implemented correctly where appropriate. If the required information is not complete, FIs are unable to complete the transaction. However, Cuba's Post Company is now carrying out these activities, and as it is not a formal reporting entity under DL 317, it is not a reporting entity in the country's AML/CFT regime, so it is uncertain whether its services may be used for ML/TF purposes.

506. Finally, in the area of enhanced measures for FATF higher-risk countries, applicable legislation seems to be implemented without difficulty, FIs and DNFBPs are aware and have a good understanding of how often the lists of higher-risk countries are updated. In addition, they have the possibility of applying enhanced measures before any transactions with natural or legal persons from those countries. As regards the lists of

individuals or entities identified in the lists of financial sanctions of CSNU Res. 1267, 1988, 1718 and 1737, as well as any third country designation under Res. 1373, it should be noted that FIs and DNFBPs are aware of the lists; they receive them from the DGIOF and have appropriate mechanisms to prevent that listed individuals or entities from being able to collect any fund or asset.

507. Generally, the applicable legislation for AML/CFT compliance and obligations in the sector of DNFBPs under DL 317, including the obligation to apply enhanced CDD measures to certain customers or under certain circumstances, was issued in July 2014, so as at the date of the on-site visit there was no opportunity to evaluate the adequacy or extent of implementation of these obligations. However, it should be noted that applicable DNFBPs in Cuba have a good understanding of the situations in which enhanced CDD measures should be implemented, as well as the measures they should apply to mitigate the risks posed by certain customers or situations for ML/TF crimes.

Suspicious Transaction Reports

508. As explained in previous sections, since December 2013 there has been a legal obligation for DNFBPs to file suspicious transaction reports with the FIU when there is reasonable doubt that a transaction could be related to ML/TF, so as at the date of the on-site visit there were no elements to analyse the adequacy and extent of the sector compliance with this obligation as no reports had been filed with the DGIOF yet. However, it is should be noted that it was confirmed during the on-site visit that DNFBPs are aware and have a good understanding of their obligation to file suspicious transaction reports with the FIU. However, as at the date of the on-site visit no reports had been filed.

509. FIs generally seem to comply with their obligation to report suspicious transactions to the DGIOF without difficulty. Institutions are aware of when a STR needs to be issued and are trained to do so. Until 2013, reports were physically filed with the FIU. In August 2014 a coded e-mail system for report reception was established in Cuba. Regular meetings are held between the DGIOF and FIs to improve the quality of reports; however, this area can still be improved because, based on FIs' comments, they receive feedback on a large number of reports. As at the date of the on-site visit, the DGIOF has not received any TF-related STR.

510. It should be noted that lawyers can file suspicious transaction reports through their self-regulatory body, the ONBC, through a coded e-mail system set up for this purpose. Notaries file STRs through the nearest bank branch via coded e-mail—only the notary has access to the appropriate enabled computer session. Finally, bookkeepers file STRs with the DGIOF directly or through the relevant DGIOF website.

511. The table below shows the number of STRs filed by FIs with the DGIOF from 2011 to July 2014. As mentioned above, Cuba's financial sector is limited compared to other countries, so suspicious transaction reports come mostly from banking FIs and the only FI operating as an exchange office. As mentioned above, when FIs reject a transaction for incomplete information or failure to comply with CDD measures, they are required to file an STR with the DGIOF.

Suspicious Transaction Reports Filed with the DGIOF

Year Institution	2011	2012	2013	2014*	Total
FI 1	58	74	36	26	194
FI 2	10	6	4	4	24
FI 3	3	5	9	9	26
FI 4	0	4	8	2	14

FI 5	17	8	36	43	104
FI 6	0	0	2	0	2
FI 7	38	35	36	0	109
FI 8	0	0	1	1	2
BCC	0	0	1	2	3
AGR				23	23
Total	126	132	133	110	501

*Information as at December 2014

512. The main unusual events detected by FIs to trigger an STR are as follows: high amount transfers ordered from abroad, inadequate management of current accounts by domestic entities, undue payments to self-employed individuals, legal persons that have made payments inconsistent with their corporate purpose, forgery of documents, financial intermediation by unauthorized individuals, cash withdrawals above the amount established in CDD procedures, and import transactions with entities which are not included in the Register of Suppliers.

513. As regards the requirements to prevent the disclosure of information (tipping-off), FIs and DNFBPs understand their obligation not to disclose the filing of an STR with the DGIOF to third parties and are aware of administrative and criminal implications involved.

Internal Controls

514. As part of the internal controls applied by FIs and DNFBPs to ensure compliance with AML/CFT requirements, they use feedback from compliance officers on the sector's level of AML/CFT compliance. On the instructions of the supervising agency, all FI processes are subject to monitoring and internal and external audit.

515. In addition to auditing FIs processes, they have an ongoing training programme. Since 2014, DNFBPs have benefited from this specific AML/CFT training. In general, there are successful results derived from FIs' internal controls. For DNFBPs, it is important to remember that as at the date of the on-site visit these requirements were beginning to be implemented, so that there was insufficient evidence to conclude that they have effective internal controls.

516. In 2006 the BCC provided FIs with an alerts guide to be used to identify when an operation may be related to ML/TF issues. The financial sector generally found this guide was very useful at the time. While currently FIs have more mechanisms for knowledge of other documents, both at national and international level, where the most common alerts are disseminated and every bank updates its alerts according to its own functions, it is deemed appropriate for authorities to update the guide as appropriate and share it with the financial and non-financial sector.

General Conclusions of Immediate Outcome 4

517. Legal persons and arrangements operating in Cuba are mostly state owned and reflect state activity as a key factor in the economy of the country. Taking into consideration Cuba's context and financial and non-financial sectors, it is considered that the authorities have made great efforts to lay the groundwork for an effective regime of ML/TF prevention and combat. However, there are still some measures that the country should take to achieve a more robust regime. This is expected to be brought about by the implementation of obligations; however, there is still work to do for all reporting entities to know and understand their obligations in this area. In general, FIs and DNFBPs understand the obligations they are exposed to in order

to comply with the country's strategy of prevention and fight against ML/TF crimes. Training and awareness raising among financial sectors and DNFBPs should be constant, especially taking into consideration the new challenges facing the country in view of the legislative update of 2013 and 2014.

518. Because the DNFBP sector was recently included as a reporting entity for the AML/CFT prevention regime, it is not possible to determine the adequacy or extent of the sector's application of preventive measures. However, it is noted that DNFBPs are generally aware of most of their new responsibilities to comply with provisions of DL/317, where DNFBPs are listed as reporting entities to identify their customers' actions or transactions that may be related to potential ML/TF transactions.

519. Thus, it was found that the financial sector is the area where preventive measures are best applied. Due to the characteristics of the financial sector (most institutions are banking FIs, all FIs are state owned, money transfer services can only collect resources from foreign countries to Cuba, and there is a securities exchange market), risk of the sector being used for ML/TF purposes is lower than in other countries. The financial sector appears to have a good understanding of ML/TF obligations and responsibilities. There are some areas for improvement, such as the design of internal mechanisms for suspicious transaction reports to identify foreign politically exposed persons in a prompt and timely manner and to conduct actions oriented to add value to the suspicious transaction reports filed with the DGIOF. Although there is a constant and fluent relationship between the DGIOF and FIs, there should be a more effective dialogue between the sectors to improve the quality of reports, and more effective feedback should be provided.

520. However, it should be noted that as at the date of the on-site visit, it was found that Cuba's Post Company was providing money transfer services via money order services, and although that the sector currently represents a low risk given its small volume of transactions performed and it is required to observe and enforce ML/TF rules, the entity is operating without a licence from the BCC and is not yet formally listed as a reporting entity for the national regime ML/TF prevention and combat.

521. In terms of the country's efforts to understand its ML/TF risks, Cuba is making efforts to identify, evaluate and design public policies aimed at mitigating risks. Taking into account the resources for NRA development, it is noted that coordination among national authorities and between them and FIs and DNFBPs largely facilitated the result of the analysis. It was found that the authorities and sectors generally understand the risks the country is exposed to; this was verified through the review of the information classified as confidential that the assessment team had access to. Even though this effort should be recognized, some of the country's risks identified in the NRA are not necessarily associated with the combat of ML/TF and the proliferation of weapons of mass destruction, which is clearly an area of improvement for the country.

522. On the one hand, in terms of the understanding by FIs and DNFBPs of the risks they are exposed to, it can be concluded that FIs know and understand these risks and update their internal risk strategies as indicated in the applicable legislation. As regards DNFBPs in Cuba, notaries have a strategy in place to identify the main risks they are exposed to. However, as the review of these documents reveals, unlike notaries, the lawyers sector does not have a strategy fully intended to identify ML/TF risks. It has a robust strategy that includes risks that may be related to ML/TF, but it is more focused on their activities rather than having an ML/TF approach.

523. Additionally, although DNFBPs still does not conduct all the activities in which they are reporting entities under DL/317, it seems to be that they do not fully identify all the potential risks of being used for ML/TF crimes they could be exposed to as a result of their activities. Authorities should raise more awareness among DNFBPs of the potential ML/TF risks they may be exposed to. The above applies to lawyers, notaries and accountants.

524. Last, in spite of national authorities' effective internal controls to ensure that FIs and DNFBPs adequately comply with AML/CFT regulations, greater efforts are needed in terms of training. Training is particularly needed among DNFBPs, as their role in the ML/TF prevention and combat regime is recent, and this sector should be properly informed about the way it can be used for ML/TF offences.

525. *In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 4*

D. Recommendations on Preventive Measures

526. Listing Cuba's Post Company as a reporting entity for the regime of prevention and combat of ML/TF, particularly considering its money order service.

527. Designing a mechanism or procedure to provide FIs and DNFBPs with accurate and timely information of persons that may be considered as foreign PEPs.

528. Emphasizing the training of DNFBPs so they know and fully understand the AML/CFT risks they could be exposed to as reporting entities under DL/317. It should be noted that this action has been identified in the NRA mitigation policies; it has been so far impossible to verify its implementation.

529. The BCC should update the alert guide for identifying transactions that may be related to ML/TF that was prepared and disseminated to FIs in 2006. This guide should be prepared for the DNFBPs sector as well with particular emphasis to the characteristics and functions of this sector.

530. Improving feedback between the DGIOF and FIs so that the quality of the reports can gradually be improved and FIs can add value to the STR.

VI. SUPERVISION

Key Findings

531. Overall, the area of Cuban FIs is the most experimented in applying prevention standards regarding AML/CFT. Existing regulations are consistent with international standards, despite a limited financial sector restricted to only a few products, its low degree of sophistication, and the absence of financial derivatives, securities exchange markets, and large-scale asset securitization processes.

532. Therefore, the Cuban financial sector has limited links with international markets and financial sectors. Existing relations are designed to carry out foreign trade operations, primarily through the export and import of goods, occupying the services sector, an entirely backstage position.

533. FIs and DNFBPs are generally aware of their AML/CFT obligations; FIs contribute to reducing foreign investment risks, ensuring the application of international standards on funds channelled through these entities.

534. In general, there is an adequate implementation of preventive measures. But some areas should be improved, for example the implementation of more effective mechanisms for identifying international PEPs and an improvement in the quality of reports filed with the Financial Intelligence Unit, as well as ensuring FIs effective access to information collected by the Company Registry.

535. FIs seem to have an adequate level of understanding AML/CFT obligations and have demonstrated that they identify risks and carry out actions to reduce them.

536. The family remittances sector has a major impact in the country's economy. Most remittances from abroad are channelled through FIs under the supervision and regulation of the BCC. However, there are some areas that should be enhanced, such as the inclusion of Cuba's Post Company as a reporting entity for ML/TF as it provides international money transfer services to Cuba.

A. Background and Context

537. The financial sector in Cuba has a moderate impact in the economy of the country. Relevant FIs are state-owned, and international links are reflected in foreign trade and, to a lesser extent, family remittance orders.

538. The insurance sector is underdeveloped and no life insurance policies are issued. There are no activities involving securities in Cuba. These situations reduce risks in the financial system and restrict their complexity.

539. FIs are supervised mainly by the Superintendence, reporting to the BCC, and the insurance sector, by the Superintendence of Insurance, reporting to the Ministry of Finances and Prices.

540. In terms of supervision and surveillance on DNFBPs, the quantitatively-restricted character of these professional activities and restricted scope of transactions involving individuals reduces the risk.

541. Supervision and surveillance is carried out by the MINJUS in the case of DNFBPs and by the National Organization of Law Offices as an independent supervisor in the case of lawyers. Some sectors, such as bookkeeping activities, do not have a clearly-designated supervising authority regarding ML/TF.

542. The Ministry of Communications is legally empowered to regulate and supervise the money order activity; this service is provided by a state-owned company, through the Universal Postal Convention.

543. However, within Cuba's current economic context, the growing number of self-employed workers calls for supervisors' attention.

544. The resources for financial supervisors seem appropriate; the Superintendence has a fine structure to carry out supervising activities and a strong presence across the country, thanks to different Regional Supervision Offices. The control on DNFBPs focuses on verifying their internal control system, which is designed on a risk-based approach.

B. Technical Compliance (R26-28, R34, R35)

How prudential supervision adequately integrates ML/TF risks.

545. **Recommendation 26 is rated Largely compliant.** Supervision on banking and non-banking FIs, as well as on foreign entity representation offices, is carried out by the Superintendence of the BCC; the insurance sector is regulated and prudentially supervised by the Superintendence of Insurance, reporting to the Ministry of Finances and Prices. AML-CFT supervision activities developed by the BCC are carried out following the prudential criteria of the activity on a risk-based approach. The risk-based approach translates into a matrix that receives inputs from on-site and off-site supervision activities and other early warnings. Money transfer services are provided through banking and non-banking FIs which are subject to appropriate licensing and supervision by the BCC. The money order sector was recently added to the AML/CFT regime as a reporting entity; however, it is unclear whether it is subject to supervision by its regulator and to an ML/TF risk assessment.

546. The licensing system is in line with technical criteria. As it is a public administration activity, managers and administrators and candidates for such positions are subject to an ethical and background assessment that includes AML/CFT criteria. A similar process is defined on private institutions aiming to participate in the Cuban financial system. These are subject to a background assessment, including natural persons, legal persons, and beneficial owners. In the banking sector, prudential measures are taken on a risk-based approach, and AML/CFT is included in FIs' operational risk. Assessing risk adequately allows supervisors to identify the intensity of supervision and monitoring activities, thus allowing for a better distribution of resources during on-site, off-site, or targeted visits. Risk-based supervision has not been implemented in the insurance sector yet, and there is no evidence of its application in the money order sector. There are no financial groups in Cuba, so consolidated supervision does not apply domestically, and it is forbidden to establish correspondent relations with shell banks.

547. **Recommendation 27 is rated Largely compliant.** Supervisors are legally empowered to supervise and monitor AML/CFT issues on all FIs (banking and non-banking entities, representation offices for foreign entities and insurance undertakings), including the ability to require and check information from supervised parties. It remains unclear whether the money order sector is subject to AML/CFT supervision by its regulator. Supervisors have a wide range of corrective actions and sanctions to be applied to institutions under their supervision and to natural persons in managing positions. The amount of fines—with a maximum of CUP 5 000 000—seems inadequate regarding FIs asset liability. Powers in the money order sector are not clear. The sanction regime regarding natural persons (public administration officials) concludes with disciplinary observations and sanctions applied by the CGR, which may lead to, depending on its seriousness, the removal of officials involved.

548. **Recommendation 28 is rated Partially compliant.** Supervision and control on notaries is carried out by the MINJUS. For the activity of lawyers there is an SRB called ONBC. The MINJUS monitors notaries and the ONBC on a risk-based approach, which may include the revision of AML/CFT issues, within the internal control system approved by the CGR. While it was confirmed that AML/CFT procedures are applied in the internal control system, the General Self-Control Guide (CGR Res. 60/2011) contains no specific reference. It is not clear whether bookkeeping activities intended to provide accounting services to self-employed workers are subject to supervision, regulations, monitoring, and sanctioning regarding AML/CFT issues.

549. **Recommendation 34 is rated Largely compliant.** The Superintendence of the BCC issues instructions regarding the banking and non-banking sector; reports and findings of supervising activities are informed to FIs' authorities, establishing an action and follow-up plan in order to correct deficiencies. At a national level, there is a training and certification programme for those involved in activities requiring AML/CFT compliance within the financial sector. The Superintendence of the BCC issues special training and information gazettes for all banking agents. The authorities and the private sector regularly participate in the cycle of Combating Crime Workshops, a field for discussing on policies. It is not clear whether this type of actions is applied in the insurance and money order sectors. Also, it remains unclear whether there is a formal channel for the DGIOF to report on the quality and reasons of suspicious transaction reports received or whether the DGIOF systematically prepare reports about the most common offences. In terms of DNFBPs, conclusions regarding the internal control system are informed to supervised subjects, but there are no other feedback systems, and training actions are less intensive.

550. **Recommendation 35 is rated Partially compliant.** The BCC has the necessary powers to apply sanctions in the event of non-compliance with the AML/CFT system. The sanctions may be applied on both legal persons and natural persons involved in public administration activities. It is not at all clear whether these sanctions can be applied on shareholders. There is a wide range of sanctions available for the banking sector, including corrective measures for the supervision process, written warnings, temporary or permanent suspension and modification of licences, fines up to CUP 5 000 000 or its equivalent in convertible currency. Regarding the insurance sector, there is a similar system, with a fine limit of 1% on the capital of the insurance company. Administrators are also subject to disciplinary sanctions for not complying with the Public Administration Code of Ethics: they may be removed from public function, and be subject to criminal liability. Although there is an adequate framework of dissuasive, effective and proportionate sanctions for FIs, the maximum amount of a fine that a legal person may be subject to seems restricted. It is not clear which system applies in the case of money order companies. The sanction regime on DNFBPs and NPOs is not clear beyond the disciplinary responsibilities that may be imposed on their administrators.

C. Effectiveness: Immediate Outcome 3 (Supervision)

551. The contextual factors characteristic of Cuba's economy and the development of the financial sector, its impact within the country's gross product, the existence of a reduced number of state-owned banking and non-banking entities, as well as the absence of securities exchange markets, are factors that greatly restrict risk but they have been taken into account when assessing Immediate Outcome 1.

552. According to what was mentioned earlier, in the Cuban banking and financial system there are nine (9) commercial banks; fifteen (15) non-banking FIs; and fifteen (15) banking and non-banking FI representation offices. The Cuban financial system relates to the international sphere with foreign trade operations and, to a lesser extent, family remittances, an industry that has recently become more important. Remittances orders or money transfers from Cuba are not possible—without prior authorization by the BCC.

Commercial banks	Bank with branches	5
	Bank without branches (second-tier)	4
	Total	9
Non-banking FIs	Financial Company	13
	Trust Company	1
	Exchange Office	1
	Total	15
Representation Offices	for Banks	12
	for Non-banking FIs	3
	Total	15

Source: Superintendence of the BCC—Effectiveness Questionnaire

553. The FIs that own most of the branch network belong to two commercial banks that have over 400 and 200 service offices, and a non-banking FI dedicated to currency exchange services that has over 400 service offices.

554. Therefore, the performance of the international financial sector in Cuba is limited to the development of banking and non-banking FIs representation offices, excluding the operation of branches or subsidiaries for foreign entities. The opening and maintaining of correspondent accounts with Cuban FIs is regulated by BCC regulations, for example mitigation measures that prohibit associating local FIs with shell banks (Section 55 of BCC Superintendence Inst. 26/2013 Specific Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital).

555. The risk of developing shell banks in Cuba through stock ownership, branches and representation offices is reduced thanks to Res. 24/1999 issued by the President of the BCC, Regulation for Licensing FIs and Representation Offices to Settle in the Country and their Registration. Mitigation actions, in addition to requirements proving legal personality and shareholding (beneficial owner) and managing status, include the following: i) provide proof of their operations through financial statements for the last three years, audited by independent auditors; ii) other documents proving its existence, seriousness, and solvency; (iii) exchanges of information with the regulatory authority of the country's head office.

556. The insurance sector focuses on property insurance and is currently underdeveloped. Two fully state-owned companies operate in this market. Although authorized by the regulation, life insurance policies are not issued in Cuba; this situation is explained by the coverage level of social security. Therefore, this sector has been excluded from the assessment according to the FATF methodology.

557. Money orders, both domestic and international, are developed by the state post company, under the international conventions and principles that govern the activity (Universal Postal Convention). Its impact within the total remittances sent to the country is not significant: authorities have reported an annual amount of approximately CUP 5 000 000 (USD 208 000) for international money orders and CUP 400 000 000 (USD 16 600 000) for domestic money orders. However, the overall growth of international funds sent to Cuba for this, in addition to some technical compliance aspects, may increase the risk of ML/TF activities in the sector. Cuban authorities have mentioned that the post company requested the BCC a licence to act as non-banking financial entity in order to operate with money orders under the regulation and supervision of the BCC.

558. The regulation, supervision and sanction regime on financial institutions, banking, non-banking and representation offices for foreign entities, are the main functions of the BCC. These functions are carried out through the Superintendence, reporting to the BCC, which is the highest authority responsible for supervising and applying sanctions. The regulation and supervision of this sector are carried out according with international standards set by the Basel Committee on Banking Supervision, and background records on this issue date back to 1997.

559. The supervision on the banking and non-banking financial sector is carried out using a risk-based approach, which takes into account the FATF Recommendations and the conclusions drawn from the National AML/CFT Strategy, published in July 2014 (Recommendation 1).

560. Regarding the supervision of DNFBPs, the evolution of the Cuban Economic Model Update Programme may call for a new assessment of potential risks from these professional activities (new forms of private action) and resulting impact on the AML/CFT system. Today, the reduced number of professions and work areas is a mitigating factor, supported by both legislative and regulatory barriers (Effectiveness Questionnaire).

561. The Superintendence of the BCC has developed actions against the illegal use of the Cuban financial system since 1997 (Res. 91/97), incorporating CDD measures, training programmes for all employees in the sector, and a risk information desk. It shows an appropriate structure with a Supervision Division that develops prudential tasks, as well as reviews on AML/CFT compliance, implementation on FIs, and analysis on the identification, assessment, and definition of an ML/TF risk mitigation programme in the sector. Moreover, the Prevention and Combating Division is a decentralized entity: it has three regional supervision managing offices (East, Central, and West); while these decentralized delegations have limited staff, they have shown a great performance in supervising and compliance activities in the sector.

562. In the financial system, supervisors have the proper resources in accordance with the dimension and complexity of the system under supervision. The Supervision Division includes ten (10) supervisors and a Managing Director; all of its members are university graduates with great experience in the financial sector. A large number of staff members have completed postgraduate studies and earned diplomas in related fields. The Supervision Division defines a supervision schedule that takes into account the human resources rotation regarding the FIs under supervision, thus avoiding supervision groups to control the same institution for over three years in a row; this is a reasonable measure to avoid harmful relations to build between supervisors and supervised parties.

563. Public administration officials who exercise supervision tasks undergo ongoing training and updating. To exercise supervising functions and responsibilities, public administration officials participate in international events, such as internships in the People's Republic of China (2013-2014), related to financial openness and risk control, and in risk management seminars developed in the Federative Republic of Brazil. Also, Cuban supervising officials have also participated, through the GAFILAT-European Union project, in the XIII Seminar for Assessors Preparation held in Rio de Janeiro, Brazil, in November 2013 and in the Typologies Biennial Exercise 2014 organized by GAFILAT.

564. The BCC assigns an annual budget to the Superintendence and to each of its Directorates/Divisions, including the Supervision Division; this guarantees the necessary resources for these functions. Considering the above, supervising functions carried out by the BCC show an adequate allocation of human and material resources, highlighting the high level of technical specialization shown by officials, and the importance of maintaining a level of participation in international fora and training programmes.

565. Cuban banking and non-banking FIs employ approximately 26 000 employees, operating nearly 6 million bank accounts (including current accounts, savings accounts and term deposits). Agreement 127 issued by the Board of Directors of the BCC (2002) provides for the obligation to appoint compliance officers in all FIs; employees supervising compliance with regulations for preventing, identifying and combating ML/TF, as well as illegalities, corruption and criminal acts. This work situation is observed from the head office level of FIs to the branch or office level; duties or powers are not always clearly defined. Training courses are organized for compliance officers in the bank's three levels; these are also taught to Directors, Managers and other branch officials. There is a certification programme organized by the Superintendence that issues a certification when compliance officers reach minimum knowledge.

566. Cuban authorities have provided statistical data until December 2013 regarding training activities of bank employees performing compliance functions in FIs:

Review on Compliance Officers Completion						
Institutions	Number of Compliance Officers	Experience as a Compliance Officer		School Level Reached		
	Have Completed Compliance Officers Courses	1-3 years	Over 3 years	12 grades	Medium Level Technician	Univ .
Bank A	223	96	144	6	76	158
Bank B	196	81	125	3	49	154
Bank C	53	47	47	28	44	22
Bank D	0	0	0	0	0	0
Bank E	0	1	0	0	0	1
Bank F	1	1	0	0	0	1
Bank G	5	4	1	0	1	4
NBFI A	1	0	1	0	1	0
Total	479 (*)	230	318	37	171	340

Source: Superintendence of the BCC - Effectiveness Questionnaire - (*) 69 officers are in the process of capturing or certification as compliance officers.

567. As mentioned above, regarding DNFBPs, the prohibition for the casino sector to operate dates back to 1959 (Law 86), with tourism becoming less risky. In addition, in Cuba there are no independent real estate agents, independent metal/precious stones dealers, third-party fund management companies, and/nor trust agents.

568. Similarly, economic sciences professionals providing bookkeeping services for self-employed workers, a growing sector, without a clear system of supervision and regulation represent an AML/CFT risk. As informed by the Tax Supervision Division, there is a 29% annual increase in the number of self-employed workers (in the three-year period 2011-2013), and 78% of the reporting taxpayers in this group are required to use an accounting system. As a consequence, this situation has tripled the number of natural persons who can act as bookkeepers and provide services to self-employed workers and cooperative societies.

569. In turn, due to state prevalence in the economy of the Republic of Cuba, it is important to especially assess the activity of the CGR. An internal control system has been designed on a risk-based approach, involving all state reporting entities, including FIs and most DNFBPs. Despite this, it is worth noticing that the Internal Control System (Res. 60/2011) implemented by the CGR is applicable under Recommendation 18.

570. It should be noted that the banking supervision system monitors granting, modification and scope of licences to provide financial services in Cuba, which is complemented in the case of foreign FIs with the fulfilment of the requirements defined by Law 118/2014 on Foreign Investment. These regulations, due to the extent of government authorization processes, effectively reduce the risk of criminals and accomplices holding, or being the beneficial owner of, a significant or majority interest, or playing a role as an administrator in FIs.

571. In the Cuban financial system, there are different types of licences to operate activities carried out by FIs (banking and non-banking), including those operating in the area of money or value transfer services.

572. The assessment of the background information for licence granting is developed by the highest hierarchical level of the Superintendence of the BCC. For this purposes, there is an Assessment Committee that receives, checks and verifies background information and documents through available independent sources. This procedure reaches shareholders and beneficial owners. Final granting is conducted by the Board of Directors of the BCC.

573. In the field of DNFBPs, the quantitative limitation of these activities—and the fact that some of them (in the case of notaries or precious stones dealers) are run or developed exclusively by the State—can sometimes be a restricting factor of the risk regarding whether or not dishonest persons are performing these functions.

574. Supervision has detected cases of non-compliance with licensing conditions and has sanctioned those regulatory deviations, withdrawing the licence in at least one case. Cuban authorities have provided data regarding cases of licence suspension and withdrawal in the financial sector, and sanctions applied to entity administrators.

575. Supervising tasks carried out by the Superintendence of the BCC have a risk-based approach. Inst. 26/2013 and ND 1/2014 explain that this approach will assess the different business areas of the entity, the quality of internal control systems, and the identification of processes with higher inherent risk, including ML/TF risk.

576. The Superintendence of the BCC uses and adjusts periodically its comprehensive risk matrix, obtaining early warnings and other input, both through targeted checks, and on-site and off-site supervising activities. Res. 48/2014 defined the regulatory SWOT structure (strengths, weaknesses, opportunities, and threats) matrix that was developed from the methodologies published by the FATF, International Monetary Fund and the World Bank, for the purpose of incorporating Recommendation 1.

577. The postulates for a risk-based approach expressly consider international standards published by the Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision in 2012*, and the FATF Recommendations.

578. For the purpose of understanding and identifying risks in the sector, in 2011, 2012 and 2013, the Superintendence of the BCC has organized and participated in different bodies and government collegiate bodies including, in some cases, a mixed integration among different government agencies, for example:

Supervision Committee (collegiate body of the BCC); events to assess work and managing strategies held with Banking Supervision Office's managers in order to check effectiveness of the system to prevent, identify and combat ML/TF and other related predicate offences; meetings of the Board of Directors of the BCC to assess the system to prevent, identify and combat ML/TF and other related offences; State Control Committee meetings; and meetings held with the CGR. At a domestic level, the Superintendence of the BCC has created areas of work to identify, assess and reduce risks with the DGIOF.

579. Each year, FIs are required to submit their risk identification, assessment and mitigation strategies to the Superintendence of the BCC. Reviewers were provided with the respective documents; these provide the basis for off-site analysis and subsequent on-site actions or remote monitoring performed by supervisors.

580. Thus, there is no evidence of risk-based monitoring on money order activities, regulated by the Ministry of Communications.

581. Regarding DNFBPs, some measures were developed as part of a risk analysis, for example the existence of notaries and law firms exclusively dealing with issues related to foreign investment. However, supervising procedures, focused on technical compliance, do not seem to have been developed using a risk-based approach.

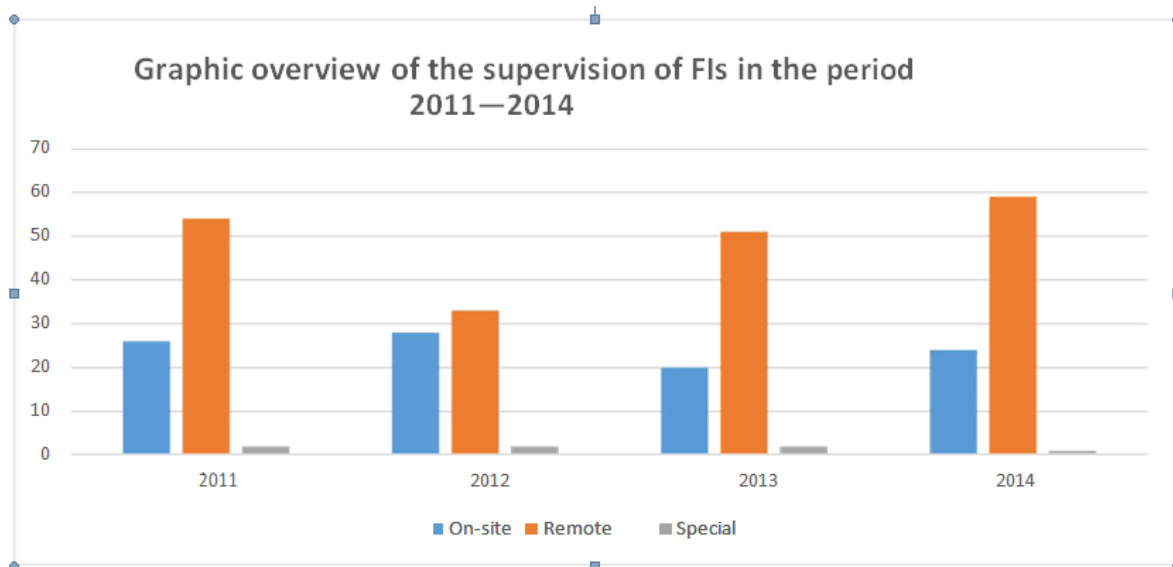
582. Supervisors of the banking sector have a wide margin to mitigate ML/TF risks through remote and on-site monitoring, periodic report and data submission, and establishment of corrective actions.

583. Comprehensive supervisions are carried out at least once a year on all banking institutions; these inspections verify AML/CFT compliance, control systems, and monitoring activities implemented by entities.

584. Cuban authorities have provided (on-site, off-site, special) supervision data carried out by the Superintendence of the BCC in the 2011-2013 period, which are shown below:

Number of Supervisions		Banks	NBFIs	RBs	Total
ON-SITE	2011	7	6	13	26
	2012	7	10	11	28
	2013	7	7	6	20
	2014*	6	8	10	24
REMOTE	2011	16	30	8	54
	2012	10	18	5	33
	2013	13	32	6	51
	2014*	9	48	2	59
SPECIAL	2011	2			2
	2012	2			2
	2013		1	1	2
	2014*	-	1	-	1

Source: Superintendence of the BCC—Effectiveness Questionnaire. (*) Data collected in 2014.



Source: Superintendence of the BCC—Effectiveness Questionnaire.

585. Banking and non-banking institutions are also subject to on-site and surprise inspections carried out by the Regional Supervision Division of the Superintendence of the BCC, which verifies AML/CFT compliance in bank branches and provincial departments. The number of procedures carried out this way is significant; findings serve as input for the supervision risk matrix (Quarterly Reports from the Regional Supervision Managers of the Superintendence of the BCC, 2011-2013).

NUMBER OF SUPERVISIONS CARRIED OUT BY REGIONAL DIVISIONS			Total
2011	WEST	132	454
	CENTRE	153	
	EAST	169	
2012	WEST	139	324
	CENTRE	117	
	EAST	68	
2013	WEST	144	343
	CENTRE	114	
	EAST	85	
2014*	WEST	70	139
	CENTRE	40	
	EAST	29	

Source: Superintendence of the BCC—Effectiveness Questionnaire. (*) Data collected as at June 2014.

586. FIs have their own risk assessment system, including ML/TF risk; its findings serve as a basis for each entity to define a prevention plan that is approved by the Board of Directors. Each year, reports on risk and prevention measures are submitted to the Superintendence of the BCC.

587. Through these procedures and in accordance with provisions in BCC Superintendence ND 1/2014, resources for supervisions are allocated effectively, particularly in higher-risk areas, in terms of potential risk for each FI and the whole Cuban financial system.

588. Relevant data on supervision actions carried out by controlling authorities and SRBs of DNFBPs were not provided. The CGR conducts monitoring actions and verifies compliance of risk control and prevention systems in state institutions, including DNFBPs. Therefore, the risk-based supervision system does not seem to be carried out by control authorities of each activity, an aspect that should be corrected.

589. However, it is necessary to consider, as an important factor of risk mitigation for DNFBPs, mainly with regard to notaries and lawyers, that only one notary deals with issues related to foreign investment and only one law firm provides advice and legally represents foreign investors (Law 118). This situation simplifies supervisors' activities, concentrating higher-risk activities.

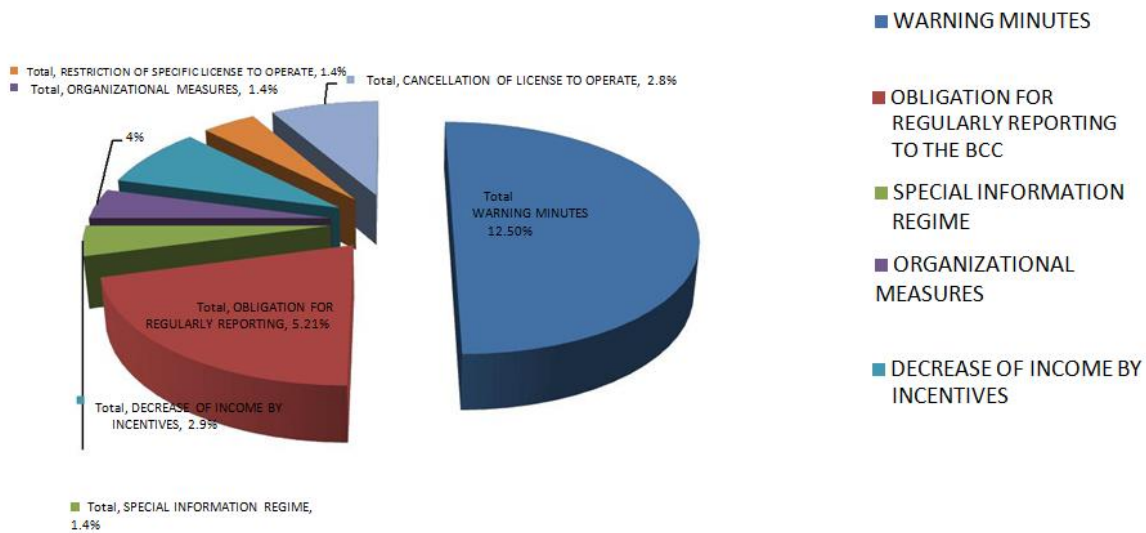
590. Financial authorities have provided information on sanctions and corrective actions adopted by the Superintendence of the BCC (Effectiveness Questionnaire). Measures adopted are actions arising from on-site, off-site monitoring activities and supervisions conducted by the General Supervision Division and by Regional Supervision Managers.

591. The table below shows the number and different types of sanctions applied in 2007-2014:

No.	DISCIPLINARY MEASURES APPLIED TO FIs	2010	2011	2012	2013	Jun / 2014	Total
1	Warning Minutes	1	2	2	1	1	12
2	Obligation for regularly reporting to the BCC	1					5
3	Special information regime						1
4	Organizational measures						1
5	Decrease of income by incentives			2			2
6	Restriction of specific licence to operate						1
7	Withdrawal of licence to operate			1			2
	TOTAL	2	2	5	1	1	24

Source: Superintendence of the BCC—Effectiveness Questionnaire.

592. Regarding the number of corrective actions and sanctions applied to FIs by the Superintendence of the BCC for the last 7 years until June 2014, the following chart shows the concentration of corrective actions on the basis the identification of minor violations (warning minutes and obligation for regularly reporting to the BCC add up to 70.8% of the types of actions taken).



Source: Superintendence of the BCC—Effectiveness Questionnaire.

593. Instructions and Procedures Manual for implementing corrective and/or sanctioning actions and measures to FIs drafted by the Superintendence of the BCC contains guidelines to be considered to promote proceedings for administrative violations regarding AML/CFT and other similarly serious conduct. Therefore, this Manual contains principles that help assess the nature of violations: a) the importance of the threat posed or damage caused; b) the benefits obtained by the FI or the regulated reporting entity, natural persons linked to them, third parties linked to facts; c) the impact on the country's financial system; d) the circumstances of having proceeded to remedy the situation with or without supervisor requirement; e) the objective difficulties that may have influenced the criminal conduct.

594. The information provided reveals the use of a wide variety of sanctions: from warning minutes to restriction and withdrawal of licences to operate. Moreover, sanctions have been applied due to irregularities committed by managers of banking institutions, who were removed from their positions.

595. According to Cuban authorities, corrective powers have been exercised in proportion to the findings of infringements detected by supervisors; so although no serious sanctions have been implemented significantly, the system is still dissuasive and achieves compliance in the regulated sector.

596. FIs carry out internal control actions, identify deficiencies and implement corrective measures at a domestic level, including warnings and sanctions to responsible personnel or public officials.

597. In 2011-2013, the findings and adopted actions have been of lesser importance, according to the information provided by authorities. Although there is a comprehensive compliance programme operating in FIs and the impact on compliance with AML/CFT requirements is verified by different routes, the findings seem to be insignificant in terms of the number and intensity of supervising activities to which FIs are subjected.

598. With respect to the whole period under consideration, based on the information provided, there is no evidence of the application of fines on legal persons or their managers. In interviews with managers of the

seven (7) FIs, none of them or their natural persons had been subjected to sanctions by the banking supervisor regarding AML/CFT issues.

599. No data has been provided regarding the implementation of sanctions in AML/CFT matters in the insurance sector, in the money order sector or in the DNFBP sector.

600. Supervisors consider that the compliance level in the sector is appropriate and that applied corrective actions have been consistent with the level of non-compliance and the risk caused by breaches (Effectiveness Questionnaire).

601. Surprise and recurrent actions taken by Regional Banking Supervision Offices have become an element that promotes a high degree of compliance with formal requirements to identify customers and the effective implementation of AML/CFT procedures throughout the country.

602. Findings from monitoring activities are informed to FIs; a schedule is required to correct deficiencies, with partial status reports on the progress and level of effectiveness of the measures taken. The monitoring actions with respect to identified deficiencies were described as constant and recurrent by FIs, influencing permanently on entities' risk prevention plans.

603. Cuban authorities emphasize that non-observance of supervision indications and fulfilment of measure plans actually implies enhanced FI interaction to follow up and assess the identified risks and vulnerabilities, which is informed to the Superintendence, resulting in proportionate and dissuasive sanctions as well as the execution of intensive FI monitoring. Committing these consecutive violations resulted in the revocation of the licences two representation offices, and before this, one of their representatives had been replaced.

604. The Superintendence of the BCC periodically updates the list of countries sanctioned with countermeasures by FATF and the list of penalties for terrorism; this update is reported by the DGIOF to FIs and DNFBPs. The electronically submitted updates are incorporated by FI computer systems and immediately entered into their monitoring programmes.

605. Based on the lack of statistical data and specific evidence of the consequences of compliance involving actions that may be taken by other control entities, like the Superintendence of Insurance, the Ministry of Communications, and the MINJUS or the ONBC on the DNFBP sector, the ML/TF penalty system for these sectors is being developed.

606. Banking supervisors have carried out different actions to identify and assess risks and implement appropriate mitigation programmes.

607. The Superintendence of the BCC has organized Prevention and Control Committees and Crime Combating Workshops aimed at assessing the system to prevent, identify and combat ML, TF, PW and other similarly serious related predicate offences and the implementation of the international standards in this area. Also, international events have been held about international AML/CFT system standards and about the implementation of the FATF Recommendations, which involved FIs' and DNFBPs' representatives. This programme has been very significant to identify risks and include the Republic of Cuba in the group of countries that are compliant with international standards and the FATF Recommendations.

608. Supervisions are focused on FI compliance with ML/TF risk management policy. Inputs obtained by supervisors, in turn, feed the quantitative (risk-indicators chains) and qualitative criteria operating in the risk assessment process, by activities and processes, and are included in the Risk Matrix.

609. To undertake these actions, there is a guiding Instructions and Procedures Manual that provides a basic level of knowledge in terms of conceptualization and requirements or essential aspects to monitor, according to current legislation for managing specific risks and effectiveness achieved through management and control systems. This Manual is legally based on ND 1/2014, issued by the Superintendence of the BCC.

610. The MINJUS supervises specific features that distinguish the notarial activity, law and specialized consulting in Cuba, subject to compliance with laws and regulations which are checked and monitored by the oversight or self-regulatory body. These activities are audited internally and externally, but it remains unclear whether AML/CFT standards compliance and ML/TF risk are supervised, or whether the sector's reporting entities need to identify, assess and engage in ML/TF risk mitigation actions.

611. The CGR has developed important actions regarding application of prevention policies based on risk identification, including the ML/TF risk, since 2009, particularly since the implementation of Res. 60/2011 on Internal Control System.

General Conclusions of Immediate Outcome 3:

612. It is noted that the Republic of Cuba has a supervision system for banking and non-banking FIs that is based mainly on the suitability and the effective application of the supervision system developed by the Superintendence of the BCC, which comprises most of the relevant ML/TF risks in the Cuban economic context described above. For all other sectors, including the insurance sector, money orders and DNFBPs, this system is not entirely clear.

613. The state ownership of the main FIs and strict system for granting and controlling licences, with a close link to Law 118 on Foreign Investments, significantly reduce the risk of criminals or accomplices participating in or playing prominent roles and/or being beneficial owners in the Cuban financial system.

614. The identification, understanding and mitigating actions of ML/TF risks in the reporting entities regulated by the Superintendence of the BCC seem appropriate, and the actions taken, such as the regulations issued over the last years, show the existence of a system in accordance with international principles regarding the supervision of the sector.

615. Risk-based supervision, clearly and specifically considering AML/CFT compliance, has not been implemented in the insurance area yet. Although the risk is limited by the considerations already stated, the lack of a supervision and monitoring system in some parts of FIs is a significant deficiency.

616. In addition, there is no risk-based AML/CFT supervision framework in the money order sector. This situation can be remedied if Cuba's Post Company is granted a BCC licence as a non-banking FI and is consequently subjected to supervision.

617. In the DNFBP sector, supervision is related to authorities' monitoring activities, e.g. the MINJUS for notaries and the ONBC for lawyers. However, beyond the prerogatives provided by the legislation to the MINJUS or using its self-regulatory body character on the ONBC, it remains unclear whether an AML/CFT supervision and monitoring system is implemented on DNFBPs, a situation that reduces system effectiveness even in a context of limited risk.

618. Data regarding the application of corrective measures and the system of sanctions may weaken supervision as a whole under some circumstances. This is due to the fact that in practice it is not easy to identify sanctions specifically applied for AML/CFT non-compliance, the relationship with violations detected and actions adopted by the supervised party. Similarly, the maximum amount defined by Res.

108/2013 of the BCC regarding fines is currently low, as well as the limit set for the insurance sector. However, in this context, it is worth mentioning that the administrative-disciplinary liability applied concomitantly within the framework of public service (Public Administration Code of Ethics, Laws 196 and 197) is a factor that partly improves the assessment of the effectiveness of the sanction system.

619. *Generally, Cuba shows a substantial level of effectiveness in Immediate Outcome 3*

D. Recommendations on Supervision

620. Based on the comments stated regarding IO 3 and its basic criteria, the following priority recommendations are made, which, according to assessors, are useful measures for Cuban authorities to improve the effectiveness of the AML/CFT system:

621. Regulatory incentives should be adopted for supervisors' corrective actions and sanctions to clearly identify the liability of natural persons, in particular when they are in manager and director positions in FIs, and expressly establish a connection in the case of the possible application of parallel sanctions to public administration positions.

622. The different responsibilities of the compliance function in FIs should be considered, clearly defining responsibilities and ensuring the involvement of senior management in considering operations for filing with the DGIOF as STRs.

623. The BCC should systematize and provide reporting entities with reports on typologies by sector for DNFBPs, insurance and money orders. In addition, it needs to implement existing mechanisms regarding banking and non-banking FIs.

624. A monitoring system should be implemented to check AML/CFT compliance in the insurance sector and ensure a risk-based application, according to IASIS standards.

625. The authority of control and AML/CFT supervision in the money order sector should be clarified, or the company providing this service and others that may exist in the future should be under banking supervision.

626. Control and monitoring actions on DNFBPs should include an ML/TF risk-based approach and ensure accurate supervision of notaries, lawyers, dealers in precious metals, and bookkeepers.

627. Regulations considering ML/TF as a specific risk should be expressly incorporated in the Internal Self-Control Guidelines (CGR Res. 60/2011 for applicable reporting entities).



VII. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

628. Legal persons and arrangements operating in Cuba are mostly state owned and reflect state activity as a key factor in the economy of the country.

629. Cuban authorities are focusing on promoting foreign investment, so the legal framework in this matter has been recently modified. In the current state, it is early to evaluate the effects of this legislation; however, it should be noted that applicable regulations are consistent with international AML/CFT standards.

630. These features reduce ML/TF risk, since the abuse of legal arrangements and/or companies with illegal purposes is not attractive to criminal organizations. Prior authorization mechanisms for developing investment and/or capital contributions in legal persons and arrangements, such as the association in the prior state authorization for selling shares are preventive factors strongly limiting the ML/TF risk.

A. *Background and Context*

(a) Overview of legal persons

631. The legal persons that can be legally constituted and act in the Republic of Cuba are defined in DL 226/2002. In the current economic context, most of the legal persons are entirely state-owned (state-owned enterprises in business development, entirely Cuban-capital corporations), agricultural and non-agricultural cooperatives non-profit organizations and foundations (the latter under the control and monitoring of the MINJUS). Companies with bearer shares are not legally permitted, and registry functions are conducted by the Company Registry.

632. Within the framework of companies, there is public or private foreign share through joint ventures, international agreements of business management and participation, and branches of foreign companies. The development of the business activities using foreign capital has been acknowledged as a priority by the Cuban government, and the implementation of the new Law 118/2014 on Foreign Investment.

633. In Cuba, there are no civil trusts, and Law 118/2014 on Foreign Investment does not allow foreign trusts to operate. The only legal persons authorized by the BCC to act as trustees are FIs; and there is a non-banking FI engaged in the trust business.

(b) Overview of legal arrangements

634. The trust sector is extremely limited; its performance is controlled and supervised by the Superintendence of the BCC, and the implementation of AML/CFT standards is ensured due to the exclusive role of FIs as trustees. It is noted that the trust sector is not currently relevant within the current Cuban economic context.

635. The legal arrangements called "international economic association contracts" are treated by law as legal persons, and rules for the creation, management and liquidation of companies (Section 2.1 of DL 226/2002) are applicable. Therefore, these are subject to the Company Registry's supervision and to the requirements set by Law 118 on Foreign Investment.

(c) International context for legal persons and arrangements

636. The context of international relations and performance of corporations and legal foreign arrangements is currently reduced and subject to the above conditions related to the process of prior state authorization of investments (Law 118) and the existence of a strict registration system.

637. Similarly, the intervention of lawyers in the foreign investment process is concentrated in a single specialized law firm, governed by the ONBC; lawyers do not act as representatives (except in a Court of Law).

638. Moreover, only one notary, based in the city of La Habana, deals with creation of companies (joint ventures and entirely foreign-owned) by public instrument and with international economic association contracts.

639. Internationally, there is an exchange control regime managed by the BCC, so capital funds repatriation and profit distribution among shareholders outside the country is subject to a two-staged control process. The first stage consists of approving share transfer activities, similar to capital entry into the country, regarding the legitimacy of profits generated (public control activities in public-private partnerships and international economic association contracts). The second stage focuses on the management policy and availability of currency in the international sphere, so money orders for such concept needs prior BCC authorization.

640. as a result of this general context, foreign investment in Cuba is possible in real economy sectors but not in financial assets. In addition, there is no securities exchange market, leading to consider that the contextual factor is not currently favourable to the creation of an international centre for the creation or management of legal persons or legal arrangements or management of international assets from Cuba.

B. Technical Compliance (R24, R25)

641. **Recommendation 24 is rated Largely compliant.** DL 226/2002 clearly identifies the types of legal persons that can operate in the country and the procedures for their creation and recognition as such. The requirements set include the identification of shareholders and beneficial owners. The information collected by the Company Registry is public and available to competent authorities and subjects with a legitimate interest in it. Reporting entities, especially FIs, have access to this information according to BCC regulations. The risks of every type of legal person are assessed according to the domestic context; there are lawyers and notaries specializing in acting for foreign companies. The legislation requires the registration and updating of the necessary identification data and beneficial owners in the Company Registry. Corporate law includes a subsection under which information can be obtained on the beneficial owner or last controlling shareholder of the company; companies include those with foreign shareholders. All shares issued by companies under the Cuban law are nominative shares. And if shares are issued, companies should inform the Company Registry of their share issues and general characteristics, as well as the appointment and removal of administrators, liquidators and auditors. In addition, the appointment and removal of secretaries and undersecretaries of managing collegiate bodies should be registered, even if they are not members. Moreover, acts should be registered which modify or alter accounting entries or otherwise as provided for; this includes capital ownership and beneficial owners (cfr. DL 226/2006, Section 11, and Res. 230/2002 of the Ministry of Justice). Any violation of registration regulations will be fined, and may lead to suspension or withdrawal of legal personality.

642. **Recommendation 25 is rated Compliant.** According to DL 173/1997, only non-banking FIs may operate trusts; there are no civil trusts, so DNFBPs are excluded from the activity. This activity is subject to

licensing and supervision by the BCC. The regulation of the activity (Inst. 26/2013 of the Superintendence of the BCC) require FIs to identify the settlor, the beneficiaries, other trustees, if any, and any other natural person who exercise ultimate effective control on the trust, including an ownership chain. The information should be preserved in accordance with deadlines and standards of Recommendation 11 and regularly updated, including any reference to beneficial owners. Secret trusts, or service provision, are banned if the FI is not compliant with CDD. FIs, in the event of non-compliance, are subject to sanctions imposed by their regulator in addition to criminal sanctions if the refuse to cooperate with authorities (a case of disobedience, Section 147 of Law 62/1987 of the Criminal Code).

C. Effectiveness: Immediate Outcome 5 (Legal Persons and Arrangements)

643. The assessment of the company registry system and the regulation on the activity of legal arrangements (trusts and international economic associations) should be made considering the current Cuban economic context. And the potential effects of the adoption of a Cuban Economic Model Update Programme by the government should be assessed.

644. The approval process of foreign investment (Law 118/2014), the suitability and probity analysis of foreign investors, as well as the application of similar requirements for selling or repatriating investments and a mechanism of prior state authorization for profit distribution are conditions mitigating ML/TF risk.

645. Currently, the prevailing role in the economy is played by fully state-owned legal persons (state companies in business development, of totally Cuban capital). The reform process has incorporated non-agricultural cooperatives as a new entirely Cuban-owned legal person.

646. The functions conferred to the Company Registry by DL 226/2002 include both the initial identification of company shareholders and what this process involves in the case of change in capital (increase, decrease, share transfer, transformation, and merger). These kinds of registrations are another factor of risk mitigation that also helps concentrate company information in a public registry, including data regarding beneficial owners.

647. The following legal persons may be registered in the Company Registry: I) State- or Cuban-owned companies: a) state companies in business development; b) entirely Cuban-owned companies and their branches; c) non-agricultural cooperatives; II) private companies as corporations with nominative shares, their creation requires the Government's approval: a) public-private partnerships; international economic association contracts and foreign capital companies; b) foreign natural persons authorized to operate in Cuba, according to current legislation; c) foreign company branches.

648. Regarding the operation of legal persons other than state-owned companies with private shareholders, there are different types:

649. "*Joint ventures*" (or "mixed companies") are companies (corporations with their own legal personality) incorporated under the Cuban law in which at least one domestic investor and one foreign investor are shareholders.

650. "*International economic association contracts*" are agreements between at least one domestic investors and one foreign investor to operate as an international economic venture without becoming a single legal person with an identity separate from its members.

651. "*Fully foreign-owned companies*" are companies created with foreign capital with no Cuban investor shareholder. Foreign investors manage the company, enjoy all rights and are responsible for all obligations

set out in the relevant authorization granted by the Government. The establishment of foreign investors can be done in different ways with or without independent legal personality: a) as a natural person acting on his own behalf; b) as a legal person, establishing a Cuban subsidiary of the foreign entity owned, in the form of a corporation with nominative shares; or c) as a legal person, establishing a branch office of the foreign entity.

652. Lastly, “*first-tier non-agricultural cooperatives*” are organizations with economic and social purposes, formed with the contribution of assets and rights, and based on the work of its partners. They have their own assets and legal personality; they cover expenses with profits earned with business and respond to obligations with their assets.

653. In terms of the potential services provided by DNFBPs regarding company issues, it should be noted that pursuant to Law 50/1984 and DL 81, lawyers and notaries can only represent legal persons and assist them with legal documentation processing. Cuban authorities have stated that under no circumstances may legal representation involve nominal ownership (*nominee*).

654. On the other hand, when notaries are involved in the creation of a legal person, the process has already been subjected to a prior governmental authorization, either for a state-owned company or an entity created to channel foreign investment. Similarly, the creation of a state-owned company is preceded by the issuance of an administrative act.

655. Regarding legal arrangements, it is worth noticing that the trust sector is limited; its oversight and regulation is performed by the Superintendence of the BCC. Trusts are exclusively dealt with by non-banking FIs (there is a specialized operator, known as “trust company”), a situation that reduces the risk of poor implementation of AML/CFT standards. In Cuba, there are no civil trusts, and Law 118/2014 on Foreign Investment does not allow foreign trusts to operate. The DNFBP sector is unable to establish relations with trusts in Cuba.

656. Another relevant legal arrangement is the “*international economic association contract*”. This figure is used in the tourism sector (hotel management, tourism-related activity management), which could, in principle, increase ML/TF risk due to the impact of tourism in Cuba's economy. However, this increase in risk is mitigated by current legislation (DL 226/2002, Section 2.1), which brings together these agreements and companies with a similar treatment. Therefore, they are subject to the Company Registry's supervision and to the requirements set by Law 118/2014 on Foreign Investment.

657. The ONBC brings together lawyers representing Cuban or foreign natural and legal persons. Under Agreement 1603, this SRB regulated the procedure to identify vulnerabilities that may appear in preventing ML and TF.

658. Legal services provided by the ONBC include legal advice for operating and performing functions assigned to the legal persons assisted and hired, so lawyers are not involved in creating and managing legal persons.

659. Relevant information concerning companies should be registered and updated when it changes, according to DL 226/2002. The registry includes the company's beneficial owners. In terms of legal arrangements, in accordance with Inst. 26/2013 of the Superintendence of the BCC, FIs should keep and update information related to trusts (trustee, beneficial owners and others).

660. Information kept in the Company Registry, as provided by DL 226/2002, is available publicly at the request of entitled parties. In accordance with regulations, FIs can and should, in certain cases, request the

Company Registry for information about registered entities in order to verify information provided by customers during the identification process.

661. The Company Registry provides advertising through certifications and simple informative notes, which are requested by duly entitled persons; this situation is credited, for example, displaying the contractual or precontractual relation with the beneficial owner. The procedure should be clarified in order to allow access to all reporting entities in the AML/CFT system.

662. It is worth noticing that the information is not currently computerized or digitalized, a situation that has been acknowledged by the MINJUS authorities. Information on trusts is held by FIs and may be required by competent authorities.

663. In view of the reported context, authorities have identified foreign investment as the sector with the highest ML/TF risk. In principle, this assessment seems to be in line with the Cuban economic reality and is not related to financial assets and/or derivatives from them.

664. It should be noted that the Cuban Economic Model Update Programme, driven by the authorities, aims at improving foreign investment and increase production of new and emerging sectors in the national economy (non-agricultural cooperatives, self-employed workers); this situation may require a new risk reassessment in the near future.

665. Government authorization processes established by Law 118/2014 on Foreign Investment, and the operation of professionals (lawyers and notaries) specializing in these areas suggest that authorities have correctly understood ML/TF risks.

666. The features of the political and economic system of the Republic of Cuba, the need to manage government authorizations and the exchange control system have become barriers that have contributed to preventing misuse of legal persons and other legal arrangements for ML/TF purposes.

667. The need for an express government authorization and requirements to hold it (e.g. Decree 206/1996 allows the withdrawal of authorizations) is a factor that helps dissuade criminals or their accomplices from using legal persons or other legal arrangements under Cuban legislation. The system reduces assets liquidity, and this operates as a dissuasive.

668. As stated previously, Cuban legislation does not recognize the use of bearer shares. Companies are registered as corporations with nominative shares. Capital contributions made by partners (national and/or foreign) in order to start a company cannot be made in cash, and need to be channelled through FIs, under the CDD process. Therefore, the prohibition to issue bearer shares and the type of registration set out in DL 226/2002 and the way in which capital contributions are made are suitable factors to mitigate ML/TF risks in the Cuban context.

669. Legislation allows competent authorities to keep basic information and data on beneficial owner in the case of legal persons. Due to the company registration system, as well as the intervention of FIs, the information collected is reasonably accurate and up-to-date. The legislation requires companies and natural persons to submit an updated certification from the Company Registry if they need to start any proceedings before state agencies and national entities. The period to update information before the Registry is the month following the change made, except for financial statements that are deposited in the first half of the year. Failure to comply with these duties may lead to fines.

670. Information held by the Company Registry is available to the DGIOF and competent authorities, from legislation, regulations and collaboration agreements for these purposes; therefore, FIs can access this information proving their legitimacy.

671. In general, basic information collected by the Company Registry should include, at least, the following, depending on each association type: Documents including start-up, corporate purpose, address, structure identification, directors, partners and/or shareholders, appointments or changes in management, financial statements, assets, government authorization for creation, among others.

672. However, it is worth pointing out that the MINJUS authorities have stated that to date no information search requests have been received from the DGIOF regarding AML/CFT to undertake investigations.

673. Based on the information provided, it is understood that the necessary effectiveness is reached with proportionate, dissuasive and effective sanctions applied to non-compliance with information requirements by the Company Registry.

674. Authorities have reported that to date no sanctions have been applied due to non-compliance. However, applicable sanctions are: i) a surcharge of 30% applied to service rates, due to non-compliance with terms defined for registration of the parties and acts; (ii) suspension of the registration of the party or act registered if the violation is serious.

675. National authorities reported that from 2010 to July 2012, 23 authorizations were withdrawn, although the main causes were violations for non-compliance with established legal regulations (Decree 206/1996).

676. There is a reported case of withdrawal of legal personality of companies involved in the Butterfly case; responsible managers were convicted for ML crime.

General Conclusions of Immediate Outcome 5

677. Based on the conclusions on technical compliance and the reviews by assessors together with Cuban authorities, it can be concluded that the control system on legal persons and other arrangements is currently consistent with international ML and TF prevention standards. It is important to note that Cuban authorities are focusing on promoting foreign investment; the new Law 118/14 on Foreign Investment has changed the current legal framework seeking to attract capital in different sectors of the Cuban economy. Thus, it is early to evaluate the effects of this legislation; however, it should be noted that applicable regulations are consistent with international AML/CFT standards.

678. Existing standards adequately mitigate the risks of misuse of legal persons and other legal arrangements for ML/TF; in addition, there is a formal collection of ownership information that is available to competent authorities, with no obstacles. The country should demonstrate effective information availability proving access by the DGIOF, FIs and DNFbps.

679. *In general, Cuba shows a substantial level of effectiveness in Immediate Outcome 5,*

D. Recommendations on Legal Persons and Arrangements

680. Based on the comments stated regarding IO 5 and its basic criteria, the following priority recommendations are made, which, according to assessors, are useful measures for Cuban authorities to improve the effectiveness of the AML/CFT system:



681. The development of an electronic information exchange system is recommended, available at least for the DGIOF to have timely access to information collected by the Company Registry. This system could be extended to all reporting entities.

682. Access to data and reports available in the Company Registry for all reporting entities should be clarified; the mere request regarding AML/CFT should necessarily lead to consider that there is sufficient legitimate access.

683. There should be a wider variety of sanctions available for those who fail to comply with Company Registry obligations and demonstrate effective implementation.

684. Regulations considering ML/TF as a specific risk should be expressly incorporated in the Internal Self-Control Guidelines (CGR Res. 60/2011 for applicable reporting entities).

VIII. INTERNATIONAL COOPERATION

Key Findings

685. Within the framework of international cooperation, Cuba has ratified the Vienna, Palermo and Merida Conventions, and the Convention for the Suppression of the Financing of Terrorism. It is greatly appreciated that in the case that there are no international agreements or treaties signed, cooperation will still be possible based on the principle of reciprocity, thus broadening the legal basis for exchange. The strength and cohesion of different national entities and organizations in the fight against the threat posed by the use of the country's financial system for ML, TF and PW is also noted. This synergy is reflected thanks to a framework of cooperation with foreign counterparts; there is a high willingness to cooperate when it comes to mutual legal assistance (including extradition) and exchange information and intelligence services.

686. In this area, the effort of the Government of Cuba to update signed bilateral treaties on mutual legal assistance and extradition is a highlight. As at September 2014, the Cuban Government has signed 25 mutual legal assistance agreements; 14 of them, covering a total of 17 countries, deal with the issue of extradition. These are added to 11 extradition treaties signed with different countries. In addition, there are 13 more agreements on mutual legal assistance signed between the Cuban Government and other countries which have not been implemented yet. Cuba has investigated and prosecuted successfully only one case of ML, during the period assessed; this offence was committed by a transnational criminal organization through international cooperation with operational authorities and counterpart security forces.

687. Regarding extradition, the current legislation does not include rules and procedures to request passive extradition. A regulatory development is needed, including requirements, procedures and deadlines for extradition, evidentiary requirements for simplification, extradition for related offences, acceleration of the extradition process, and rejection causes.

688. Based on the Vienna Convention, Cuba has signed 33 bilateral cooperation agreements with countries in different regions of the world. Additionally, it has signed 16 international agreements to fight terrorism. Regarding other forms of international cooperation, the existence of bilateral agreements designed to contribute to customs and police cooperation is a highlight.

689. Moreover, despite having ratified the Vienna, Palermo and Merida Conventions, Cuba has not developed special legal provisions related to special investigative techniques, such as undercover operations, intercepting communications and guarded deliveries, among others, affecting the effectiveness of complex investigations and excluding the possibility of becoming an element of proof in the criminal process¹⁴. The country has not informed assessors whether it has signed bilateral or multilateral agreements or arrangements to use these techniques in the international cooperation context. In addition, Cuba has a restriction to cooperate for property of corresponding value in confiscation requests; this situation could, in certain cases, prevent Cuba from providing international cooperation in the most appropriate manner.

690. In the field of information exchange, Cuba's participation in international organizations, for example INTERPOL (International Criminal Police Organization), GAFILAT (Financial Action Task Force in Latin American and its RRAG [Asset Recovery Network]), IberRed (Ibero-American Network of International Legal Cooperation), INTOSAI (International Organization of Supreme Audit Institutions), and the World Customs Organization, among others, is considered a very positive feature.

¹⁴ Regarding guarded deliveries, on 1 April 2015, the Governing Council of the Supreme People's Court, under Section 121 of the Constitution of the Republic, issued Decision 443 interpreting Sections 104, 119 and 123 concluding that they legally support this special investigative technique.

691. Cuba also participates in multilateral networks through bilateral agreements signed by institutions dealing with information and financial intelligence exchange in the field of supervision, especially between the DGIOF and the Superintendence of the BCC, and their foreign counterparts. International cooperation in the field of financial intelligence and ML/TF monitoring has been limited to a single case, but there are no obstacles in regulation.

692. Regarding ML, it is important to highlight that Cuban legislation allows the removal of the banking secrecy for administrative monitoring procedures and for criminal pursuing and investigative purposes.

693. The willingness to enhance risk management activity, capacity building and adoption of modern technologies to meet the challenge posed by the fight against these criminal procedures under international standards is highlighted.

A. Background and Context

694. Considering Cuba's current situation, characterized by the centralism executed by the Administration in the political, economic and social spheres, the risk of crime in general and of ML/TF in particular seems to be limited.

695. Pages 29 and 30 of the National AML/CFT Strategy explain the 14 most relevant risks identified by the country at the national level. Based on these, ML is considered to occur basically as a result of national and foreign citizens aspiring to introduce funds into the Cuban financial system coming mainly from illegal activities carried out in foreign locations or to increase their personal wealth through the acquisition of use and securities with exact illicit origin.

696. While inputs provided by Cuba when conducting this assessment have prevented a high risk of criminal activities linked to transnational criminal organizations, Cuba show evidence of this phenomenon to occur in the national territory; competent authorities have referred to specific cases of international cooperation with foreign counterpart entities in this area.

697. The Cuban law on the creation of state-owned and mixed companies, as well as any act related to private property with intervention of foreign capital, highlight the fact that these criminal organizations ultimately seeking to introduce, into the legal course, enormous profits derived from their criminal activities, thus damaging the fundamental legal right of socio-economic order of societies. In this sense, the Cuban government has developed a robust system to fight crime including specific anticorruption measures and duly-empowered, trained and coordinated competent authorities for preventing, investigating, pursuing, and prosecuting crime. Also, a fairly-consistent complementary system of asset confiscation and forfeiture may be used to deprive offenders of virtually all their assets, together with severe criminal, administrative, economic sanctions, which seem to be strictly applied.

698. However, reforms being made to the Cuban economic system, amid increasing international economic relations and increasing reporting entities, among others, and the creation of companies, associations, and other forms of commercial and public administration may encourage criminal organizations to use the country's financial systems for ML/TF/PW activities.

699. In order to prevent illegal activities, and based on the above assumptions, Cuba has developed a wide legal framework in ML/TF issues in accordance with international standards, which covers different national bodies and entities, strengthening synergies to identify, prevent, detect, and investigate risks and analyse information.

700. This ML/TF/PW prevention policy is supported by the country's leadership, with a significant level of commitment and inter-agency cohesion.

701. Regarding international cooperation per se, Cuba provides wide legal assistance following the Vienna, Palermo and Merida Conventions, and the Convention for the Suppression of the Financing of Terrorism, following all its principles, including the confidentiality of information. This guarantee is also found in the fundamental principles of domestic law for information management. In addition, international cooperation is provided based on international agreements and treaties signed by Cuba or, in the absence of an agreement, based on the principle of reciprocity.

702. Regarding this, the MINREX deals with inbound and outbound legal cooperation requests. From the functional and organizational point of view, the applicable scheme designates the MINJUS as the central authority in mutual legal assistance, although other authorities may deal with these requests exceptionally.

703. In relation to other forms of international cooperation, the Cuban authorities may jointly develop actions of cooperation and information exchange with foreign counterparts, under the treaties, agreements and memoranda signed with foreign counterparts and international organizations, based on the impacts, although limited, of various transnational criminal profiles in the country.

B. Technical Compliance (R36-40)

704. **Recommendation 36 is rated Largely compliant.** The Republic of Cuba signed the Vienna Convention on 7 April 1989 and ratified it on 12 June 1996. The Republic of Cuba signed the Palermo Convention on 13 December 2000 and ratified it on 9 February 2007. The Republic of Cuba signed the International Convention for the Suppression of the Financing of Terrorism on 19 October 2001 and ratified it on 15 November 2001. The Republic of Cuba signed the Merida Convention on 9 December 2005 and ratified it on 23 February 2009.

705. Although Cuba largely implements the Vienna, Palermo, and Merida Conventions, and the Convention for the Suppression of the Financing of Terrorism, and these can be accessed directly by offering legal assistance according to them, the current Cuban legislation has not developed specific legal provisions related to the application of some of its requirements.

706. **Recommendation 37 is rated Largely compliant.** Cuba's legal basis provides for a wide variety of mutual legal assistance. The legal framework includes international conventions signed and ratified by Cuba, and many treaties; where these are not present, Cuba acts on the principle of reciprocity.

707. Based on this, the country fosters joint investigations, as well as arresting and surrender fugitives to authorities in other countries. Cuba has no special legal provisions regulating the use of special investigative techniques. However, it is possible to use these techniques in collaboration with other countries provided that the results are not used as evidence in Cuba.

708. Additionally, regarding mutual legal assistance, there are no obstacles for providing financial data, and there are no apparent rejections of legal assistance request for banking secrecy or tax reasons.

709. **Recommendation 38 is rated Largely compliant.** Cuba has been empowered to take expeditious action in response to requests made by other countries to identify, freeze, seize or confiscate laundered assets derived from, resulting from, used in or as instrumentalities intended for use in ML, its predicate offences, or TF, including cooperation requests made on the basis of non-conviction based confiscation

proceedings and related provisional measures (Decrees Law 149/1994 and 232/2003). However, Cuba has no confiscation regulations, not even where the proceeds of an offence have been mixed with legitimate assets; although these could be included, as discussed in Recommendation 4, based on Sections 43 and 44 of the Cuban Criminal Code for the figures of confiscation and forfeiture.

710. A positive aspect is that Cuba has applicable mechanisms to manage or dispose of confiscated assets as regulated in Decree 313/2013, also discussed in Recommendation 4, which also applies to measures on goods deriving from mutual legal assistance processes.

711. **Recommendation 39 is rated Largely compliant.** Cuba is capable of processing extradition requests related to ML/TF based on current treaties or the principle of reciprocity, and with no undue delays through processes designed by Sections 31, and 435-441 of Law 5 of the Code of Criminal Procedure, regarding internal proceedings for active extradition cases; on the contrary, there is no express legislation regarding passive extradition. This Law also refers to or sets out simplified extradition mechanisms, beyond the provisions of Sections 437.2 and 441.7 ("from the principle of reciprocity"), and does not mention the processes for prioritization of extradition requests.

712. The Cuban legal system does not allow the extradition of its own nationals; however, if required by the country requesting extradition, Cuban authorities assume the responsibility to investigate and prosecute acts committed abroad, provided that they are criminalized by law. In addition, Sections 5.1, 5.2 and 7.2 of Law 62 on the Criminal Code includes the possibility of acknowledging a judgment issued by a foreign court for an offence committed by Cuban citizens in that country. On the other hand, based on the principle of surrendering certain foreigners, Section 6.3 of the same Law defines that extradition is not allowed in the case of certain foreigners and offences¹⁵.

713. **Recommendation 40 is rated Largely compliant.** All competent authorities (including the DGIOF, the BCC as a supervisor of FIs and law enforcement agents) have a sound legal basis and mechanisms to provide a wide range of international cooperation activities relating to ML, associated predicate offences and TF in a quick, constructive, effective manner, either spontaneously or by request although there are proceedings that remain unclear.

C. Effectiveness: Immediate Outcome 2 (International Cooperation)

Mutual Legal Assistance Requested and Provided

714. Based on information provided by authorities, Cuba has a legal basis allowing competent authorities to provide a wide range of mutual legal assistance in the field of investigations, prosecutions and criminal proceedings in general, and after the development of a broad legal framework regarding ML/TF, based on internationally accepted standards, in the field of ML, associated predicate offences, and TF.

715. In addition, joint actions for collaboration and information exchange with foreign counterparts have been developed; treaties, agreements, and memoranda have been signed with counterparts and international organizations, and in their absence, cooperation is carried out under the principle of reciprocity.

¹⁵ The extradition of foreigners processed for having fought imperialism, colonialism, neo-colonialism, fascism, or racism, or by having defended the principles of democracy or the rights of working people does not apply.

716. Below there is a table that summarizes the statistical data provided by Cuban authorities, related to the extent to which the country has provided mutual legal assistance in the wide range of requests for international cooperation¹⁶ (excluding extradition):

Processing Agency¹⁷	Year	2011	2012	2013	2014	TOTAL
MINJUS	Requests Received	0	9	10	9	28
	Requests Sent	0	0	1	1	2
FGR	Requests Received	0	1	1	4	6
	Requests Sent	0	2	0	3	5
TSP¹⁸ (International Relations Department)	Requests Received	0	0	0	3	3
	Requests Sent	0	0	0	3	3

717. From the analysis of data provided by Cuban authorities and synthesized in the table above, it is clear that mutual legal assistance provided by the competent authorities does not correlate specifically with ML/TF but with offences in general, which, following the amendment of Section 346.1 of the Cuban Criminal Code through DL 316, December 2013, are now considered predicate offences of ML. The specific case of the MINJUS shows that of the total of twenty-eight (28) applications received, seventeen (17) were processed and three (3) were rejected due to lack of sufficient and relevant information to process; nine (9) of them were still under investigation at the time of the on-site visit. Only two (2) of the requests received involved ML, both in 2013. None of the requests submitted by the MINJUS involved ML.

718. Six (6) mutual legal assistance requests were received by the FGR, only one (1) of them involved ML (2012).

719. Of five (5) requests sent by the FGR, two (2) were made in 2012 and involved ML. Both cases were closed; evidence for ML was inconclusive.

720. The TSP did not receive mutual legal assistance requests related to the crimes of interest, but for predicate offences of ML. Of the total of three (3) sent, one (1) of them involved ML (2014).

721. The remaining requests, a total of forty-one (41), received/sent by all Processing Agencies (MINJUS, FGR and TSP) involved predicate offences of ML.

¹⁶ Data provided to assessors was not classified by type of request; i.e. if they are dealing with judgments, current investigations, evidence requests, asset inquiries, confiscations, etc.

¹⁷ As discussed for Technical Compliance, the criteria for forwarding requests to the MINJUS, FGR or TSP (depending on phases of judicial proceedings, on types or severity of offences, or on applicant countries, etc.), and processes for prioritization and timely execution of mutual legal assistance requests remain unclear.

¹⁸ In 2011-2014 (until the date of the on-site visit), the TSP has received a total of 126 requests for judgment copies and penalty settlements for offences of interest, three of them for ML.

722. In view of the above, in terms of international cooperation requests on ML/TF in particular, of the total of forty-seven (47) requests received/sent, six (6) involved ML, representing less than thirteen per cent (13%) of requests.

723. The National AML/CFT Strategy, published by the Cuban Government in July 2014, includes such strategic goals to mitigate risks identified in international cooperation as the following: Goal 10 "to coordinate and consolidate mechanisms to improve international cooperation through legal and non-legal means, using available channels, in order to obtain and provide information in the event of ML/TF risks"; Goal 10.1 "Proposal of new measures and mechanisms to increase international collaboration"; Goal 10.2 "Updating applicable mechanisms"; and Goal 11, "To update rules and regulations contributing to the implementation and development of international commitments of cooperation and mutual legal assistance."

Extradition

724. In accordance with the information provided by Cuba, the country is capable of processing extradition requests in relation to ML/TF, based on existing treaties or according to the principle of reciprocity, and without undue delay (Section 31 of the Code of Criminal Procedure).

725. As discussed in *a)* of Immediate Outcome 2, Cuba has signed 11 extradition treaties with different countries and has also signed 15 legal assistance agreements, involving 17 countries and covering extradition.

726. The following table includes statistical data on extradition requests made by the Cuban authorities:

Year ¹⁹	2012	2013	2014	TOTAL
Requests Received/Processed	0	1	4	5
Requests Sent	0	0	0	0

727. As reflected in the above table, passive extradition, although not explicitly developed in the current legislation, is used for international cooperation in this field; of a total of 5 requests received, only one (1) involved ML (2014); again, response timing in the cases provided is considered positive. However, assessors have not been informed whether other requests were rejected. In addition, based on the above table, no data was provided for active extradition, i.e. those requested by Cuba to other countries.

728. Regarding the extradition of Cuban nationals, as discussed in the Technical Questionnaire section, the principle of surrendering nationals applies. In this sense, there is only one example of Cuba prosecuting Cubans where there is evidence to do so without undue delay, pursuant to Law 62 on the Criminal Code. Assessors were provided with a summary of "Peregrine S case"²⁰, Case No. 474/07, First Chamber, Criminal Division of the People's Provincial Court, City of La Havana, and its judgment 596/2007 against the defendant for ML. In 2003, Cuban authorities acknowledged the criminal acts by means of a note verbale from the Government of the United States requesting extradition, which was not accepted, but prosecution was conducted in Cuba for these offences. The defendant was found guilty as perpetrator of ML, according

¹⁹ Assessors were not provided with data for 2011.

²⁰ Although this case is previous to the period under assessment, it is taken as an example of Cuba judging its nationals where they are requested for extradition in compliance with international standards.

to Sections 346.1 and 346.2 related to Section 5, both of the Criminal Code. Ten years of imprisonment were imposed, and there was no judgment regarding asset confiscation or forfeiture due to non-seizure.

729. Data shows that the volume of assistance requested by Cuba regarding ML/TF matches the number of investigations, prosecutions or legal proceedings carried out by national authorities in this matter. With respect to requests received from foreign authorities, inputs are consistent with the context of the country or ML/TF risks and level of impact detected. Cuba's response timing are considered positive in the specific examples in which the country provided assessors with data, with an average of five months for the MINJUS for mutual legal assistance (except extradition) and three months for reported extradition cases²¹.

730. There is little evidence about the quality or use of the cooperation provided and on whether it was useful for countries requesting this mutual legal assistance, as no information or comments are reported in this regard by consulted countries.

731. Regarding international cooperation on ML, the "Butterfly case" shows the quality of information exchanged. And for other forms of international cooperation, the examples of exchanges within the framework of different international organizations and platforms related to law enforcement indicate that they were useful.

International Cooperation in Confiscation Cases

732. Indeed, there was forfeiture of numerous assets in the "Butterfly case", following judgment 158/2011 sentenced for ML. This issue, also discussed in Immediate Outcome 7, refers to a French citizen linked to foreign criminal organizations involved in drug trafficking outside Cuba but with effects in the country.

733. In this case, as discussed in IO 8, a large number of assets were forfeited, including the following: eleven vessels (five catamarans, two motored sailing boats, two yachts, and two trimarans) valued at over US\$ 1 million; ten kayaks, two jet skis, boat parts and accessories, and sailing, communication, diving, and fishing equipment; Money in currency for EUR 4 284 704, USD 4 120 732, CAD 480 653, and CUC 71 111; Twelve art works by contemporary artists, valued at CUC 30 500; Two real estate properties, 16 cars and a motorcycle; a large amount of furniture, computing and office equipment.

734. In addition, foreign funds belonging to companies involved were frozen; but only funds deposited in Cuban accounts were forfeited, because international cooperation with involved countries has still not recognized the execution of a judgment abroad—processed by 2014.

735. In the police sphere, the DGPNR is supported by the DGIOF for their financial investigations including freezing of funds and the proceeds of crime, also for ML; these measures extend to other countries through legal assistance or letters rogatory issued in cooperation with the FGR. Movable and immovable property can also be seized, as well as any instrumentalities or media used to commit offences, under the initiation of the record preparatory phase and pending final judgment of the applicable court that will decide on the assets. Responsible entities, in particular, the MINREX, the MININT (DGPNR), the DGIOF, and the BCC have an adequate legal framework, understanding and structure for freezing and eventually confiscating or forfeiting funds/assets related to TF as discussed in Immediate Outcome 9.

²¹ This means that data was not provided by the Cuban authorities on requests that are pending response or were rejected.

736. Last, as regards measures and agreements to dispose of and repatriate assets confiscated at the request of other countries, the Government of the Republic of Cuba signed an agreement with the Government of Canada Regarding the Sharing of Forfeited Assets or their Equivalent Funds on 8 July 2003.

Other Forms of International Cooperation

737. Cuba has adopted measures designed to improve communication channels between Cuban and other countries' institutions, for example, conventions regarding police services, customs, central bank, and financial intelligence, among others.

738. As evidence that the country's competent authorities apply other forms of international cooperation to exchange information and financial intelligence services in the field of banking supervision, through the DGIOF and the Superintendence of the BCC, with their foreign counterparts in order to meet ML/TF goals, Cuba has the provided data in the table below.

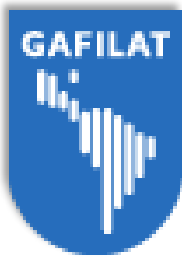
Processing Agency	Year	2011	2012	2013	2014	TOTAL
DGIOF	Requests Received	0	0	0	0	0
	Requests Sent	0	1	0	0	1
Superintendence of the BCC	Requests Received	0	0	0	0	0
	Requests Sent	0	4	0	0	4²²

739. The cooperation request made in 2012 by the DGIOF to the Police Financial Investigations, Narcotics Bureau, Hong Kong Police (FIU), continued in 2013. The return of the funds has not been granted yet, but they been frozen administratively.

740. The Superintendence of the BCC informed assessors of one case (2012) where it spontaneously provided information within the framework of an investigation for several crimes, including money laundering, including transfers to several jurisdictions. Information was sent to the Superintendence of Banks of Panama and to other three foreign banks (in Trinidad and Tobago, Spain and Canada).

741. The powers granted to the DGIOF by Law are rated positively. In this sense, under the provisions of DL 322/2013 the DGIOF is empowered to interact directly with foreign agencies and exchange information with their counterparts, in order to monitor assets and investigate ML/TF, PW, and other similarly serious related offences. It has been granted autonomy to disclose relevant information to competent national authorities and their foreign counterparts, through secure channels and only for the purposes defined by law, pursuant to agreements and memoranda of understanding signed by the Superintendence of the BCC for non-legal cooperation; for example, the one signed by GAFILAT member countries Guidelines for Cooperation and Exchange of Information between FIUs of GAFILAT countries, including the exchange of information with financial intelligence units of GAFILAT member countries (Argentina, Bolivia, Brazil, Chile,

²² Sent for a unique case



Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay).

742. Likewise, the Superintendence of the BCC is governed by memoranda signed with China (Memorandum of Understanding, June 2011, with the China Banking Regulatory Commission (CBRC) in order to establish an agreement to exchange monitoring information and expand cooperation activities in the area of banking supervision) and Venezuela (Memorandum of Cooperation with the Superintendence of Banks and other FIs of the Bolivarian Republic of Venezuela), as well as the agreement signed with the Russian Federation in November 2013.

743. Based on the above, there are no systematized procedures for exchanging information in the field of financial intelligence and supervision beyond those provided for in bilaterally approved agreements and memoranda. The DGIOF has only signed agreements with GAFILAT, and the Superintendence of the BCC is governed by signed memoranda; how cooperation would articulate in these cases under the principle of reciprocity remains uncertain, as data related to information exchanges in the field of financial intelligence and supervision is virtually non-existent in recent years: there has been only one request for financial intelligence information made by the DGIOF in 2012 (Hong Kong) and another for supervision in the same year.

744. Furthermore, as evidence that the country applies other forms of international cooperation, Cuba has had two contact points in GAFILAT's Asset Recovery Network since March 2013: one in the FGR and another in the MININT (DGPNR). This represents a major step forward for Cuba's information exchange on international cooperation and mutual legal assistance, as required by FATF international standards.

745. With respect to the RRAG platform, at the time of the assessment, evidence for exchanging information with foreign counterparts came from only one case (2014), which was appropriately addressed by Cuban authorities. Additionally, two more countries were consulted (2014) through cooperation among RRAG and CARIN networks.

746. In addition, Subchapter 1.5 of MININT Res. 12 establishes that the National Police is the body responsible for coordinating police international cooperation through INTERPOL and other relevant organizations. Based on the above, the DGPNR has been strengthening and extending its relations of cooperation and exchange of relevant information with foreign counterparts bilaterally or through INTERPOL.

747. Information provided by the country refers to the following: Between 2010 and 2013, specific operational contacts were kept with 32 police and official services operating in the²³region, leading to 1 129 messages; of these, 703 were originated by the DGPNR as information requests or responses to foreign authorities' requests, and 426 information requests and responses to Cuba's requests received.

748. Criminal modalities originating exchanges with foreign counterparts include drug offences, with 844 messages (74.7%); second, asset laundering suspicions, with 51 messages (4.5%); murders (these events mainly occur abroad and do not involve hired murders), 48 messages (4.25%); sexual offences, with 32 messages (2.83%); fraud and forgery involving IDs, travel documentation or forms of payment, with 46 messages (4.07%); fraud, 20 messages (1.77%); robbery involving of limited value objects, with 26 messages (2.30%); and financial offences, with 33 messages (2.9%). For similar purposes, during 2013, Cuba exchanged through the INTERPOL's National Central Bureau—La Habana 166 messages (106 requests, 58 responses and 2 reports), and 146 messages

²³ In this sense, sustained exchange prevails with anti-drug services in Ecuador (174), Canada (149), Spain (133), Mexico (98), France (96), Italy (80), Colombia (57), Jamaica (41), Panama (41), Costa Rica (35), Russia (32), and the United Kingdom (30).

received (29 information requests), 39 responses to the country's requirements, 5 reports, and 73 search notifications, issued about Cubans and foreigners with occasional incidence in the Cuban national territory). Through this gateway, the drug matter was the most significant issue in the exchange process, with 109 messages, followed by Medicare fraud in the United States, with 32; third, asset laundering suspicions, with 20; different fraud types, with 10; and sexual offences, with 13.

749. Considering the geographical regions with greater incidence in the exchange of police information, Europe comes first, with 404 messages; South America, with 284; Central America, with 190; North America, with 149; the Caribbean, with 90; Asia and Australia, with 3; and the Middle East, with 1. Cuban authorities have informed that sometimes one investigation has resulted in many information transfers.

750. Moreover, the number of letters rogatory answered for the offences investigated amounted to 17 (2011-2014); 1 of them involved ML (2014). There were 2 letters rogatory requested due to offences analysed, for the same period, both in 2014, and neither of them involved ML. Finally, Cuban authorities have reported to have surrendered 15 fugitives (2011-2014); one of them involved in ML (2014).

751. Good spontaneous cooperation practices at the police level between Cuba and other countries are noted. The MININT may perform appropriate inquiries on behalf of its foreign counterparts, and they may exchange this information in order to comply with the request, for intelligence or investigation purposes for offences in general, ML related offences, associated predicate offences or TF, particularly including the identification and tracing of assets that are the proceeds and instrumentalities of such offences.

752. In this context, there is materialization of information exchanges with Spanish counterparts through the RRAG, referred to previously; also, actions carried out within the framework of the "Butterfly case", as previously discussed, a successful example of fighting transnational organized crime, as well as joint investigations with foreign counterparts in the ML area. Cuban authorities provided this case as an example that special investigative techniques are used; the country also noted that for investigating illicit drugs, transnational criminal activities and money laundering, among others, it has some bodies responsible for implementation. Its application would have been as a non-frequent investigative mechanism, useful and necessary to fight offences that escape traditional methods of law enforcement, among which ML/TF and associated predicate offences are noted.

753. Given the special significance of fundamental rights that could be affected by these special techniques, this means that they should be based on the proper need for investigation purposes and should be carried out by specialized members who are duly authorized in relation to the investigation itself. Thus, according to conventions ruling these special investigative techniques, each State should adopt measures not only for making use of them, but also to allow evidence derived from these techniques into their courts. During the "Butterfly case", members of the Central Office against Illegal Narcotics Trafficking (OCRTIS) and the Central Office for the Suppression of Serious Financial Crime (OCRGDF) of the French MININT, the Directorates of Criminal Investigation, Operations, Anti-Drug National Offices of the MININT, and the FGR in Cuba.

754. Joint work included the exchange of information, work contacts and creation of letters rogatory and allowed for the dismantling of an international cocaine trafficking network, with incidence in France, Spain and the Netherlands mainly, and the prosecution of a French businessman in Cuba.

755. Other more recent cases of information exchange between the DGPNR and counterpart services in the field of ML/TF were provided by Cuban authorities, for example: the National Police of Ecuador (2011), the Federal Criminal Investigation Police of Germany (2011) and the Royal Canadian Mounted Police (2012).

756. Moreover, the Cuban AGR promotes information exchanges based on the signature of international, regional and bilateral legal instruments, as provided by Cuban authorities: at the international level, International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (the Nairobi Convention); Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco); Memorandum of Understanding between the Business Alliance for Secure Commerce (BASC) and the Cuban AGR. At the regional level, Multilateral Convention on Cooperation and Mutual Assistance between Customs Administrations of Latin America, Spain and Portugal (Mexico Convention); Amendment to the Multilateral Convention on Cooperation and Mutual Assistance between the Customs Bureaus of Latin America, Spain and Portugal; COMALEP's Protocol for Exchanging Information (Alert Protocol). And at a bilateral level, Letters of intent signed with 28 customs within the framework of the Caribbean Customs Law Enforcement Council (CCLEC) to respond to cooperation as provided for in the MOU providing the legal basis for the CCLEC, which Cuba cannot be a member of under Sections 1 and 12; Agreements on Mutual Administrative Assistance with: Ukraine, Qatar, Russia, People's Republic of China, Vietnam, Mexico, United Kingdom, Turkey, Venezuela, France, Spain, and Iran.

757. This institution has an Intelligence Liaison Officer for immediate exchange of information in terms of customs offences according to the Customs Enforcement Network (CEN) of the World Customs Organization, and the Regional Intelligence Liaison Office (RILO) for the Caribbean, under the leadership of the Caribbean Customs Law Enforcement Council (CCLEC).

758. The information exchange originated between the AGR and its foreign counterparts is shown in the following table:

Year	2011	2012	2013	2014 ²⁴	TOTAL
Number of cases reported to the World Customs Organization (WCO) Customs Enforcement Network (CEN) database — Exchange between counterparts.	32	66	159	89	346

759. Additionally, the AGR has provided through the Effectiveness Questionnaire two examples of international cooperation for information exchange: both related to the attempt to illegally export large amounts of freely convertible currency, detected at the border by defined supervision and monitoring mechanisms. The first case (2011) is the attempt by a Cuban living in Peru to export USD 49 350 inside Cuban cigar aluminium tubes; he was arrested. The second case (2013) involves CAD 100 000 found inside the wheels of a carry-on luggage belonging to a couple; one Cuban male citizen and two Cuban female citizens were arrested and found to be related (two of them were a married couple). In both cases, Customs authorities proceeded to confiscate the cash, based on the National Bank of Cuba resolutions, and to report the case to the competent authority. However, assessors are unaware, due to lack of data, of whether the actions were effective and the allegations resulted in parallel investigations started on ML/TF, both at the national and international level.

760. In addition, after the on-site visit, there were new data reported on the amounts seized at the border by currency type, precious stones for the 2010-2014 period. These have apparently led to confiscation and the appropriate penalty (a total of 1941 in the case of coins, and 183 for precious stones); but no information has been on whether the reporting to the competent entities resulted in parallel investigations initiated on ML/TF both at the national and international level.

²⁴Statistical data as of 31 August 2014.

761. Global or regional operations in which the AGR has participated are also mentioned in the annexes provided for the evaluation process: During the evaluation period, the "Lionfish" (2013), "Pericón" (2013-2014) and "Copa" (2014) operations have apparently taken place, all of them aiming at fighting drug trafficking; but none of them involved ML/TF issues. The "Atlas" operation against money smuggling (2009-2010) is noted for its recognized relevance and its potential association with ML.

762. The examples of successful provision of international communications with foreign counterparts shown by the AGR shows clear Cuban border authorities' efforts and willingness. Among these, there are several information exchanges with the Caribbean RILO and other customs about boats and crew members suspected to be related to drug trafficking; in addition, spontaneous-warning information transfers on passengers suspected of drug-trafficking from Cuba to different European countries. Nevertheless, these cases are not related to ML/TF.

763. The effort of the Cuban government to allocate financial resources to significantly improve technology expected to improve formal and informal cooperation mechanisms represents an added value to actions carried out by different competent authorities in this area, as discussed in the other parts of this document.

764. In relation to the capacity to cooperate with foreign requests to identify and exchange basic information about the beneficial owner of legal persons and other legal arrangements, no cases have been reported. Based on the arguments presented on this matter in IO 5 and the context of the country, it is believed that there is limited material impact; therefore, the evaluation does not go deeper in analysis.

General Conclusions of Immediate Outcome 2

765. Cuba has developed a wide legal framework in the area of ML/TF, in compliance with internationally accepted standards, which involves different agencies and competent national authorities and provides them with a sound legal basis and appropriate mechanisms to offer provide a wide range of international cooperation. Still, the information provided on international cooperation on ML, associated predicate offences and TF, as analysed above, does not sufficiently show that the framework is fully effective.

766. Cuba's focus on international cooperation and additional measures taken, including the issuance and amendment of different laws and procedures, is an important step to guide public politics and the institutional strengthening of relevant areas, thus rendering Cuba unattractive to carry out ML/TF activities.

767. Cuban authorities can develop joint actions for collaboration and exchange of information with foreign counterparts; they have signed treaties, agreements, and memoranda with its counterparts and international organizations, and, in their absence, they cooperate under the principle of reciprocity.

768. All Cuban authorities interviewed during the visit demonstrated a high commitment to the ML/TF/PW prevention policy supported by the leadership of the country; in this regard, they are aware of the importance of international cooperation in the fight against ML/TF. This is reflected in the National AML/CFT Strategy, published by the Cuban government in July 2014 and setting strategic goals for mitigating the risks identified in the national assessment performed by competent authorities and other relevant stakeholders, particularly *"To contribute to the strengthening and development of relations with international bodies and agencies related to the prevention and fight against ML/TF."*

769. The overall strength and cohesion of different national entities and organizations in the fight against the threat posed by the use of the country's financial system for ML/TF is noted. The willingness to enhance risk management activity, capacity building and adoption of modern technologies to meet the challenge posed by the fight against these criminal procedures under international standards is noted.

770. Cuba's participation in international organizations, e.g. the International Criminal Police Organization (INTERPOL), the Financial Action Task Force of Latin America (GAFILAT) and its Asset Recovery Network (RRAG), the Ibero-American Network for International Legal Cooperation (IberRed), the International Organization of Supreme Audit Institutions (INTOSAI), and the World Customs Organization, among others, is considered a positive feature.

771. In addition, Cuba also participates in multilateral networks through bilateral agreements signed by institutions working on information and financial intelligence exchange in the field of supervision, especially between the DGIOF and the Superintendence of the BCC, and their foreign counterparts.

772. In this line, the DGIOF has applied for membership with the Egmont Group²⁵. Moreover, the Superintendence of the BCC has applied for membership to the Association of Supervisors of Banks of the Americas (ASBA) with which it has maintained exchange relations and participation in international events since 2008.

773. *In general, Cuba presents a moderate level of effectiveness in Immediate Outcome 2*

D. Recommendations on International Cooperation

774. The country is encouraged to expand certified procedures of existing mutual legal assistance in order to include clear criteria to forward to the competent authority, the MINJUS, FGR or TSP (depending on the phases of judicial proceedings, on the types or severity of crimes or on requesting countries, etc.), processes for the prioritization and timely execution of mutual legal assistance requests.

775. Cuba's legal system should incorporate regulations on special investigative techniques, such as undercover operations, interception of communications, access to computer systems, and controlled deliveries, among others, for the investigation of ML/TF and predicate offences. The country may wish to adopt measures for their use, as well as for the admissibility of evidence resulting from these techniques at their courts.

776. Cuba should foster bilateral agreements on the sharing of confiscated assets and, if applicable, their repatriation if they have been confiscated in third countries, particularly when confiscation is a direct or an indirect result of coordinated law enforcement actions between law enforcement authorities in the area of ML/TF.

777. Regulations on passive extradition should be developed to address requests sent by third countries, including internal procedures for processing: reception, evaluation, prioritization criteria, and answer, causes of rejection, realization deadlines, etc.

778. Competent authorities in the area of supervision and financial intelligence are encouraged to search for international cooperation (included spontaneously) in order to comply with AML/CFT objectives. In this regard, the DGIOF has requested access to the Egmont Group. Moreover, the Superintendence of the BCC has applied for membership to the Association of Supervisors of Banks of the Americas (ASBA)

779. Considering the basic goals of the National AML/CFT Strategy, published by the Cuban government in July 2014, authorities are encouraged to continue performing activities to monitor the actions included in

²⁵ It finally became a member in June 2015.



the Strategy, regarding international cooperation in general and ML/TF offences in particular, in order to assess the improvement and development accomplished.

TECHNICAL COMPLIANCE ANNEX

I. INTRODUCTION

CT1. This Annex provides a detailed analysis of Cuba's level of compliance with the FATF Forty Recommendations. It does not include descriptive texts of the country's situation or risks, and it is limited to the analysis of the technical criteria of each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

CT2. The ML/TF system of the Republic of Cuba has not been previously evaluated. Thus, this Annex provides a detailed analysis of all the criteria, according to the methodology of the fourth round, the FATF Forty Recommendations.

II. NATIONAL AML/CFT POLICIES AND COORDINATION

Recommendation 1—Assessing risks and applying a risk-based approach

CT3. *Criterion 1.1* Cuba has developed a methodology for the identification and assessment of ML/TF risks at the national level, which has resulted in the National AML/CFT Strategy, a strategy that provides an identification of national risks and objectives to strengthen the ML/TF system. However, the risks identified with the application of the methodology are not always related to ML/TF. Additionally, mitigation actions are sometimes inconsistent with the risks identified by the country when applying the methodology.

CT4. *Criterion 1.2* Section VII.19 of DL 317 provides for the creation of the Coordinating Committee for the Prevention and Detection of Transactions to Combat ML/TF/PW and the Illegal Flow of Capital (hereinafter the Coordinating Committee), which is responsible for developing and proposing the National AML/CFT Strategy.

CT5. The Committee is chaired by the President of the BCC—and by the Superintendent in his absence. It is made up of representatives of the FGR, MINJUS, MINREX, MININT, AGR, ONAT, and other experts from the bodies and agencies of the Central Administration of the State where necessary. Res. 41/2014, the BCC describes the functions and coordination mechanisms in this area.

CT6. *Criterion 1.3* The first national risk assessment, along with its strategy, was developed only recently, so it has not applied this update yet. However, the Methodological Guide for the Prevention and Detection of Operations in the Fight against Money Laundering and Terrorist Financing and the Illegal Flow of Capital and the Assessment and Application of a Risk-Based Approach in National Risks (hereinafter the Methodological Guide) provides that in this first stage the diagnosis, analysis, strategy and action plan will be designed for three years, with an annual monitoring of compliance with objectives, unless a body provides the Coordinating Committee with the proposal for another update to include new risks or types of detected offences.

CT7. In addition, DL 317 provides that the Coordinating Committee performs the following activity (among others): c) Monitor compliance with the strategy of prevention, detection and fight against ML/TF (...) to verify the effectiveness of the approved action plan and propose adjustments as appropriate.

CT8. *Criterion 1.4* Section 20.2 of DL 317 stipulates that "the strategy for the prevention, detection and fight against ML/TF (...) is presented by the President of the BCC to the Council of Ministers for approval, as often as deemed necessary". All heads of bodies and agencies in the Council of Ministers participate to discuss, approve and therefore learn the results of the evaluation for implementation in the appropriate sector. The methodology states that (p. (22)) "Upon approval of the diagnosis, strategy and action plan, mechanisms are established for dissemination to all competent authorities, regulatory or oversight bodies, natural and legal persons legally defined as reporting entities, as well FIs".

CT9. Res. 48/2014 of the BCC approved the methodological guide and schedule for the preparation and monitoring of the National AML/CFT Strategy. Additionally, reporting entities participated in the development of National AML/CFT Strategy. Once completed, it was disseminated to all sectors.

CT10. *Criterion 1.5* The National AML/CFT Strategy provides actions to mitigate the identified risks. However, it does not provide for the application of a risk-based approach involving risk prioritization.

CT11. *Criterion 1.6* Below is a list of activities that do not apply or partly apply for some criteria of the FATF Recommendations, based on Cuba's specific characteristics. See the appropriate section for a more detailed description.

CT12. This is a list of DNFBPs that do not apply in Cuba.

Casinos	According to Law 86 (February 1959) and Section 219 of Law 62, Criminal Code, casinos are prohibited in Cuba.
Real estate agents	<p>A national resident or permanent resident cannot have more than two homes, one as a residence and another as a holiday home, according to Law 65, General Housing Law. Real estate agents are state entities operating with licences, this activity is state run and regulated. Real estate activity is concentrated in fully Cuban-owned companies.</p> <p>For self-employed workers with a licence to manage the exchange, purchase and sale of homes, Res. 42 of the Ministry of Labour and Social Security (22 August 2013) defines activity 148, that of managers, who provide services for managing and arranging the implementation of exchanges, purchase and sale of homes at the request of customers, which excludes the activity of agencies and direct dealing or dealing on behalf of another person.</p> <p>Foreigners interested in investing in Cuba can only do so for tourism purposes, and the real estate sale service is pending enforcement in amendments to the new law on foreign investment. (Foreign Investment Law 118, 29 March 2014).</p>
Dealers in precious metals and dealers in precious stones	In Cuba there are no private dealers in gold and precious stones. This is a state activity, which is concentrated in the Coral Negro company, a Cuban jewellery producer and dealer. It specializes in jewellery production and retail sale. It provides repair, maintenance and assembly services for watches, clocks and jewellery, as well as precious metal appraisal services and jewellery making. There are registration and control procedures in place for purchase and sale transactions. It is audited and monitored by the Auditing Unit of the institution itself and of the body it reports to and by the CGR (as set out in Law 107/2009). Res. 42 of the Ministry of Labour and Social Security (22 August 2013) defines self-employed workers' activities and their scope. Activity 110, repair of jewellery items, does not cover dealing in metals or precious stones.

Lawyers, notaries, other independent legal professionals and accountants in:	
Managing of client money, securities or other assets.	<p>Under Decree-Law 317, the above professions are reporting entities when they prepare for, or carry out, transactions for customers concerning the management of client money, securities or other assets.</p> <p>However, at present this criterion does not apply as lawyers, notaries and other legal professionals and natural or legal persons working as accountants independent or under other forms of non-state management are not allowed to conduct this activity in accordance with the rules governing the powers and activities of each sector (Decree-Law 81 for lawyers and Law 50 for state notaries).</p>

Organization of financial contributions for the creation, operation or management of companies.	Not applicable—these services are not available in Cuba. Lawyers, notaries, other legal professionals and accountants are not empowered to perform these activities.
Creating, operating or management of legal persons or other legal arrangements, and buying and selling of business entities.	This sector is listed in DL 317 as a reporting entity in the creation, operation or management of legal persons or other structures. It should be noted that according to Cuban authorities, lawyers, notaries, other legal professionals and accountants now do not participate in the buying and selling of business entities in Cuba—they only provide consultancy services for foreign investors.
Trust and company service providers in the following cases	
Providers of trust services and acting as a trustee of an express trust or performing the equivalent function for another form of legal arrangement. Acting as a formation agent of legal persons	Trust services in Cuba are performed through the financial institutions authorized by the BCC. Therefore, all the rules for ML/TF prevention intended for FIs are applied. Providers of the service of acting as a formation agent of legal persons are listed as reporting entities in DL 317/2013, although these functions are not carried out at present.
Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.	These services are not provided for nationals in Cuba. With the economic opening processes, these services are only provided to entities expressly authorized by a licence of the Ministry of Foreign Trade and Foreign Investment, which are required to register with the National Registry of Branch Offices and Agents, Chamber of Commerce of the Republic of Cuba (Decree 206 Section 3).
Acting as a nominee shareholder for another person.	Not applicable, according to the provisions for the records of regular or occasional customers, companies and corporate suppliers of Cuban state-owned companies.

CT13. Financial activities that is not applicable in Cuba and their basis.

Financial instrument	Situation
Issuing and managing means of payment (cheques and traveller's cheques)	Cuba does not issue or manage traveller's checks.
Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.)	BCC DL 172 and DL 173 on Banks and Non-Banking FIs (28 May 1997) set out the appropriate legal framework to promote the efficient development of banks and non-banking FIs, as required in the current situation and prospects of Cuban economy development. Financial intermediation in Cuba is only performed by banks and non-banking FIs.
Trading in exchange, interest rate and index instruments	
Trading in transferable securities	

Financial instrument	Situation
Trading in commodity futures trading	
Underwriting and placement of life insurance and other investment-related insurance.	<p>DL 177 in Insurance and Entity Management was approved in 1997. Section 10 lists life insurance as one of the sectors for operating in the country. Section 10.2.- Group I shall cover (personal) life insurance; Group II, insurance of goods (damage); Group III, credit, surety and civil liability insurance; Group IV, insurance of service; and Group V, reinsurance exclusively.</p> <p>The Cuban insurance market currently operates mainly in the personal insurance sector, with an annual period, providing coverage in the event of death, temporary or permanent disability, medical expenses and funeral expenses; however, it does not operate in the long-term life insurance market yet.</p> <p>It is generally a very limited sector in Cuba, with no insurance with advance premium payment or investment or life insurance of more than one year. It therefore does not apply for the purposes of the FATF Recommendations.</p>

CT14. *Criterion 1.7* The objectives set out in the National Strategy were developed involving reporting entities at the meetings of the Coordinating Committee. The Strategy specifically states (p. 29) that "measures should be proportionate to the identified risks, and the objectives, which have a cascading effect, should include FIs and other DNFBPs," requiring reporting entities to include the relevant provisions of this Strategy in their identification and risk mitigation processes. It is relevant to note that, in addition to the above, several of the provisions in BCC Resolution 73/2014 for APNFDs and BCC Superintendent Instruction 26/2013 for FIs list customers, transactions or high-risk countries from which reporting entities should require enhanced CDD measures.

CT15. *Criterion 1.8* Section 40 of BCC Inst. 26 BIS/2013 provides that "FIs shall apply simplified measures to those permanent and occasional customers showing a lower risk of ML/TF and similarly serious related conduct. [...] Simplified DD measures shall be applied only in cases approved by the BCC Superintendent, upon FI request."

CT16. *Criterion 1.9* In the case of FIs, the Superintendence of the BCC supervises the application of all standards to FIs, including those on risk analysis and mitigation, according to BCC ND 1/2014, which provides risk-based banking supervision and the allocation of resources in areas and risk processes, implementing provisions in Inst. 26/2013.

CT17. In addition, Section 2 BCC Res.73/2014 on general rules for DNFBPs states that "the supervision and control plans of the bodies that supervise reporting entities for these rules provide for compliance with the provisions in this Resolution, which includes obligations related to risk analysis and implementation of mitigation measures.

CT18. *Criterion 1.10* Chapter VII, Section 3 of DL 317 provides for the obligation of reporting entities to identify and assess the vulnerabilities that can emerge in this sector or area and ensure that adopted measures reasonably reduce the identified risks and are proportionate to them.

CT19. In addition, in the case of FIs, Section 3 of BCC Inst. 26/2013, it provides that "FIs are required to identify, analyse and assess their ML/TF risks which are necessarily documented [...]. To this end, its strategy

will be designed and implemented, according to the risk profile defined on the basis of the complexity, volume and diversity of operations and transactions, products and services, as well as the countries, economic sectors and customer segments with which they do business". Furthermore, Section 7 thereof defines that the risks will be managed according to the level of FI exposure, associated with the likelihood of occurrence and impact. When there are greater risks, appropriate measures will be adopted to manage and mitigate them. Section 91 of BCC Inst. 26/2013, provides that FIs shall maintain statistical records of all risk events analysed and reported at any level or competent authority, which will be used at the request of the highest authority level of the FI they report to or the Superintendent for the purpose of assessing the implementation and effectiveness of the established rules.

CT20. Then, Section 5.2 of BCC Res. 51/2013 5, states that "all managers and staff in general shall understand the strategy and measures adopted internally for these purposes, with regular checks being conducted."

CT21. Moreover, in the case of DNFbps, Chapter III, Section 4 of BCC Res. 73/2014 on general rules for DNFbps: "The reporting entities for these rules, when developing the risk prevention plan laid down in the Standards of the Internal Control System issued by the CGR, incorporate the risks identified and assessed as ML/TF/PW vulnerabilities, in order to understand and mitigate them according to their customers, countries or geographical areas with which they can associate their services and transactions." Then, Section 11 of CGR Res. 60/2011, which sets the Standards of the Internal Control System, provides that "the identification of risks is conducted constantly [...] leaving documentary evidence of the process". And Section 13 comments on managers' legal and ethical duty inform on their management, as well as other necessary aspects, to their upper bodies, board of directors and group of employees.

CT22. *Criterion 1.11 (a)* Section 5 of BCC Res. 51/2013 provides the obligation of presidents and representatives of FIs of foreign capital with a licence to operate in Cuba, adopted the strategy of the institution or representative office, focused on risks for ML/TF/PW prevention. In addition, Section 3 of Inst. 26/2013 stipulates that "FIs' boards of directors shall design and implement their strategy according to the risk profile defined on the basis of the complexity, volume and diversity of operations and transactions, products and services, as well as the countries, economic sectors and customer segments with which they do business".

CT23. In the case of DNFbps, CGR Res. 60/2011 sets the Standards of the Internal Control System, including the obligation of preventing risks, applying actions or procedures designed to mitigate or minimize the potential causes and conditions promoting internal and external risks based on their identification and assessment. The above is implemented through the Risk Prevention Plan, which is evaluated in the Prevention and Control Committee and approved in a management collegiate body.

CT24. *Criterion 1.11 (b)* In the case FIs, Section 4 of BCC Res. 51/2013 provides that "the reporting entities for these rules shall have periods strategy review and update and adjust budgets to ensure the necessary resources for the implementation of these rules."

CT25. For DNFbps, CGR Res. 60/2011 provides for the development of "the risk prevention plan [which] constitutes a management tool for systematic follow-up on specific control objectives is updated and regularly analysed with employees' active participation given the presence of facts as appropriate".

CT26. *Criterion 1.11 (c)* BCC Inst. 26/2013 for FIs establishes the possibility of implementing enhanced measures based on the risks identified in different instruments, and Section 39 stipulates that "depth in DD application shall depend on the identified risk profile, and FIs shall adopt simplified or enhanced measures,

as appropriate to" the level of risk identified. For DNFBPs, there is no regulatory provision requiring the adoption of enhanced measures to manage and mitigate higher risks.

CT27. *Criterion 1.12* Section 40 of BCC Ins. 26 BIS 2013 provides that "simplified due diligence measures shall apply only in cases approved by the instructing authority [the Superintendent], upon FI request". In the case of DNFBPs, Section 7 of BCC Res. 73/2014 on the general rules for DNFBPs provides that "when lower ML/TF/PW risks have been identified, simplified DD measures may be applied, provided that this is approved by the senior managers determined by the head of the regulatory or oversight body, as appropriate." Section 8 states that simplified DD measures cannot be accepted where there is a suspicion of ML/TF or in cases of higher risks.

CT28. *Evaluation and Conclusion:* Cuba has developed its National Risk Assessment and the appropriate National Strategy. However, not all of the identified risks are ML/TF risks, depending on the methodology used. Additionally, there is no specific reference to DNFBPs' need for enhanced measures to manage and mitigate higher risks. **Recommendation 1 is rated Largely compliant.**

Recommendation 2 — National Cooperation and Coordination

CT29. *Criterion 2.1* Based on the national risk assessment, Cuba prepared a National AML/CFT Strategy (published in July 2014) establishing strategic objectives and a schedule to implement priority actions. According to the methodology, monitoring will be conducted annually and updated every three years, unless an agency proposes a previous update, if or when necessary.

CT30. Chapter VII, Section 19 of *Criterion 2.2 DL 317* creates the Coordinating Committee, which is responsible for developing and proposing the National AML/CFT Strategy, and it coordinates the policies and actions to combat ML/TF/PW or similarly serious conduct.

CT31. *Criterion 2.3* The Committee is chaired by the President of the BCC—and by the Superintendent in his absence. It is made up of representatives of the FGR, MINJUS, MINREX, MININT, AGR, ONAT, and other experts from the bodies and agencies of the Central Administration of the State where necessary. The DGIOF provides the Secretariat of the Committee. BCC Res. 41/2014 describes the functions and coordination mechanisms in this area. Additionally, the agreement of the Council of State of the Republic of Cuba (19 February 2013) provides for the creation of the State Control Committee as a state advisory body with the objective of presenting, analysing and studying significant cases show illegalities, alleged corruption and criminal acts.

CT32. *Criterion 2.4* Section 20 of DL 317 includes such functions as coordinating policies and actions to combat PW financing.

CT33. *Evaluation and Conclusion:* Cuba has clear and appropriate national coordination and cooperation mechanisms. **Recommendation 2 is rated Compliant.**

Recommendation 33 — Statistics

CT34. *Criterion 33.1 (a)* Sections 7.3 and 7.3.c of Decree 322 of 2013 states the functions of the DGIOF such as introducing software to facilitate the preservation of information and maintain the protection, availability and due integrity of the database used for information processing for at least five years, including statistics from the STRs received and disseminated.

CT35. *Criterion 33.1 (b)* In TSP there is the Directorate of Organization, Planning and Information created by Agreement 461 (17 December 2013) of the Governing Council, which includes the Working Group on Judicial Statistics with such functions as those regulated in Section 28 of the Regulation of Law 82 on People's Courts, 11 July 1997. The data in the judicial statistical system, including the prosecutions and convictions, as well as models and information, that should be reflected in each indicator, are approved by TSP Governing Council agreements.

CT36. Regarding the statistics on investigations, the MININT says that it has a system for the registration, control, follow-up, and statistical analysis of allegations related to criminal acts and other circumstances of police interest. The FGR, in turn, produces statistics of its processes too. However, it is unclear how Cuba implements the above to keep statistics up-to-date and consistent.

CT37. *Criterion 33.1 (c)* The FGR maintains national statistical control on the seizure and forfeiture of assets regulated through the administrative processes laid down in DL 149 of 1994 on unjust enrichment and DL 232 of 2003 on the confiscation of assets in crimes related to drug trafficking, corruption and others, which enables accounting for the number of processes, persons acted upon, number of occupied and confiscated assets and other persons who benefit from these acts. As regards statistics on forfeited assets, the follow-up processes used by the TSP are unclear.

CT38. *Criterion 33. 1 d)* Section 3 of TSP Inst. 214 (27 March 2012), Methodology for the Processing of Letters Rogatory states that "for the purpose of maintaining an adequate control of the administrative processing of letters rogatory and notes verbales, the Department of Judicial Cooperation, will provide a court book for those submitted by Cuban courts to the MINREX and another for those received from foreign courts. In addition to the appropriate number, both books include, according to the consecutive order of those received in the calendar year concerned, the date of filing, the body from which they are received, the submitting court or chamber, the subject and number of case, the country of origin or destination, the diligence to be performed", the person subject to due diligence, the date of return, and the total administrative processing period." For other forms of international cooperation, each requesting or receiving institution collects its own statistics, which translates into dispersion of information on the cooperation provided the country.

CT39. *Evaluation and Conclusion:* Each of the relevant entities has regulated a process of development and updating of statistics. However, Cuba should generate mechanisms for statistics to be up-to-date and consistent at all times. **Recommendation 33 is rated Largely compliant.**

III. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3— Money Laundering Offence

CT40. *Criterion 3.1* Sections 346.1 and 346.2 of the Criminal Code, as amended by Section 3 of DL 316, include such verbs as "purchase", "convert", "transfer", "use" or "hold" in order to "conceal" or "disguise" the illicit origin or "knowingly or having reasonable grounds to assume." It also contains the guiding verbs "cover" or "conceal" associated with the "illegal source of the assets", their "nature", "source", "location", "destination", "movement" or "true ownership" of all funds "knowingly or having reasonable grounds to assume" that come from these offences. Section 3 also refers to the criminal type along with the elements of the attempt and the commission of the offence as part of an organized group.

CT41. *Criterion 3.2* Section 346.1 of the Criminal Code, as amended by Section 3 of DL 316, Cuba includes an extensive list of ML predicate offences. However, the offences of (maritime, air) piracy and counterfeiting of goods (other than works of art) are not specifically listed. The offence of specially protected wildlife is not included in the list of predicate offences for ML, but it is listed as tortious conduct.

CT42. Maritime and air piracy are partially covered under the crime of terrorism and hostage-taking, which are ML predicate offences. According to Cuba, acts not considered terrorist acts are covered under such offences as burglary, robbery, theft, and misappropriation. With regard to the piracy or counterfeiting of products, such predicate offences as smuggling, counterfeiting of works of art and currency are established. According to Cuba, in other cases of piracy, such offences as embezzlement, as well as organized crime, transnational crime and the trafficking of stolen items, covering a wide range of piracy acts may apply.

CT43. *Criterion 3.3* Not applicable. Section 346.1 of the Criminal Code, as amended by Section 3 of DL 316; Cuba uses the approach of the list of predicate offences.

CT44. *Criterion 3.4* Section 346.1 of the Criminal Code, as amended by Section 3 of DL 316, establishes that the ML offence covers "resources, funds, assets, rights, actions, or other forms of participation related to them [...] derived directly or indirectly from related acts [...]" According to Cuba, this is regardless of the value of the assets, as no legislative threshold has been set.

CT45. *Criterion 3.5* Section 346.5 of the Criminal Code, as amended by Section 3 of DL 316, provides that "the offences covered by this Section are sanctioned separately from those committed on the occasion in question".

CT46. *Criterion 3.6* The effectiveness of the Cuban criminal law in terms of territory, according to Chapter II, Sections 4 and 5 of the Criminal Code, covers Cubans and persons without citizenship who commit an offence abroad, if they are in Cuba or they are extradited, and Cubans who commit an offence abroad and are sent to Cuba, and foreigners and persons without citizenship who commit an offence abroad if they are in Cuba and are not extradited, both if they reside in the territory of the country where the acts are committed and in any other country, provided that the offence is also punishable in the place of its commission. This last requirement is not enforceable if the offence is a crime against the fundamental, political or economic interests of the Republic of Cuba, or against humanity, human dignity or collective health, or is prosecutable under international treaties, such as ML, which is subject to the Vienna Convention and Palermo Convention, both ratified by the Republic of Cuba.

CT47. *Criterion 3.7* The ML offence is applicable to all persons committing the predicate offence and performing ML criminalized actions according to Sections 346.1 and 346.2 as amended by Section 3 of DL

316 because there is no prohibition in the country to sanction persons engaging in these acts for ML, even where different legal assets are affected.

CT48. *Criterion 3.8* Section 357 Law 5 on the Code of Criminal Procedure provides that the court issues a judgment evaluating the evidence at the trial, the reasons given by the prosecution and the defence, and the statements made by defendants. It is not a legal requirement that the ML defendant should have been sanctioned before for the predicate offence, so the court performs a comprehensive analysis of the evidentiary material of the case and verifies, at the same time, the existence of the predicate offence and other acts involving ML. Although it is not specifically clear whether to determine the intent to commit ML and the knowledge of the illicit origin of the resources in question, as can be inferred from objective facts, the judgements of ML cases provided, it is apparent that judges clearly make inferences from other facts to rule on the liability of the defendant.

CT49. *Criterion 3.9* Cuban criminal law provides that when ML convictions are ruled, a penalty of imprisonment from five to twelve years shall be applied, and if there is tortious conduct, from seven to 15 years, in addition to the accessory penalty of forfeiture or confiscation of assets.

CT50. *Criterion 3.10* Sections 28.4, 28.5 and 28.6 of Law 62, Criminal Code, provides for criminal liability for legal persons for the offences envisaged in this code or in special laws, committed within the sphere of action of such legal persons, when they are committed by their representation or by agreement of their members, without prejudice to the individual criminal liability of the offenders or accomplices in the punishable act.

CT51. *Criterion 3.11* Section 18 of Law 62, Criminal Code, establishes the different levels of involvement and includes the person committing the act (18.2.a), the person organizing the offence plan and commission (18.2.c), the person cooperating in the commission of the criminal act (18.2.ch), the aiding person (18.2.ch, 18.3.b and 18.3.ch), the abetting person (18.2.c and 18.3.a), the facilitating person (18.2.ch and 18.3.c and ch), and the advising person (18.2.b and 18.3.b). It is also an aggravating circumstance of criminal liability, as set out in Section 53.a of the Criminal Code, "to commit the act as part of a group of three or more persons".

CT52. *Evaluation and Conclusion:* Cuba does not list such offences as maritime and air piracy as ML predicate offences, but they can sometimes be considered terrorism. This is also the case with counterfeit goods (other than works of art) and environmental crime. The latter is only included as tortious conduct. **Recommendation 3 is rated Largely compliant.**

Recommendation 4— Confiscation and Provisional Measures

CT53. *Criterion 4.1*In general, Sections 28.3, 43.1 and 44.1 of Law 62 on the Criminal Code list forfeiture and confiscation of assets as penalties applicable to natural persons. Confiscation consists of depriving the sanctioned person of the assets or objects used in perpetrating the offence and the proceeds of the offence, as well as the assets or objects of use, possession or illegal trade that had been seized from the criminal. Furthermore, confiscation consists in depriving the criminal of some or all of his assets, regardless of whether or not they are related to the commission of the offence. This last concept is broad enough to cover the deprivation of property of corresponding value. These items are applicable to the ML and TF offences.

CT54. Specifically, Section 3 of DL 316, amending Section 346.6 of Law 62 (Criminal Code), provides that persons found liable for the ML offence are also subject to the accessory penalty of forfeiture of assets. Additionally, forfeiture applies to terrorism and financing of terrorism as they are offences against state security, according to Section 1.1 of Law 93/2001 against terrorist acts.

CT55. *Criterion 4.2* Sections 135 and 277 of Law 5 on the Code of Criminal Procedure regulate the seizure of assets or related items that may have a link with the offence, with the potential accessory penalty of confiscation or forfeiture. The seizure is performed at the investigative stage (Section 119). Section 122 of Law 5 describes the investigative actions to be carried out by investigating officers to prove the offence. In addition, Section 8 of Law 93/2001 states that in cases of terrorism the preventive seizure and freezing of assets or funds that may be involved in terrorist acts may be applied.

CT56. *Criterion 4.3* The General Prosecutor's Office is the body that protects the rights of third parties and ensures the legality of the proceeding. TSP Decision 205 (20 November 1984) clarifies: "in accordance with the provisions of Section 43 of the Criminal Code, the assets confiscated are only those owned by the defendant, which were used or intended for use in the commission of the offence, as well as the direct or indirect proceeds of the offence that are not owned by a third party". Therefore, third parties' assets cannot be confiscated, but in accordance with the provisions of Section 70.3 of the Criminal Code, the damaged person is entitled to the replacement of the item even if it is held by a third party. As a result, the proceeds of the crime are restituted the damaged person even if lawfully acquired by a third party." In the case of forfeiture, it is not clear whether the same protection applies to bona fide third parties.

CT57. *Criterion 4.4* Sections 43.3.a and 43.3.b of Law 62 on the Criminal Code set out the rules on the destination of confiscated assets. Decree 313 (21 August 2013) regulates how the deposited movable assets are transferred to the State, once the forfeiture, confiscation, and the rules for deposit, disposition, preservation, and return, where applicable, have been established. The General Housing Law applies to real estate, which lays down the provisions for the disposition of property held by the State. Both processes cover the basics, but more details could be provided for greater effectiveness.

CT58. *Evaluation and Conclusion:* The Criminal Code provides for property confiscation and forfeiture as final measures and seizure as a provisional measure. In cases of forfeiture, property of corresponding value applies, but this is not the case with confiscation. Measures exist to protect the rights of bona fide third parties in cases of confiscation, although it is not clear whether they apply in cases of forfeiture. In addition, there are mechanisms for the disposition of property in place, but they could be more detailed. **Recommendation 4 is rated Largely compliant.**

Legal and operational application

Recommendation 29 — Financial Intelligence Units (FIU)

CT59. *Criterion 29.1* Sections 5 and 6 of Chapter II of DL 317/2013 provide for the creation of the DGIOF as a national centre for receiving, centralizing and analysing suspicious transaction reports and requesting additional information related to ML, ML predicate offences, TF, or PW. It also has the responsibility of notifying the competent authorities of cases of suspicion of the illegality of the source of the assets involved.

CT60. *Criterion 29.2 (a)* Section 10.1 of DL 317/2013 states that when one of the reporting entities, including DNFBPs, is involved in a transaction or financial transaction and suspects or has reasonable grounds to suspect that the funds are the proceeds of ML/TF/PW crime and similarly serious activities, it has the obligation to promptly report its suspicion to the DGIOF.

CT61. *Criterion 29.2 (b)* Section 7.1.b, 7.1.c and 7.1.d of Decree 322/2013 sets out the DGIOF's function of receiving reporting entities' suspicious transaction reports, cash transaction reports exceeding the threshold set by the BCC, other information established for the purpose of clarifying the analysis and ongoing investigations, provided by the AGR, the ONAT, the Superintendence of Insurance, or other bodies or agencies as necessary, when specifically requested, and reports and data about the improper use of banking

services, as well as alleged criminal acts and manifestations of corruption in the Cuban banking and financial system.

CT62. *Criterion 29.3 (a)* Section 6.2 of DL 317 provides that the DGIOF is required to request additional information. Section 3.2 of Decree 322 provides that the DGIOF has the power to request relevant information to clarify and analyse the activities associated with ML/TF/FPWMD and similarly serious offences.

CT63. *Criterion 29.3 (b)* Section 6.2 of DL 317/2013 states that the DGIOF is responsible for requesting additional information, as well as notifying the competent authorities when there are suspicions of illegality, including public sources of information. Section 7.c and 7.d of Decree 322 stipulates that the DGIOF has the function of receiving information consisting of: other information as agreed for the purpose of clarifying the analysis and ongoing investigations, which are provided by the AGR, the ONAT, the Superintendence of Insurance, or other bodies or agencies are necessary, where specifically requested; and reports and data about the improper use of banking services, as well as the alleged criminal acts and manifestations of corruption in the Cuban banking and financial system. In addition, Section 86 of BCC Inst. 26/2013 provides that FIs are required to report the information required from them, and Section 30 of Res. 73/2014 on DNFBPs states that the DGIOF may request all bodies and entities any information relevant to ML/TF/PW investigation.

CT64. *Criterion 29.4 (a) and (b)* Section 7.2.a establishes that DGIOF duties include performing operating analysis, which consists of aggregating and using the information in the identification of specific vulnerabilities persons' conduct, asset management and any other criminal association, in order to assess the compliance of existing legislation and propose appropriate actions to the Superintendent, as well as to determine the link between the results of this information and potential proceeds of ML offences, including predicate offences. Section 7.2.b states that the DGIOF has the responsibility of conducting strategic analysis to identify threats and vulnerabilities for ML, predicate offences, TF/PW.

CT65. *Criterion 29.5* Section 7.3.a of Decree 322/2013 establishes that information processing, includes dissemination of analysis results to relevant competent authorities, where appropriate, ex officio or at their request. Information is disseminated through secure and protected channels and can only be used within the limits set by existing laws.

CT66. *Criterion 29.6 a)* Section 6.2 of DL 317/2013 states that the DGIOF is responsible for disseminating the information through protected channels. In addition, Decree 322/2013 Section 7.3.a and 7.3.c explains that the DGIOF has such duties as introducing software for information collection, processing and preservation. The results are disseminated through secure and protected channels. The database used for information processing should be protected and kept available and with due integrity for at least five (5) years.

CT67. *Criterion 29.6 (b) and (c)* Section 31.a and 31.b DL 199/1999 on Security and Protection of Official Information, applicable to the DGIOF according to ND 1/2013, explains that the heads of state bodies, including the DGIOF, are required to "educate, prepare and raise awareness among their staff to maintain due discretion and partitioning in the classified or limited official use information within their knowledge because of their position, as well as comply with all the measures established in terms of the security and protection of this information" and take special control of such technology as portable computing devices, magnetic storage media, among others, when they contain official, classified or limited use information. The authorities say that they are in the process of implementing a computer system for STR filing, processing and analysis.

CT68. *Criterion 29.6 (c)* Aspects related to DGIOF access, protection and security are regulated in DL 186 of 1998, which is the general law governing the system of security and physical protection for state entities. Additionally, in the DGIOF it is compulsory to carry a tag indicating access to areas as appropriate. The facilities have security cameras, alarms and staff from a security and protection agency. There is also a liability act that all DGIOF member need to sign for authorized access to the documentation classified with a commitment not to disclose the classified information therein. As indicated by the authorities, the organization is in the process of changing facilities to strengthen security measures and the infrastructure in general.

CT69. *Criterion 29.7 (a)* According to Sections 2.1, 3.1, 3.2, 7.1, 7.2, and 7.3.a of Decree 322/213, the DGIOF is the central financial intelligence unit and has the authority, legal capacity and autonomy is to receive, request, disseminate, and analyse ML/TF/PW information.

CT70. *Criterion 29.7 (b)* Section 2.2, 7 of Decree 322/2013 grants the DGIOF the competence of independently interacting with other competent authorities at a national level, as the specifically designated contact in its relations with specialized foreign agencies and bodies, and exchanging information with counterpart entities, for asset monitoring and investigation of ML/TF/PW offences and similarly serious conduct, in accordance with agreements and memoranda of understanding signed for non-judicial cooperation, in compliance with existing legislation and within the established limits and powers. In addition, Sections 12-15 of Chapter IV of the decree regulates DGIOF cooperation with foreign counterparts.

CT71. *Criterion 29.7 (c) and (d)* Thus, the DGIOF has the power to act autonomously and independently and is the central authority to receive, analyse, disseminate, and request information on ML/TF/PW and other related crimes to other national authorities and foreign counterparts. In addition, Section 6 of Decree 322/2013 states that to perform its functions, the DGIOF has the assets and funds that are allocated to it by the BCC and that are directly administered by the DGIOF. However, for the on-site visit there is a Quality Committee involving various authorities until the STR is filed with the competent authority²⁶.

CT72. *Criterion 29.8* The membership application for the Egmont Group was submitted in 28 March 2014. The Egmont Group, after checking that Cuba was sponsored by Mexico and Brazil, endorsed the start of the membership process²⁷.

CT73. *Evaluation and Conclusion:* Cuba has a legal framework that grants broad powers to the DGIOF, which is autonomous, is the central agency for the reception of STRs, can perform operational and strategic analysis, can disseminate its reports to the competent authorities, and can receive additional information from different sources. During the on-site visit, it became evident that the DGIOF is in undergoing a process of infrastructure and computer system strengthening. It also has a Quality Committee, which could, because of its members, undermine the operational independence of the DGIOF. **Recommendation 29 is rated Largely compliant.**

Recommendation 30 — Responsibilities of Law Enforcement and Investigative Authorities

CT74. *Criterion 30.1* Sections 119-240 of Law 5 on the Code of Criminal Procedure lays down PNR powers and procedures of investigation. In addition, DL 317 refers to the MININT, and hence to the PNR, as a member of the Coordinating Committee for designing national ML/TF policies.

²⁶ The DGIOF amended Directive 1 of 2013, providing for the participation of the Superintendence in the Quality Committee, with the issuance of Directive 3 of 2014. With this reform, the Superintendence legal expert was removed from the Quality Committee. Although assessors' concern was addressed, the regulatory amendment was made after the on-site visit, so this information cannot be considered in the ratings of this report.

²⁷ At the 23rd Plenary held in June 2014, the DGIOF of Cuba formally entered the Egmont Group.

CT75. *Criterion 30.2* Section 277 of Law 5 on the Code of Criminal Procedure empowers authorities to conduct investigations involving assets and imposing their seizure or attachment. In addition, Res. 12 of 2014 of the Ministry of Domestic Affairs appoints the PNR General Directorate to centralize information exchange and coordinate actions among bodies for criminal investigation and combat of the MININT with the DGIOF, and BCC ND 1/2013, in the general provisions under 2.11, and specific aspects of joint investigations from A to F, sets out the procedure for conducting joint financial investigations requested by or to the DGIOF. There is a legal framework for parallel financial investigations; however, it is very limited and the processes for this kind of investigation are not clear.

CT76. *Criterion 30.3* Section 119 of Law 5 on the Code of Criminal Procedure explains that the Police, noting a criminal act, may impose, where appropriate, any provisional measures considered (including those related to assets), and immediately undertake the appropriate proceedings. Appropriate proceedings include the seizure of objects and instrumentalities of the offence; the inspection or reconstruction of the place of commission. These proceedings can be arranged by order of the investigating officer or prosecutor without a court order. In addition, Section 135 states that "the competent authority [police, investigating officer or prosecutor] shall collect the weapons, instrumentalities or any proceeds of crime that may be related to the offence and that are in the place of commission, in its surroundings, held by the defendant or elsewhere". In addition, Section 229 provides that "when seizing the instrumentalities and proceeds of crime, the documents, papers or any other items found can be collected too if needed for the result of the investigation". According to the criminal proceeding, the seized assets may be disposed of during the process, and only the court, when making a judgment, decides on their destination: they may be confiscated, forfeited or returned to their rightful owner or holder, who can access the property only in this case.

CT77. *Criterion 30.4* Not applicable. Law enforcement authorities in Cuba have the responsibility to investigate and prosecute crimes.

CT78. *Criterion 30.5* Not applicable. The CGR in Cuba has no investigative powers.

CT79. *Evaluation and Conclusion:* Although there is a legal framework to investigate, seize, freeze, confiscate, and forfeit property, there are no clear procedures to pursue parallel financial investigations.

Recommendation 30 is rated Largely Compliant.

Recommendation 31— Powers of Law Enforcement and Investigative Authorities

CT80. *Criterion 31.1 a)* Section 41 of Law 5/1977 on the Code of Criminal Procedure establishes that "bodies, agencies, organizations and other entities, including economic entities of any kind, are required to provide courts, prosecutors, investigating officers or the police, in their respective cases, with any reports, data and background information required by them for the crime investigation, within the term set by them, which may not exceed twenty business days following the date on which the commission is received. This term may only be extended, in exceptional cases, for a period set by the competent authority."

CT81. *Criterion 31.1 (b), (c) and (d)* Sections 119-240 of Law 5/1977 on the Code of Criminal Procedure lay down PNR powers and procedures of investigation. They describe police powers and actions to learn about the criminal act (Section 119). Starting from Section 122, the law describes the investigating officer's actions to verify the offence, including actions such as the reconstruction of the facts (Section 133), the seizure of weapons, instrumentalities or the proceeds of crime (Section 135), the defendant's identity (Section 151), the defendant's statement (Section 161), witnesses' statements (Section 167), the confrontation of witnesses (Section 196), the expert opinion and experts (Section 200), the house search (Section 215), the review and retention of correspondence (Section 228). It also includes provisions for searches in public places, homes, and foreign aircraft or vessels.

CT82. Criterion 31.2. Although Cuba ratified the Vienna and Palermo Conventions, it has no special legal provisions on special investigative techniques²⁸.

CT83. *Criteria 31.3 and 31.4* According to Section 41 of the Law 5/1977 on the Code of Criminal Procedure provides that courts, prosecutors, investigating officers, or police may require, from any agency or entity, including the DGIOF and FIs, information, reports, data, and others for crime investigation, within the period set by them. The tracing of assets by the authorities does not require prior notice to the owner; only the decision of the competent authority is required. In addition, agreements for the exchange of information on other assets with the DGIOF, the ONAT, the MINJUS (notary and company registry), the MINCEX, the AGR, the Real Estate Registry, and the Chamber of Commerce have been adopted, which speeds up the identification of assets. Similarly, the MININT has automated records of the owners of vessels, vehicles and firearms, to which investigators have access.

CT84. *Evaluation and Conclusion:* Although Cuba is a signatory to the United Nations conventions, it does not have a legal framework to use special investigative techniques. **Recommendation 31 is rated Partially compliant.**

Recommendation 32 – Cash Couriers

CT85. *Criterion 32.1* Section 6 of DL 162/1996 on Customs Control Regulations establishes that "all goods, assets and securities that are imported or exported under any of the regimes established in this DL, including those that are exempt from customs duties, tariffs and other charges, shall be duly declared to the Customs."

CT86. *Criterion 32.2* The Customs Declaration for Passengers established by AGR Res 439 indicates that "every passenger or head of household coming into Cuba shall fill this Declaration." Section 2 of BCC Res. 17 of 2012 provides that if a passenger is carrying an amount in cash or cheques exceeding USD 5 000 or the equivalent amount in other FCCs when entering Cuba, a Customs Declaration must be presented. Sections 3 and 5 stipulate that passengers may leave Cuban territory with up to USD 5 000 in cash, cheques or the equivalent amount in other FCCs and must declare it at the Customs. According to Res. 439, this written declaration shall be based on the model of customs declaration for passengers.

CT87. *Criterion 32.3* Sections 51, 52 and 53 DL 162/1996 on Customs Control Regulations provide that "passengers entering and leaving the national territory shall present a Customs Declaration covering all items carried other than their personal belongings. [...] Any neglect or omission, regarding the Declaration, provided that there is no evidence of bad faith, may be remedied with an oral statement before the customs authority at the time of baggage control. [...] When the customs authority considers it appropriate, it shall proceed to the confrontation of the declaration with the actual content of the baggage." If the situation occurs in leaving the country, the passenger should also show the documents proving authorization the export of an amount exceeding USD 5 000 or other freely convertible currencies.

CT88. *Criterion 32.4* Section 19 of DL 162/1996 on Customs Control Regulations grants the Customs powers, inter alia, to inspect documents, supports, business correspondence, records, accounting books, licences, permits, banking transactions, commercial and tax operations, and other elements that can serve as a basis for determining customs operations; hearing statements, testimonies, conducting interrogations, confrontations and identification, and referring to users or to third parties for proceedings; exercising customs control over the premises, offices, stores, vehicles, means of transport, packing, persons and other assets and

²⁸On 1 April 2015, the Governing Council of the Supreme Popular Court agreed on Decision 443, which clarifies the requirements and guarantees to observe for implementing a "controlled delivery", as a special investigative technique, under international conventions combating illicit trafficking in narcotic drugs and psychotropic substances, organized transnational crime, and corruption. It also establishes its significance as evidence in criminal processes.

places, including searches when there are allegedly goods or items that are the proceeds of violation of customs legislation resulting in fraud or smuggling.

CT89. *Criterion 32.5* Section 17 DL 22/79 on Customs Tariffs states that without prejudice to criminal liability, Customs performs the administrative confiscation of imported products in the following cases: When their entry is prohibited, when the products are brought or sent with a fraudulent declaration or when the products are brought or sent involving violation of the provisions in the existing legislation. In other cases concerning measures applicable to exports, Section 6.20.b of Decree 277/2005 on administrative customs violations provides for confiscation for travellers trying to take goods from the country without a Customs Declaration or otherwise evading customs control. In addition to the foregoing, if there is a connection with a potential crime, convictions and confiscation measures may be implemented under the Criminal Code.

CT90. *Criterion 32.6* Section 3 of AGR Res. 183/2014 sets out the mechanism used by the Customs to report or disclose information to the DGIOF related to suspicious cross-border transport incidents.

CT91. *Criterion 32.7* Section 16 of DL 162/1996 on Customs Control Regulations lays down Customs duties, inter alia, "to develop the policy and the procedural and regulatory basis for the exercise of customs control in the application of different customs regimes, while fostering, in conjunction with other related agencies, measures to facilitate trade and passenger traffic; to participate in the development of state programs of prevention and combat of illegal activities in its area of competence and perform the actions directed, liaising with other authorities and agencies as appropriate." Additionally, there is a Cooperation Framework Agreement between the MININT and the Head of the AGR for the overall strengthening of border services and security. Annex 1 sets out the areas for the signing of conventions or specific agreements, including the exchange with the Directorate of Foreign and Immigrant Identification.

CT92. *Criterion 32.8* Section 16 of DL 162/1996 on Customs Control Regulations provide that Customs authorities also have the duty "to impose administrative sanctions for violations or breaches of customs rules committed by natural or legal persons or their representatives and to dispose of the seized or abandoned goods in the name and on behalf of the State." In addition, Section 19 provides that Customs authorities have the authority, inter alia, "to take the appropriate provisional measures necessary for proper conservation of the evidence, including the retention of goods and means of transport, and conduct all the proceedings, performing the necessary tests for the correct and timely determination of customs duties and the application of sanctions as appropriate." The above rules apply when there is indication, suspicion or evidence of the occurrence of criminal acts or customs administrative breaches, so they may be applied if there is suspicion of ML/TF or predicate offences.

CT93. *Criterion 32.9* Section 16 of DL 162/1996 on Customs Control Regulations stipulates that Customs authorities also have the responsibility "to comply with and enforce, where appropriate, treaties, conventions and agreements on customs matters and others associated with customs activities, to which the Republic of Cuba is a signatory." Customs authorities retain all Customs Declaration for Passengers as evidence of the act performed by the declaring party, including statements or disclosures that exceed the threshold permitted by the BCC; if there is a false statement or disclosure, or if there is suspicion of ML/TF, these documents support the imposition of administrative sanctions where appropriate. If there is suspicion of ML/TF, in addition, the established measures are adopted, including the dissemination of information to the appropriate authorities.

CT94. *Criterion 32.10* With the processes of information collection with the written declaration system, it does not seem to restrict trade payments between countries or free movement of capital.

CT95. *Criterion 32.11* In line with Criterion 32.5, Section 17 of DL 22/79 on Customs Tariffs provide that Customs authorities perform the administrative confiscation of imported products failing to comply with customs rules and Decree 277/2005 on administrative customs violations—Section 6.20.b provides for confiscation for travellers trying to take goods from the country without a Customs Declaration or otherwise evading customs control. The above is without prejudice to criminal liability; therefore, when ML/TF-related acts and ML predicate offences are committed, the Customs authorities inform the competent bodies for investigation.

CT96. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 32 is rated Compliant.**

IV. TERRORIST FINANCING AND FINANCING OF PROLIFERATION OF MDW

Recommendation 5 — Terrorist Financing Offence

CT97. *Criterion 5.1* Cuba has signed and ratified the Convention for the Suppression of the Financing of Terrorism in November 2001, and consequently criminalizes the TF offence in Section 25 of Law 93/2001, as amended by DL 316, Section 1, stating the following: "1. Any person who, by any available means, directly or indirectly, collects, transports, provides, or holds funds or financial or material resources intended to be used, fully or partially, to commit any of the offences referred to herein or known to be used to commit any of the offences shall be imprisoned from 10 to 30 years." Additionally, Section 26.1 of the same Law, as amended by DL 316, describes the case that acts are intended "to cause death or serious injury to any person not participating in the hostilities in a situation of armed conflict, when the purpose of the act, by its nature or context, is to intimidate a population or to compel a government or an international organization to perform or abstain from performing an act." Moreover, Law 93/2001 includes all conduct properly covered by conventions annexed to the Convention for the Suppression of the Financing of Terrorism.

CT98. *Criterion 5.2 (a)* Section 25.1 of Law 93/2001, as amended by DL 316 in 2013, defines that "Any person who, by any available means, directly or indirectly, collects, transports, provides, or holds funds or financial or material resources intended [with intention] to [...] be used [...] to commit any of the offences referred to herein [terrorist acts], or known to be used to commit any of these offences, shall be punished with imprisonment from 10 to 30 years."

CT99. *Criterion 5.2 (b)* Section 25.2 of Law 93/2001 defines a similar penalty for "any person who, directly or indirectly, provides another person or entity with funding, financial or material resources, or financial services or other related services intended to commit any of the offences referred to herein." In addition, Section 25.3, as drafted in Extraordinary OG 34, 2 August 2014, stipulates that: "when the acts described above are committed in favour of a person or entity related to terrorist activities, without funding, resources or services provided, whichever their origin may be, being used or intended for use to commit the offences as defined herein, the penalty shall be imprisonment from four to 10 years." Thus, the conduct described in Sections 25.1 and 25.2, even the action of collecting funds in favour of a person or entity related to terrorist activity, even if funds are not intended directly to commit terrorist acts, are punished with imprisonment from four to 10 years.

CT100. *Criterion 5.3* Section 25.3 of Law 93/2001, as amended by DL 316, as worded in Extraordinary OG 34, 2 August 2014, provides that: "...regardless of their origin...", referring to whether they have a legitimate or illegitimate origin. The term "funds" is defined by Annex 1 to Law 93: "Funds shall be taken as assets of any kind, tangible or intangible, movable or immovable, not depending on how they were obtained, and documents or legal instrumentalities, of any form, included digital or electronic documents, proving ownership or other rights on them, included but not limited to bank credits, traveller's cheques, money orders, shares, securities, bonds, bills of exchange, and letters of credit."

CT101. *Criterion 5.4* Section 25.3 of Law 93/2001, as amended by DL 316, defines that "When the acts described above [25.1 and 25.2] are committed in favour of a person or entity related to terrorist activities, without funding, resources or services provided [...] being used or intended for use to commit offences as defined herein, the penalty shall be imprisonment from four to 10 years."

CT102. *Criterion 5.5* Section 357 of Law 5 on the Code of Criminal Procedure establishes that the Court based on the evidence collected during trial, reasons given by the prosecution and the defence, and statement made by the defendant, issues a judgment, arguing the reasons why the act has been proven, based on its assessment, on the principle of free weighting of evidence, from which the analysis of acts are declared

proven. In the Cuban criminal justice system, weighting evidence should provide circumstances of criminal acts; otherwise, there cannot be subsumption regarding the criminal type described in law. Therefore, as the offence is not criminalized, it will be excluded. In this context, subjective elements are restricted to the intention of the actor (wilful misconduct or gross negligence), while factual propositions related to the punishable act are objective.

CT103. *Criterion 5.6* Section 25 of Law 93/2001, as amended by DL 316, provides that when a conviction is imposed for TF, proportionate and dissuasive criminal penalties apply to natural persons convicted for this offence—imprisonment from four to 30 years may apply, as appropriate.

CT104. *Criterion 5.7* Sections 16.3, 16.4, 28.4, 28.5, and 28.6 of Law 62 on the Criminal Code provide for criminal liability for both natural persons and legal persons. For example, it establishes the following in Section 16.1: "Criminal liability is imposed upon natural persons and legal persons. [...] 3. Legal persons are liable for the offences envisaged in this code or in special laws, committed within the sphere of action of such legal persons, when they are committed by their representation or by agreement of their members, without prejudice to the individual criminal liability of the offenders or accomplices in the punishable act." Section 28.4, among others, complements it by including penalties that may apply to legal persons.

CT105. *Criterion 5.8* Section 5 of Law 93/2001 states that "preparatory, tentative and consummated acts are punishable." In addition, in accordance with rules in the Criminal Code the following persons will be punished due to preparatory acts: any person a) who, having decided to commit any of the offences envisaged herein, proposes to one or more people to participate in the execution of the act; b) who agrees with one or more people to execute any of the offences defined herein and jointly decide to commit them; c) who encourages or induces (an)other person(s), verbally, in writing or in any other form, publicly or privately, to execute any of the offences envisaged herein. If the encouragement or inducement results in the commission of the offence, the person initiating the act is punished as the perpetrator of the offence committed." In addition, Section 18 of Law 62 on the Criminal Code establishes enforceable liability to both perpetrators and accomplices. It is also an aggravating circumstance of criminal liability, as set out in Section 53.a of the Criminal Code, "to commit the act as part of a group of three or more persons."

CT106. *Criterion 5.9.* Section 346.1 of Law 62 on the Criminal Code, as amended by DL 316 (Section 3), includes the offences of terrorism and TF, as predicate offences of ML.

CT107. *Criterion 5.10.* Section 2 of Law 93/2001 claims that "the acts referred to in previous section [terrorist acts], in order to define punishment, are considered to be committed within the Cuban territory if the preparatory or execution phase is carried out in it by the defendant, even if the effect is observed in a foreign territory, or if these are committed in a foreign territory and their effects are observed in the Cuban territory." Additionally, offences listed by Section 25.1 are materialized when "collected, provided" funds are "intended to [...] be used" in such a way that the terrorist or the location of the terrorist act does not affect the establishment of the offence.

CT108. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 5 is rated Compliant.**

Recommendation 6 — Targeted Financial Sanctions Related to Terrorism and Terrorist Financing.

CT109. *Criterion 6.1 (a)* Section 18 of DL 317 states that "the MINREX will process with the applicable Committee of the UNSC as appropriate to comply with UNSCR 1267 (1999), its successive resolutions, and UNSCR 1373 (2001)."

CT110. This DL, in the second final provision, sets out the powers of the MINREX to regulate the implementation of the DL. In this context, Res. 85/2014 approved the Regulation for the Cooperation between States and the Relationship between the UNSC and National Entities with Regard to the Prevention and Combat of ML, TF, PW and the Illegal Flow of Capital. This Regulation establishes that the DGAMDI is the unit responsible for processing communications of national entities with the UNSC (Res. 1267 and successive resolutions) and Member States (Res. 1373 and successive resolutions). In this context, the DGAMDI is in charge of circulating, without delay, these lists to the national entities in the Coordinating Committee.

CT111. Regarding the proposed designation of persons and entities or their de-listing from UNSC lists, Section 7 of Res. 85/2014 establishes that all Cuban requests should be received from the MININT or be forwarded to it if received directly from any other competent national body. Moreover, MININT Res. 12/2014 appoints the DGPNR to centralize information exchange and coordinate actions among bodies for criminal investigation and combat of the MININT with the DGIOF. Thus: [...] 2. It coordinates, as appropriate, the participation of the bodies for criminal investigation and combat of the MININT concerning the enforcement of measures and actions under the established financial sanctions regimes through UNSCR 1267 (1999), UNSCR 1988 (2011) and successive resolutions, [...], and those related to the implementation of UNSCR 1373 (2001).

CT112. In addition, the Procedure annexed to Res. 12/2014 provides that the DGPNR is empowered to act as a competent authority to propose, to the relevant committees, the designation of persons or entities pursuant to UNSCR 1267, 1989 and 1988 and to centralize the actions of bodies for criminal investigation and combat of the MININT for compliance with and implementation of this procedure in Cuba. These proposals are processed through the MINREX, in compliance with Res. 85/2014 of this Ministry.

CT113. *(Criterion 6.1 (b))* Section 7 of the Procedure defines that "during the process of identification to suggest the UNSC the designation of persons and entities under UNSCRs 1267, 1988 [...], and successive resolutions, the DGPNR centralizes and compiles the relevant information or documentation submitted by the remaining bodies for criminal investigation and combat of the MININT, the DGIOF, other competent authorities and regulatory bodies, as stipulated in DL 317/2013, in order to demonstrate that they meet the criteria to be designated as applicable according to the above Resolutions and Section 4." Section 4 of the Procedure defines the designation criteria according to the UNSCR, for lists of persons and entities related to terrorism and terrorist financing according to the FATF Standards.

CT114. Criterion 6.1 (c) Section 6 of the Procedure defines that "the identification and proposals for designation of persons and entities to be included in the lists of the Res. 1267 (1999), 1988 (2011), [...], and successive resolutions; [...] all of the UNSC, are based on the designation criteria established by the UNSC for the lists related to terrorism and terrorist financing, and evidentiary standards for reasons or reasonable basis as follows, without requiring a criminal process", pursuant to the FATF Recommendations. Section 6 establishes the standards for weighing evidence of reasons applied by competent authorities and is not subject to the proposal or dependent on the existence of criminal proceedings. When this section refers to this circumstance as one of the possibilities, it complements the remaining subsections; it is clear, then, that if there are criminal proceedings, there will be an increased number of pieces of evidence on that person.

CT115. *Criteria 6.1 (d) and (e)* Section 8 of the Procedure stipulates that "proposals for designating Committees included in UNSCRs 1267, 1988, and successive resolutions, contain as much information as possible about the suggested name, enough identification information of individuals, groups, companies, and entities, a summary of the case with the arguments, defining whether there is authorization or not to grant the Cuban government responsibility for its designation by the Committee of the UNSC, in accordance with established procedures and forms, as applicable for each of the Resolutions mentioned."

CT116. Criterion 6.2 (a) Section 1 of MININT Res. 12, published in the OG 25 June 2014, declares "To appoint the DGPNR to centralize the information exchange and coordinate actions of MININT entities combating and investigating crimes, through the DGIOF, for which [...] it coordinates, as appropriate, the participation of the bodies for criminal investigation and combat of the MININT concerning the enforcement of measures and actions by virtue of the established financial sanctions regimes through [...] the implementation of UNSCR 1737 (2001)." Additionally, Section 2 sets out that "under the international commitments signed by Cuba as a member of the UN, pursuant to UNSCR 1373 (2001), it coordinates the process of identification, designation and exclusion, freezing and unfreezing, without delay, if funds and other assets, following the national list or a request made by another country.

CT117. Criterion 6.2 (b) The Procedure annexed to MININT Res. 12/2014 (Section 9) defines that "during the process of identification and designation of persons and entities by virtue of UNSCR 1373, the DGPNR centralizes and compiles the relevant information or documentation submitted by the remaining bodies for criminal investigation and combat of the MININT, the DGIOF, other competent authorities and regulatory bodies, as defined in DL 317/2013." Section 4 of the Procedure also defines designation criteria for Res. 1373 (2001) are compliant with the FATF Recommendations.

CT118. Criterion 6.2 (c) Section 9 of the Procedure in MININT Res. 12/2004 provides that "in both cases [internal request or request from another country], the DGPNR should immediately check whether the request complies with the provisions of Sections 4 and 6 of the Procedure or whether it is necessary to request any relevant additional information to the requesting authority." If no additional information is requested to the competent foreign authority, requests are processed through the MINREX.

CT119. Criterion 6.2 (d) Section 6 of the Procedure in MININT Res. 12/2014 defines that "the identification and proposals for [...] designation in the lists of UNSCR 1373 (2001) are based on the same criteria for designation established by the UN to designate lists linked to terrorism and terrorist financing, and apply evidentiary standards for reasons or reasonable basis as follows, without requiring a criminal process", pursuant to the FATF Recommendations.

CT120. Criterion 6.2 (e) Section 10 of the Procedure establishes that once "the existence of reasonable grounds or basis to designate persons and entities pursuant to UNSCR 1373 (2001) has been determined, the DGPNR issues the administrative act to include the designated person or entity in the national list and communicates this to the MINREX, the DGIOF and the MINJUS for its publication in the OG. When a person or entity is designated pursuant to this Section, the MINREX may be requested to process a request to freeze funds or other assets, or any other requirement to comply with Res. 1373 (2001) for another country, under the international commitments signed by Cuba as a UN member. This request should provide, to the extent possible, all available data for identification and support of the designation in the national list."

CT121. Additionally, MINREX Res. 85/2014 sets out that the DGAMDI should submit, by virtue of UNSCR 1373. (2001), to third countries, without delay, the freezing requests received by MININT from the authorities of the requested country, through Cuban diplomatic and consular missions abroad.

CT122. Criterion 6.3. (a) As previously mentioned, the DGPNR has been granted authority to centralize and collect information or documentation related with these UNSCRs. Section 3 of the Procedure annexed to MININT Res. 12/2014 defines that the DGPNR centralizes the exchange of timely and agile operational information with competent authorities, with the DGIOF, as well as with other bodies or agencies of the Central Administration of the State as required.

CT123. Criterion 6.3 (b) Section 14 of DL 317 stipulates that funds and other assets derived or generated by persons or entities designated by UNSCR 1267 and successive resolutions, and those designated under UNSCR 1373 will be frozen without delay and without prior notice.

CT124. Criterion 6.4. Chapter VI of DL 317 sets forth the freezing mechanism without delay and without prior notice, from the moment that the MINREX or the DGPNR inform the DGIOF (which immediately notifies the freezing order) and the MINJUS, for publication of the lists in the OG. Section 5 of the Procedure defines "without delay" as "immediacy or in a matter of hours." In the case of freezing without delay should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organizations, those who finance terrorism and the proliferation of weapons, and the need for this action to interdict and disrupt their flow swiftly."

CT125. Criterion 6.5 (a) Section 15 of DL 317 determines that "[reporting] entities mentioned in Section 2.1 herein are responsible of preventing or impeding any financial transaction and of ensuring that no funds are directly or indirectly used for the benefit of the designated persons pursuant to UNSCR 1267/99 and 1373/2001 and successive resolutions." Section 3 of BCC Inst. 31/2013 complements the regulatory framework by stating that "FIs are required to freeze, without delay and without prior notice, the funds or other assets of any designated person or entity and to keep up-to-date on the lists identifying such designations, which are published by virtue of the relevant UNSCRs." According to Section 4 of Inst. 31/2013, as amended by Inst. 31BIS/2014, provides that FIs shall have full knowledge of the lists of persons and entities designated by the DGIOF.

CT126. In addition, Section 16 of DL 317 provides that updates on the designation of persons or entities or their de-listing from UNSC lists shall be published in the OG of Cuba. Also, requests made by third countries to freeze assets owned by individuals or entities related to terrorism and designated by them with good reasons and are accepted for processing, under UNSCR 1373/2001. In addition, and pursuant to regulations, lists are also sent to each of the reporting entities through their respective regulator (notary offices, the Real Estate Registry, lawyers and associations, through the MINJUS).

CT127. Criterion 6.5 (b) y (c) Section 15 of DL 317 determines that "[reporting ...] entities are responsible of preventing or impeding any financial transaction and of ensuring that no funds are directly or indirectly used for the benefit of the designated persons pursuant to the aforementioned UNSCR 1267 and UNSCR 1373." In addition, Section 8 of BCC Inst. 31/2013 and Section 18 of BCC Res. 73/2014 prohibit FIs and DNFBPs, respectively, from providing funds or assets, financial resources or other related services, directly or indirectly, altogether or jointly, to individuals and entities designated according to UNSCRs.

CT128. Additionally, citizens who provide funds, resources or financial or related financial services to persons or entities designated for their link to terrorist acts commit the offence of TF provided for in Section 25 of Law 93 against terrorist acts, as amended by DL 316 (2013).

CT129. Criterion 6.5 (d) The mechanism to communicate designations to reporting entities has been established in general terms in DL 317, and according to these provisions, each competent authority involved in the mechanism has been assigned a regulation that guides its implementation. In particular, designations received from the UNSC and the MINREX, under Section 6 of Res. 85/2014, is forwarded without delay to the national entities in the Coordinating Committee. In addition, Section 16 of DL 317 provides that updates on the designation of persons or entities or their de-listing from UNSC lists shall be published in the OG of the Republic of Cuba. In practice, to ensure promptness, UNSC designations are notified directly by the MINREX to the DGPNR and the DGIOF, which in turn notifies the FIs and DNFBPs. National designations are notified by DGPNR to the DGPNR, to speed up the mechanism. Once notified, the FIs and the DNFBPs freeze assets without delay, in accordance with DL 317.

CT130. *Criterion 6.5 (e)* Section 9 of BCC Inst. 31/2013 states that "Once FIs proceed to the freezing of funds without delay of any person or entity designated pursuant to UNSCR 1267/1999; UNSCR 1373/2001, and successive resolutions, FIs are obliged to immediately report to the BCC DGIOF the operation and the action undertaken, as well as other available background information, including attempted transactions or halted operations." In addition, Section 18 of BCC Res. 73/2014 states that "measures mentioned in Sections 18.1 and 18.2 are reported without delay and directly to the BCC DGIOF, including attempted and halted operations."

CT131. *Criterion 6.5 (f)* Section 13 of BCC Inst. 31/2013 stipulates that "the DGIOF will ensure the protection of the rights of bona fide third parties acting in good faith that may arise or be claimed during the fund freezing mechanism available under this Inst."

CT132. *Criterion 6.6. (a), (d), (e), and (f)* The Procedure of the MININT includes the following: Section 25. "It centralizes and evaluates the proposals of [...] competent authorities designated in DL 317 to request the de-listing, according to approved procedures, of persons and entities included in lists the UNSCRs 1267, 1988, [...] and successive resolutions, when these persons and entities, in the view of the country, do not or no longer meet the criteria for designation. Section 26. The same procedure is applied when, at the request of one party, claims or requests are filed with the DGPNR to object to the designation of persons or entities in UNSCR lists. Section 27. Upon DGPNR approval of the proposals for the de-listing of persons or entities from UNSCRs lists pursuant to both Sections, the proposals shall be forwarded through the MINREX to the respective UNSCR Committees. Section 28. In addition, homonyms or similar name cases shall be communicated in the same way, where the resulting elements of verifications indicate the presence of one of these cases"

CT133. In addition, Section 8 of MINREX Res. 85/2014 defines that "The DGAMDI shall notify the UNSC through diplomatic channels about Cuba's willingness to designate any person or entity to be included in or excluded from their lists."

CT134. *Criterion 6.6 (b) and (c)* Section 30 of the Procedure of the MININT stipulates that persons and entities included in the national list may request the review of the designation, within thirty (30) business days from the date of notification, before the appropriate authority and accompanied by the relevant supporting writings and evidence. [...] Section 32. If this appeal is processed by the DGPNR and the claimant shows disagreement, another appeal may be brought before the MININT, within thirty (30) business days from the date of the notification. The MININT shall respond within thirty (30) business days. If once more the claimant shows disagreement, a legal action in a contentious-administrative proceeding shall be brought before the competent Court. The filing of any appeal does not suspend or prevent the effects of the administrative act. [...] Section 34. In cases where a decision is favourable to the person concerned in any of the appeals lodged to object to the designation of a person or entity in the national list, as provided for in the procedure, the DGPNR shall immediately process the cessation of measures with [...] regulatory bodies defined by DL 317/2013. [...] Section 36. When the claimant has been designated to be included in the national list at the request of a competent authority from another country, the DGPNR shall process through the MINREX a request for de-listing and for unfreezing funds or assets to be sent to the country that suggested the designation."

CT135. *Criterion 6.6 (g)* Section 16 of DL 317 defines that the OG of the Republic shall publish updated lists with designation and de-listing of persons or entities that meet or cease to meet the designation criteria to be included in the lists. Under UNSCR 1373 (2001), requests made by third countries to freeze assets owned by individuals or entities related to terrorism and designated by them with good reasons and accepted for processing shall be published.

CT136. Criterion 6.7. Sections 19-24 of the MINREX Procedure set out the mechanism to request access to funds and other assets frozen under UNSCR 1267, UNSCR 1988 and 1373, to defray basic or extraordinary expenses, where appropriate, in compliance with the procedures set forth in UNSCR 1452 (2002) and UNSCR 1373. Sections 11 and 12 of BCC Inst. 31/2013 establish the procedure for FIs to carry out “authorized operations and protection of bona fide rights” in accordance with UNSCRs 1373 and 1452. In addition, Sections 17-26 of MINREX Res. 85/2014 sets out the procedure carried out by the MINREX to request access to funds both to the UNSC and third countries and the internal procedure once the MINREX has been notified of requests for access to frozen funds.

CT137. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 6 is rated Compliant.**

Recommendation 7 — Targeted Financial Sanctions Related to Proliferation.

CT138. Criterion 7.1 MINREX Res. 85/2014, MININT Res. 12/2014 and its Procedure, BCC Res. 51/2013, BCC Inst. 31/2013, and BCC Res. 73/2014 (DNFBPs) regulate the implementation of financial sanctions in cases of non-compliance with UNSCRs related to preventing, monitoring and blocking of PW and PW financing.

CT139. In this context, Res. 85/2014 approved the Regulation for the Cooperation between States and the Relationship between the UNSC and National Entities with Regard to the Prevention and Combat of ML, TF, PW and the Illegal Flow of Capital. This Regulation establishes that the DGAMDI is the unit responsible for processing communications of national entities with the UNSC. In this context, the DGAMDI is in charge of circulating, without delay, these lists to the national entities in the Coordinating Committee. Moreover, the MININT Res. 12/2014 appoints the DGPNR to centralize information exchange and coordinate actions among bodies for criminal investigation and combat of the MININT with the DGIOF. Thus: [...] 2. It coordinates, as appropriate, the participation of the bodies for criminal investigation and combat of the MININT concerning the enforcement of measures and actions by virtue of the established financial sanctions regimes by means of UNSCR 1718/2006, UNSCR 1737/2006 and successive resolutions.

CT140. Sections 14-18 of DL 317 establish the freezing procedures related to the implementation of UNSCR 1267 and UNSCR 1373 (and successive resolutions) do not include UNSCR 1718 and UNSCR 1737. This deficiency is partly mitigated by existing references, both the main title of DL 317 (purpose) and the title of Chapter VI, which specifically refer to the procedures related to PF. Thus, despite the need for adjustment of this legal text in order to ensure greater security and transparency in the freezing proceeding, the existence of a general legal basis authorizing the regulation of sanctions related to PWMD is noted, through MININT Res. 12/2014 and MINREX Res. 85/2014, Inst. 31/2013, 31BIS/2014, and 73/2014 of the BCC (DNFBPs), which explicitly include procedures related to UNSCR 1718 (2006), UNSCR 1737 (2006) and successive resolutions.

CT141. Criterion 7.2 (a) Section 3 of BCC Inst. 31/2013 states that FIs are required to freeze, without delay and without prior notice, the funds or other assets of any designated person or entity and to keep up-to-date on the lists identifying such designations, which are published by virtue of the relevant UNSCRs related to financing of PWMD. Similarly, Section 12 of the Procedure annexed to MININT Res. 12/2014 states that the DGPNR should act in the same way that for UNSCRs 1267 and 1373 when implementing resolutions related to the financial sanction regime to prevent the financing of PWMD.

CT142. Criterion 7.2 (b) and (c) Section 8 of BCC Res. 31/2013 prohibits FIs and DNFBPs, respectively, from providing funds or assets, financial resources or other related services, directly or indirectly, altogether or jointly, to individuals and entities designated according to UNSCRs. "This prohibition covers entities

owned or controlled, directly or indirectly, by designated individuals and entities; and persons and entities acting on behalf of or led by designated people or entities, unless they are licensed or authorized to make use of media to cover basic expenses, if they have been notified in accordance with relevant UNSCRs."

CT143. Section 18 of BCC Res. 73/2014 states that DNFBBs "are required to: 1. Implement procedures to prevent the use of funds and assets in favour of or for the benefit of any person or entity designated by the UNSC under Res. 1718 (2006), 1737 (2006) and successive resolutions."

CT144. Criterion 7.2 (d) and (e) Sections 4 and 6 of BCC Inst. 31/2013 require the BCC DGIOF to notify FIs, within a maximum of one business day, of the lists of designations and their updates under UNSCRs on PWMD and its financing. BCC Res. 73/2014 provides that the BCC DGIOF shall notify DNFBBs about updated lists by virtue of UNSCR 1718 (2006), UNSC 1737 (2006) and successive resolutions. In addition, these instruments require FIs and DNFBBs to notify the DGIOF, without delay, of any performed freezing operation and other attempted transactions.

CT145. Criterion 7.2 (f) Section 13 of BCC Inst. 31/2013 defines that "the DGIOF will ensure the protection of the rights of bona fide third parties acting in good faith that may arise or be claimed during the fund freezing mechanism available under this Inst."

CT146. Criterion 7.3 Section 4 of BCC Res. 108/2013 provides that with regard to FIs and their administrators "the following conduct shall be considered violations: [...] b) Non-compliance with the directions received from the DGIOF, within its scope of authority. [...] d) Failure to comply with regulations on prudential actions or any other action that violates current regulations based on the national strategy and other similarly serious related conduct. The absence of clear provisions in relation to UNSCR 1718 and UNSCR 1737 in Section 4.c of BCC Res. 108/2013, which establishes that non-compliance with the obligation of FIs to freeze assets is a violation and could generate, in theory, legal difficulties during the application of sanctions to FIs. Res. 105/2008 establishes the Regulations of the Governing Board of the Ministry of Justice, which, in Section 8.i, sets forth its function of controlling the Directorate of Notaries, the Land, Real Estate and Commercial Registry Directorate, the ONBC and the Directorate of Associations (NPOs). Notaries and lawyers are public officials subject to a special disciplinary legislation including gradual sanctions for non-compliance with their duties and obligations; among these, compliance with current legal provisions, including regulations related to ML.

CT147. In addition, it is worth noting that Section 3 of Res. 73 issued in 2014 (DNFBBs) states that "administrative sanctions shall be imposed on the reporting entities that fail to comply with the provisions of this Resolution, in consistency with the applicable law, regardless of the appropriate criminal and civil actions." Applied sanctions are coordinated and reported to the BCC DGIOF by the regulatory and oversight bodies, as appropriate."

CT148. Criterion 7.4 (a) and (b) The Procedure annexed to MININT Res. 12/2014 describes the procedures for the application of financial sanctions in compliance with UNSCR related to preventing and sanctioning conducts related to terrorism, TF/PWMD; Sections 25-29, Chapter V, define that DGPNR will centralize and evaluate proposals from other bodies to request de-listing under UNSCR 1718 and UNSCR 1737, according to the procedures described in these resolutions and successive resolutions. Once the proposals are defined, the DGPNR will send the request to the MINREX so that, under Sections 7 and 8 of MINREX Res. 85/2014, it notifies through diplomatic channels, the de-listing request to the applicable committee, using the procedure described by the committee. This procedure applies to homonym or similar name cases, where the resulting elements of verifications indicate the presence of one of these cases.

CT149. Criterion 7.4 (c) Sections 11 and 12 of BCC Inst. 31/2013 defines that the DGIOF will instruct FIs regarding the access to frozen funds, which, as determined by applicable legislation, are necessary for basic or extraordinary expenses of designated persons. In addition, Section 19 of the Procedure defined in MININT Res. 12/2014 states that the DGPNR is notified by the DGIOF of the requests for access to frozen funds or other assets to meet basic or extraordinary expenses as appropriate, in accordance with procedures established in UNSC 1735 (2006), 1718 (2006), 1737 (2006), or successive resolutions or amendments. Also, Sections 17-24 of MINREX Res. 85/2014 establish how these requests will be managed by appropriate committees under UNSCRs related to PWMD and its financing.

CT150. Criterion 7.4 (d) Section 14 of Inst. 31/2013, Regulation for the Freezing of Funds, establishes that funds remain frozen until the exclusion or de-listing from UNSC lists. Section 16 of Inst. 31BIS/2014 states that the DGIOF, within three business days following the lifting of a measure, will notify the DGPNR and the MINREX, which in turn will notify the UNSC, where appropriate.

CT151. Criterion 7.5 (a) Section 3 of Inst. 31/2013 establishes that FIs are required to freeze funds or assets owned by designated persons under UNSCRs. In addition, funds are defined, according to MININT Res. 12/2014 as including "interests, dividends or any other value or income accrued or generated by those assets; provided that they are fully or jointly owned, or are in direct or indirect control of, persons or groups."

CT152. *Criterion 7.5 (a)* The Procedure included in Section 5 of MININT Res. 12/2014 defines the concept of "Basic or extraordinary expenses: the payment of food, rentals, drugs and medical treatments, taxes, insurance premium, and water and electricity expenses, or exclusively to pay reasonable professional fees or to refund expenses related to legal services or fees or charges for possession or maintenance services on frozen funds or other financial assets or economic resources, or due payments under contracts or obligations, as applicable, according to UNSCRs 1452 (2002), UNSCR 1735(2006), UNSCR 1737(2006), and successive resolutions or amendments."

CT153. *Evaluation and Conclusion:* MINREX Res. 85/2014, MININT Res. 12/2014 and its Procedure, BCC Res. 51/2013 and BCC Inst. 31/2013, and BCC Res. 73/2014 (DNFBPs) regulate the implementation of targeted financial sanctions, without delay, related to preventing, monitoring and blocking of PW and PW financing.

The need for adjustment of the freezing obligations in relation to PF under DL 317 and the sanctions regime established by BCC Res. 108/2013 in order to provide increased legal security to both processes is noted.

Recommendation 7 is rated Largely compliant.

Recommendation 8 — Non-Profit Organizations (NPOs)

CT154. Criterion 8.1 (a) With the issuance of Inst. 26/2013, Cuba incorporated provisions for reviewing the adequacy of standards for non-financial entities that may be object of abuse for TF; thus, Section 13 was incorporated: "Non-profit organizations shall be subject to enhanced DD, according Section 39, to prevent them from being used: 1. By terrorist organizations that pose as legitimate entities. 2. To exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures. 3. To conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes."

CT155. It is worth noting that pursuant to Section 7 of Law 54/1985 on Associations, the creation of these entities is subject to express authorization of the MINJUS, which shall keep a Registry of Associations

(Section 16) for the control, supervision and inspection of the associations, in accordance with the provisions in the regulations under this Law. Additionally, Section 41 of MINJUS Res. 53/1986 Regulation of Law on Associations instructs that "associations shall send the original documents to the Registry of Associations where they are registered", which manifests the capacity of the Registry to produce timely information about the activities, size and other characteristics of NPOs.

CT156. In addition, other regulatory provisions mention the figure of foundations. For these latter cases, Law 54 is not applicable. In these cases, the Government appoints a Public Administration Agency as the oversight body performing supervision activities on these matters. The direct oversight body associated with foundations is the Ministry of Education and Culture. Currently, there are nine (9) foundations in Cuba that are supervised by the Ministry of Culture as an oversight body. The creation of foundations should be requested to the body governing the activity to be developed; after the MINJUS considers the draft Rules and Articles of Association, it authorizes the creation of every foundation, which is made effective by public deed before a notary. Regarding the implementation of the AML/CFT system by foundations, although they do not operate under Law 54, the monitoring and control exercised by the MINJUS for them is similar to other associations. It is worth noticing that the MINJUS updated its functions in 2001 with the approval of the Council of Ministers, expanding the scope of the Registry of Associations, which became the Registry of Associations and Foundations, thus providing for the monitoring and control of both forms of association.

CT157. Criterion 8.1 (c) Res. 105/2008 establishes the Regulations of the Governing Board of the Ministry of Justice, which, in Section 8.i), defines the function of controlling the Directorate of Associations, which are required to report back periodically. The 2014 Agenda of the MINJUS Board of Directors included the analysis of the operation of the Directorate of Associations and Oversight Bodies. Its reports discuss the organization and operation of the activity, the result of control actions including compliance with the AML/CFT risk strategy and measures to mitigate risks, as well as overall compliance with the prevention plan.

CT158. BCC ND 1/2014, on Risk-Based Supervision, provides for supervision procedures to be applied in the assessment of risks associated with preventing and fighting ML/TF and the illegal flow of capital and of the effectiveness of management and control systems.

CT159. In the case of the NPOs, enhanced DD measures are applied in order to prevent them from being used by terrorist organizations that pose as legitimate entities, or to exploit legitimate entities as a guide for TF, including a gateway to escape fund freezing and, finally, to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist purposes.

CT160. Thus, FIs should obtain additional information on them and a periodic update of data on identification information and beneficiary owners, type or objective of the business relation, origin and destination of funds, increase in operation volumes, number and duration of control mechanisms applied and other features defined by FIs regarding complexity, volume and diversity of operations (transactions), products, services, as well as countries, economic sectors and customers operating with them. Furthermore, no type of international money transfer from Cuban associations is authorized, which minimizes the possibility of TF activities abroad.

CT161. Criterion 8.2 Subsections ch) and d) of the First Special Section of Law 54 on Associations state that "the MINJUS is in charge of the technical, regulatory and methodological management of the registry activities of associations and, therefore, has the following responsibilities: ch) developing, promoting and, as appropriate, implementing plans, regular and special training courses and technical training for the staff of the Registries of Associations; d) convening methodological meetings, seminars and other technical events

of this activity." Courses on identification of ML/TF risks were reported in planned training actions developed by the MINJUS for associations.

CT162. Cuban authorities have provided information on training activities developed by the MINJUS in relation to NPOs. In this context, 57 training activities were developed in different NPOs, including AML/CFT system analysis. See the table below.

Activity	Years	Control Actions		Training Actions
		MINJUS	DPJ	
ASSOCIATIONS	2011	390	211	9
	2012	755	272	16
	2013	359	238	16
	2014	NOT REPORTED		16

CT163. Criterion 8.3 MINJUS Law 54 on Associations and Res. 53/1986, Regulation of the Law on Associations, establish policies promoting transparency, integrity and public trust in NPO management. In addition, MINJUS Res. 44/2005 sets out the methodology to carry out inspections in associations and the methodology to carry out visits to oversight bodies"; both documents are approved in order to supervise and control association activities.

CT164. Criterion 8.4 (a) and (b) Section 41 of MINJUS Law 53/1986, Regulation on the Law of Associations, stipulates that "associations shall submit the original documents to the Registry of Associations where they are registered: a) List of agreements reached at general meetings, within 10 days of the following month [...]; b) annual budget of incomes and expenditures, within the first 15 business days of January each year; c) Balance sheet of economic operations, in January of each year; ch) Nominal list of the registrations and deletions of each quarter. Registrations shall include members' address, age, and occupation, and deletions shall include reasons for deletion. [...] d) Nominal list of persons appointed as directors, within 10 business days following the date of designation; e) Change in registered office, within 15 business days following the date of modification; f) Other information requested."

CT165. It should be noted that laws in Cuba require the identification not only of association leaders but also of all members. And their activities are subject to direct supervision by the Registry of Associations and indirect supervision by the MINJUS, under the Regulation on the Law of Associations.

CT166. Criterion 8.4 (c) Section 21 of MINJUS Res. 53/1986, Regulation of the Law on Associations, establishes that "oversight bodies [under the MINJUS] shall ensure that associations use their resources for the purposes and objectives as determined by their creation as such." The methodology to carry out inspections in associations contains specifications on the verification of accounting books and of incomes and expenditure.

CT167. Criterion 8.4 (d) Pursuant to Section 7 of Law 54/1985 on Associations, the creation of these entities is subject to express authorization of the MINJUS, which shall keep a Registry of Associations (Section 16) for the control, supervision and inspection of the associations, in accordance with the provisions in the

regulations under this Law. In addition, Section 17 defines that "The Registry of Associations shall maintain accounting books, documentation, and inspections in which all data related to existing and future associations shall be included." Also, Section 18 defines that "registration of associations in the applicable Registry shall determine their legal personality." The legal validity of associations shall only be considered if a certification is issued by the Registry of Association where they are registered." Additionally, Section 19 of MINJUS Res. 53/1986, Regulation of the Law on Associations, states that registration of associations before the applicable Registry shall determine their legal personality. ”

CT168. Criterion 8.4 (e) Section 12 of MINJUS Res. 53/1986, Regulation of the Law on Associations, requires the following data for the creation of an association: a) Name of the association, its purposes and (...) b) Head office c) Name and surname, age, citizenship, nationality, occupation, and address of founders and initiators. d) Funds that will be available to the association for the accomplishment of its purposes. e) Number of participating people. As stated above, Section 41 of the Law on Associations requires the identification of not only the leaders but also all the members of associations. Their activities are subject to the direct control of the Registry of Associations and, indirectly, of the MINJUS, under the terms of MINJUS Res. 44/2005. At the time of the creation of the association, and as part of its purposes, in addition to recording the statements of the future members with regard to the intended use of the benefits derived from it, it should verify the veracity and feasibility of the statements.

CT169. Criterion 8.4 (f) Section 19 of DL 265/2009 on the National Archive System of the Republic of Cuba stipulates that "associations, foundations, political and mass organizations and other legal public national persons create your systems institutional files, composed of its central archives and management in correspondence with the management of those institutions structure, subordinate directly to a Deputy Minister or primary authority of the legal person in question." Then, Section 20 provides that "the fundamental functions of the central archives are [...] b) keeping, for a period of up to twenty-five years, the documentation produced by their management files that are still administrative valid but are not often consulted." Additionally, Section 51 of MINJUS Res. 53/1986, Regulation of the Law on Associations, provides that "the books and pages they contain are permanent and may not be destroyed in any circumstances, regardless of their condition." Under the powers granted by DL 317 and 322 and MINJUS-DGIOF labour agreements, the DGIOF is empowered to access the required information contained in MINJUS files.

CT170. Criterion 8.5 Section 19 of Chapter V of Law 54 on Associations defines that "the MINJUS may impose on the associations and their directors the administrative penalties established in the special legislation on the matter, where any of the above infringed the provisions of the law or the statutes or internal regulations and the regulations on relations referred to in Section 13. The measures shall be adapted taking into account the offence committed, the seriousness of the events and the injury cause

CT171. Chapter IV of Res. 44/2005, on the inspection of the activities of associations, establishes that the officer who carries out the inspection shall establish an action plan for the correction of the identified deficiencies with the appropriate date. In addition, during the on-site visit, Cuban authorities stated that, should the overseen association fail to comply with the action plan, MINJUS may apply measures including the cassation of the operating authorization of the entity. However, the regulation lacks a sanction system to determine whether penalties are effectively proportionate and dissuasive As reported, the Cuban Parliament is considering a legal provision setting out the improvement of forms of association. The provision provides equal status to all forms and addresses that issues that needed updating such as the sanction regime.

CT172. Criterion 8.6 (a) Section 11 of Law 54 on Associations provides that associations will keep coordination and cooperation relations with the registry where they are registered. Section 13 provides that "regulations governing coordination and cooperation relations between associations and state entities, bodies

or departments shall be agreed by common agreement considering the objectives, activities developed and regulations of this Law."

CT173. Criterion 8.6 (b) Section 41 of MINJUS Res. 53/1986, Regulation of the Law on Associations, requires all associations to submit budgets, balance sheets, agreements signed by the Board of Directors, among others, to the MINJUS Registry of Associations, which carries out regular inspections through the Directorate of Associations.

CT174. Criterion 8.6 (c) Section 41 of Law 5 on the Criminal Procedure establishes that bodies, agencies, organizations and other entities, including economic entities of any kind, are required to provide Courts, prosecutors, investigating officers or the police, in their respective cases, with any reports, data and background information required for the investigation of the offence, within 20 business days. DL 317 sets out that any profession, activity or entity that, in the view of the BCC, having heard the opinion of the Coordinating Committee, should become a reporting entity in order to carry out its functions effectively shall become a reporting entity. Regarding associations, oversight bodies act in accordance with the Law on Associations and its Regulation.

CT175. In addition, Section 16 of DL 317 establishes that updates on the designation and de-listing of persons or entities included in UNSC lists will be published on the OG of the Republic of Cuba and sent by the regulatory body to different institutions. In the case of associations, the MINJUS will send the lists through the Directorate of Associations to all associations for their information. In case of coincidence with any designated person, the association will inform the MINJUS.

CT176. Criterion 8.7 Requests for information related to certain NPOs suspected of TF or other forms of terrorism support should be forwarded through the MINREX if there is no bilateral cooperation agreement in this regard with the requesting country. If there is a cooperation agreement, the request will be made through a letter rogatory to the FGR, according to Section 11 of Law 83/1997, on the FGR, which establishes that "the General Prosecutor is the FGR's governing authority and has been granted the following attributions: [...] k) issuing judicial assistance requests or promoting letters rogatory to foreign judges, prosecutors offices, bodies within the Office of the Public Prosecutor, and resolve, through the channels established in each case, requests received from similar foreign entities or authorities, in accordance with the treaties and agreements which the Republic of Cuba is a party to."

CT177. Evaluation and Conclusion: While regulations set out the obligation of the Directorate of Associations to control associations, as well as the obligation of the Ministry of Culture to control the nine foundations, there is still a need to enhance the control of forms of association and to establish a sanctioning regime are still necessary. Recommendation 8 is rated Partially compliant.

V. PREVENTIVE MEASURES

Recommendation 9 – Financial Institution Secrecy Laws

CT178. *Criterion 9.1* Section 81 of DL 173, on banks and non-banking FIs, states that "FIs are required to maintain secrecy of their accounts, deposits and operations in general and may not provide news and reports to any third parties other than depositors, heirs, beneficiaries, their legal representatives or whoever is empowered to dispose of an account or intervene in an operation, unless as required by a court order issued in a process to which the depositor is a plaintiff or a defendant, or as expressly authorized by law." In addition, Sections 4 and 5 of BCC Res. 66/98 on banking secrecy explain that "notwithstanding bank secrecy limitations, FIs shall provide the reports, data and documents referred to in the first paragraph [which defines banking secrecy and documents] when required by the following authorities: a) courts, prosecutors and investigating officers of State security bodies, b) tax authorities, c) Banking Supervision Office inspectors, internal auditors of FIs and National Audit Office auditors." [...] In cases of presumed or suspected illegal flow of capital, FIs shall provide the information or documents required by the competent authorities and relating to financial transactions and banking operations carried out by those involved in these criminal activities or activities subject to investigation.

CT179. In addition, Section 41 of Law 5 on the Code of Criminal Procedure establishes that bodies, agencies, organizations and other entities, including economic entities of any kind, are required to provide courts, prosecutors, investigating officers or the police, in their respective cases, with any reports, data and background information required by them for the crime investigation. The foregoing is also applicable to international cooperation requests. Finally, Chapter I, Title V of BCC Inst. 26/2013 relating to the publication of the Specific Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital states that FI employees and directors shall not be held responsible when it is necessary to disclose information to comply with these rules.

CT180. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 9 is rated Compliant.**

Customer Due Diligence and Record Keeping

Recommendation 10 – Customer Due Diligence

CT181. *Criterion 10.1* Section 9 of BCC Res. 51/2013 on the General Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital does not allow FIs "e) to open numbered or coded accounts." In addition, Section 16 of BCC Inst. 26/2013 on the Specific Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital states that in no case shall the opening of accounts be accepted without the presence of customers. Neither shall anonymous or coded accounts be opened. Section 23 establishes that one of the minimum characteristics of CDD is to disallow the opening of anonymous, numbered or coded accounts.

CT182. *Criterion 10.2 (a)* Section 7 of DL 317 defines CDD. Also, Section 9.c of BCC Res. 51/2013 states that FIs shall take at least the following DD measures with each customer: To understand and, where appropriate, obtain information on the purpose and intended nature of a business relationship. More specifically, Section 23.3 of BCC Inst. 26/2013 and Section 24 of Inst. 26 BIS/2013 establish that "before providing any service to a potential customer for the first time, FIs are required to identify the customer in order to avoid being used as intermediaries in illegal operations. In this sense, they shall not involve themselves in a business relationship until the identification is conducted and verified by sources of information other than the service applicant."

CT183. *Criterion 10.2 (b)* Section 14 of BCC Res. 51/2013 establishes that FIs shall identify users and verify the authenticity of the data and documents submitted, in the cases where the intended operation: a) exceeds, in a single operation or in structured transactions, the cash transaction thresholds established by the Central Bank of Cuba. In addition, Sections 33.1.(i), 33.1.(ii) and 33.2 of BCC Inst. 26 BIS/2013 provide for the application of enhanced CDD measures to occasional customers when: "1. Occasional transactions are carried out: (i) above the threshold adopted by the Central Bank of Cuba (CUC 10 000, i.e. USD 10 000, or CUP 50 000.00, i.e. USD 2 083.33). 2. FIs identify financial transactions above the designated threshold, when they are carried out in several operations that appear to be related." Moreover, BCC Inst. 1 BIS/2014 instructs "First: To entrust FIs with the control, registration and analysis of transfers received from abroad to natural persons, equal to or above one thousand Cuban convertible pesos (CUC 1 000.00) (i.e. USD 1 000) as from February 2014 although received in structured transactions."

CT184. *Criterion 10.2 (c)* Sections 64-67 of BCC Inst. 26/2013 establish, as part of CDD, the inclusion of information about the originators, intermediaries and beneficiaries of transfers received and sent, as well as the preservation of information throughout the payment chain.

CT185. *Criterion 10.2 (d)* Section 14.b of BCC Res. 51/2013 states that FIs shall identify users and verify the authenticity of the data and documents submitted, when the intended operation causes or gives rise to a suspicion of ML/TF or any criminal activity, regardless of its amount and the threshold established. In addition, Section 33.3 of BCC Inst. 26 BIS/2013 provides for the application of enhanced CDD measures to occasional customers when there is a suspicion of ML/TF.

CT186. *Criterion 10.2 (e)* Section 14.c of BCC Res. 51/2013 establishes that FIs shall identify users and verify the authenticity of the data and documents submitted, when the intended operation raises doubts about the veracity of any information provided. In addition, Section 33.3 of BCC Inst. 26 BIS/2013 provides for the application of enhanced DD measures to occasional customers when the FI has doubts about the veracity of previously obtained identification data.

CT187. *Criterion 10.3* Section 9.1 of DL 317 requires those parties to whom the DL applies to identify always all their customers, whether permanent or not and whether natural or legal persons, as well as to verify the authenticity of the data and documents submitted. Section 23 of BCC Inst. 26/2013 also instructs FIs to take, at least and inter alia, the following CDD measures: 1. To identify customers by means of face-to-face interviews and verify their identity using reliable, independent source documents, data or information; 2. To identify the beneficial owner of operations and take reasonable measures to verify the identity of the beneficial owner, so that the FI knows and understands the ownership structure of the customer as a legal person.

CT188. *Criterion 10.4* Section 44 of BCC Inst. 26 BIS/2013 sets out that "FIs shall verify that any person acting on behalf of a customer is authorized to do so by an official document signed, sealed by the legal person and accepted by the FI. Persons acting on behalf of a customer may only act on behalf of third parties after the FI identifies the person requesting to make deposits or use other services in any kind of bank account."

CT189. *Criterion 10.5* Section 34 of BCC Inst. 26 BIS/2013 states that "FIs shall take the appropriate actions to identify beneficial owners and reasonable measures to verify their identity, in such a way that they are satisfied that they know who the beneficial owners are."

CT190. *Criterion 10.6* Section 9.c of BCC Res. 51/2013 states that FIs shall take at least the following DD measures with each customer: [...] c) To understand and, where appropriate, obtain information on the purpose and intended nature of a business relationship. [...]" In addition, Section 23.3 of BCC Inst. 26/2013

directs FIs, as part of DD, "to understand, and where appropriate, obtain information on the business or corporate purpose and the intended nature of the business relationship."

CT191. *Criterion 10.7 (a)* Section 9.d of BCC Res. 51/2013 requires FIs to "conduct ongoing DD on the business relationship and scrutinize transactions undertaken throughout the course of that relationship to ensure that they are consistent with the FI's knowledge of customers, their business and risk profile including, where necessary, the source or origin of funds." Also, Section 23.4 of BCC Inst. 26/2013 instructs FIs to take at least the following DD measures: "To conduct the ongoing DD on the business relationship as explained in the above subsection [to obtain information on the purpose of the business relationship] and to scrutinize transactions undertaken to determine whether they are consistent with the FI's knowledge of customers, their business and risk profile including, where necessary, the source or origin of funds."

CT192. *Criterion 10.7 (b)* Section 27 of BCC Inst. 26/2013 states that "FIs shall request customers up-to-date information at least every two (2) years, unless they are previously informed of any change in circumstances or their level of risk. In the case of savers, records shall be updated at least every two (2) years. Section 28 establishes that "Customers that are foreign legal persons not based in Cuba shall be requested to furnish a verifiable guarantee issued by a bank with internationally recognized experience, seriousness and solvency. Certified updated information about the board of directors or equivalent body, or through confirmation received by other written means, containing the names of the foreign natural persons authorized to open and operate bank accounts shall also be requested. These updates may alternate, so at least every two (2) years certifications are included in the records."

CT193. *Criterion 10.8* Section 13 of BCC Res. 51/2013 sets out that "DD in the identification and verification of a customer shall include information about the real owner, the business controller or the beneficial owner, and the submission of supporting documents." In addition, Section 34 of BCC Inst. 26 BIS/2013 states that "FIs shall take the appropriate actions to identify beneficial owners and reasonable measures to verify their identity, in such a way that they are satisfied that they know who the beneficial owners are. For legal persons and other legal arrangements, FIs are also required to understand the customer's ownership and control structure. They shall know the structure of legal persons to determine the origin of their funds and identify the beneficial owners and those who control the resources of the organization, so as to prevent the use of corporate vehicles or business entities by natural persons as a method to conceal their accounts."

CT194. *Criterion 10.9* Section 25 of BCC Inst. 26/2013 sets out that, for the identification of the customer, at least the information mentioned in Annex 2 shall be requested. This Annex explains that, for legal persons, the following information, among other, shall be requested: name or corporate name; relevant customer segment, according to the type of entity or legal status in Cuba (if incorporated abroad); legal document proving its existence and incorporation; core business; and legal structure of the company and the group to which it belongs, identifying its last shareholder if it is a joint venture; full names of its leader and senior directors; address, phone number, fax number, and e-mail address of the company. If it is a foreign entity, the information of its headquarters and its representation in Cuba, if any, among others, shall be requested in consistency with FATF standards.

CT195. *Criterion 10.10* Section 85 of BCC Inst. 26/2013 establishes that "FIs shall verify the identity of legal persons acting as customers and their beneficial owner, in cases where it is not possible to determine the beneficial owner, through the identification of natural persons associated with them. For verification, the following steps shall be taken gradually and only if necessary as the ownership interest structures are too diversified: 1. To identify the natural person with a controlling interest, i.e. the natural person(s) who ultimately own(s) the legal person concerned." Controlling interest refers to a share of more than 25% in the ownership interest of a company. 2. To identify the natural person exercising control by other means, in

order to determine the beneficial owner: the natural person who ultimately owns or controls the legal person.
3. When there is no beneficial owner, the natural person performing the function of top executive shall be identified.

CT196. Criterion 10.11 Section 34 of BCC Inst. 26 BIS/2013 states that "FIs shall take the appropriate actions to identify beneficial owners and reasonable measures to verify their identity, in such a way that they are satisfied that they know who the beneficial owners are. For legal persons and other legal arrangements, FIs are also required to understand the customer's ownership and control structure. They shall know the structure of legal persons to determine the origin of their funds and identify the beneficial owners and those who control the resources of the organization, so as to prevent the use of corporate vehicles or business entities by natural persons as a method to conceal their accounts. For trusts and other legal arrangements, FIs authorized to provide these services shall verify the identity of beneficial owners through the following information: a) the identity of the settlor, the beneficiary(ies), other trustees, if any, and any other natural person exercising ultimate effective control over the trust, including through a chain of ownership, if any; b) the identity of persons in equivalent or similar positions."

CT197. Criterion 10.12 Not applicable. For further reference, see Criterion 1.6.

CT198. Criterion 10.13 Not applicable. For further reference, see Criterion 1.6.

CT199. Criterion 10.14 and Criterion 10.15 Section 24 of BCC Inst. 26/2013 establishes that "Before providing any service to a potential customer for the first time, FIs are required to identify the customer in order to avoid being used as intermediaries in illegal operations. In this sense, they shall not become involved in a business relationship until the identification is conducted and verified by sources of information other than the service applicant. Bank accounts shall not be opened and services shall not be provided to customers until all the required documentation is submitted and the principle of identification is considered to be complied with, on a reasonable basis. If it is determined that DD information is not complete, FIs shall close the customer's accounts and shall consider the applicability of making an STR. These requirements apply to both new and existing customers, according to the level of risk and materiality, including occasional customers who request a service and do not meet the identification requirements."

CT200. Section 40 of BCC Inst. 26 BIS/2013 provides for the possibility of applying simplified measures to permanent and occasional customers showing a lower risk of ML/TF and similarly serious related conduct. Possible simplified measures include the verification of the identity of customers and beneficial owners after establishing the business relationship (e.g. if certain monetary threshold is exceeded). This subsequent identification measure was regulated in Section 2 of Inst. 6/2014, which sets out that "the simplified measures to verify the identity of the customer and the beneficial owner, during or after the establishment of the business relationship, as set forth in Section 40.1 of Inst. 26 BIS, shall be taken as follows: 1. When expressly authorized by the Superintendent, as stated in the referred Instruction and providing that the following conditions are met: a) the verification of the identity of the customer and the beneficial owner is conducted as reasonably soon as possible; b) the verification is conducted during or after the establishment of the business relationship so as to avoid interrupting the ordinary course of the operation; c) the financial products and services concerned pose low ML/TF risk, and this risk is effectively controlled."

CT201. Criterion 10.16 Section 24 of BCC Inst. 26 BIS/2013 establishes that CDD requirements "apply to both new and existing customers, according to the level of risk and materiality, including occasional customers who request a service and do not meet the identification requirements." Also, Section 39 of Inst. 26/2013 of the BCC Superintendent states that "During the provision of services, DD shall be the main tool to know customers and verify the consistency between the FIs' knowledge of customers and their risk profile."

The level of depth in applying DD will depend on the identified risk profile, and FIs shall take enhanced or simplified measures as appropriate.”

CT202. Criterion 10.17 Section 39 of Inst. 26/2013 sets out that “during the provision of services, DD shall be the main tool to know customers and verify the consistency between the FIs’ knowledge of customers and their risk profile. The level of depth in applying DD will depend on the identified risk profile, and FIs shall take enhanced or simplified measures as appropriate.” Also, this Section specifies the areas on which CDD shall focus to obtain further information. Moreover, Section 11 of BCC Res. 51/2013 defines some circumstances which are to be considered high risk and therefore shall be subject to enhanced DD measures, e.g. in the case of financial relationships and transactions with natural and legal persons from higher-risk countries identified by FATF, among other measures consistent with the standard.

CT203. *Criterion 10.18* Section 40 of BCC Inst. 26 BIS/2013 provides that "FIs shall apply simplified measures to those permanent and occasional customers showing a lower risk of ML/TF and similarly serious related conduct. These shall be commensurate with the lower risk factors (e.g. they may be related to customer acceptance measures or to ongoing monitoring aspects); [...] Simplified DD measures shall apply only in cases approved by the undersigned, upon request of the FI."

CT204. *Criterion 10.19* As mentioned above, Section 24 of BCC Inst. 26 BIS/2013 states that "[...] they shall not become involved in a business relationship until the identification is conducted and verified by sources of information other than the service applicant." Bank accounts shall not be opened and services shall not be provided to customers until all the required documentation is submitted and the principle of identification is considered to be complied with, on a reasonable basis. If it is determined that DD information is not complete, FIs shall close the customer's accounts and shall consider the applicability of making an STR. These requirements apply to both new and existing customers, according to the level of risk and materiality, including occasional customers who request a service and do not meet the identification requirements."

CT205. *Criterion 10.20* Section 40 of Inst. 26 BIS/2013 sets out that "If during the establishment or in the course of the business relationship or when occasional transactions are conducted, an FI suspects that the transactions are related to ML/TF, the institution: a) shall attempt to identify and verify the identity of the customer and the beneficial owner, either permanent or occasional, and regardless of the designated threshold that would otherwise apply; and b) shall file an STR with the DGIOF, in accordance with Recommendation 20." Also, Section 77 of Inst. 26 BIS/2013 mentions that "FIs shall not apply preventive and CDD measures when it is presumed that they may arouse the customer's suspicion and hinder the process of investigation, in which case they shall file the STR."

CT206. *Evaluation and Conclusion:* Cuba complies with all the criteria of this Recommendation for FIs under the supervision of the BCC; however, it is not clear how the criteria are applied to the Cuba's Money Order Company.²⁹ **Recommendation 10 is rated Largely compliant.**

Recommendation 11 – Record Keeping

CT207. *Criterion 11.1* and *Criterion 11.2* Section 22 of BCC Res. 51/2013 states that "The parties subject to these rules shall adopt technical procedures which allow to maintain for at least up to five (5) years the information on transactions that have or have not given rise to records of financial acts." In addition, Section 20 of BCC Inst. 26/2013 sets out that "the records of each customer and all the documentary and computerized information filed at FIs shall be duly organized and protected for at least five (5) years

²⁹ On 17 December 2014, BCC Res. 152 included Cuba's Post Company as a reporting entity subject to the provisions of DL 317/2013 and empowered the BCC to grant it a license.

following the closing of the account or the termination of the business relationship, or for a longer period if requested by a competent authority in certain specific cases." Also, Section 8 of DL 317/2013 establishes that "the information obtained by the parties subject to this DL through DD measures shall be kept for a period of at least five (5) years."

CT208. *Criterion 11.3* In addition to the above criteria, Section 22.b of BCC Res. 51/2013 sets out that records to be kept shall include information "that permits the reconstruction of individual transactions, whether completed or not." Similarly, Section 22.c states that records shall be kept "when a suspicious activity is detected. Cash transaction records shall permit reconstruction of individual transactions so as to provide evidence for prosecution of criminal activity and to trace the money trail."

CT209. *Criterion 11.4* Section 41 of Law 5/1997 on the Code of Criminal Procedure establishes that "bodies, agencies, organizations and other entities, including economic entities of any kind, are required to provide courts, prosecutors, investigating officers or the police, in their respective cases, with any reports, data and background information required by them for the crime investigation, within the term set by them, which may not exceed twenty business days following the date on which the commission is received. This term may only be extended, in exceptional cases, for a period set by the competent authority." Similarly, the obligation to submit any requested information to the DGIOP is established in Section 7 of Decree 322 (30 December 2013).

CT210. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 11 is rated Compliant.**

Additional Measures for Customers and Specific Activities

Recommendation 12 – Politically Exposed Persons

CT211. *Criterion 12.1* Section 10 of BCC Res. 51/2013 requires that "FIs shall include measures to regulate CDD and specific activities, with foreign and domestic politically exposed persons, as determined, in the risk-focused strategy for the prevention of ML/TF/PW." In addition, Section 52 of BCC Inst. 26/2013 establishes that "FIs shall apply DD to foreign natural and legal persons qualified as politically exposed. To this end, they shall establish procedures with a view to: 1. Determining whether a customer or the beneficial owner is a politically exposed person; 2. Obtaining express senior management approval of the establishment or continuity of the relationships with these customers; 3. Taking reasonable measures to establish the source and legitimacy of funds; 4. Conducting ongoing monitoring on that business relationship." BCC Circular 4/2014 provides more details about the foregoing.

CT212. *Criterion 12.2* Section 53 of BCC Inst. 26/2013 requires FIs to establish DD procedures for customers defined by the BCC as politically exposed nationals. In cases where there is a higher-risk business relationship with these persons, the following measures shall be adopted: to obtain express senior management approval of the establishment or continuity of the relationships with the customers; to take reasonable measures to establish the source and legitimacy of funds; to conduct ongoing monitoring on the business relationships. In addition, Section 2 of BCC Circular 4/2014 includes PEPs of international organizations, who shall be treated according to their level of risk. Similarly, Section 6 specifies the CDD measures to be implemented by FIs for all the categories of PEPs defined by the country, including the application of a risk management system and applicable measures appropriate to the result of the risk analysis.

CT213. *Criterion 12.3* Section 4 of BCC Circular 4/2014 states that "when a foreign or domestic PEP is identified, FIs shall apply, on a reasonable basis, the appropriate measures to evaluate possible transactions

or accounts that could be related to family members or close staff of a PEP." Section 5 mentions that "family members or close staff are persons related to a PEP either directly (up to the fourth degree of consanguinity) or by affinity, or by other similar forms of association." The Circular also requires FIs to evaluate operations or accounts related to a family member of or "staff close to" a PEP.

CT214. *Criterion 12.4* Not applicable as the life insurance policy product does not exist.

CT215. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 12 is rated Compliant.**

Recommendation 13 – Correspondent Banking

CT216. *Criterion 13.1* Sections 54.1-4 and 54.6 of BCC Inst. 26/2013 set out that "FIs shall apply procedures to gather and have information that allows: 1. To fully understand the nature of the respondent bank's business and to determine, from publicly available information, the reputation of the institution and the quality of supervision, including whether it has been subject to an ML/TF investigation or regulatory action; 2. To assess the respondent bank's AML/CFT controls established; 3. To obtain senior management approval before establishing new correspondent relationships; 4. To understand the respective AML/CFT responsibilities of each institution; 6. To apply specific questionnaires to foreign banks with which correspondent relationships are maintained, in order to be sure about their internal policies to prevent ML/TF risks and activities."

CT217. *Criterion 13.2* Section 54.5 of BCC Inst. 26/2013 establishes that, in relationships with correspondent banks, financial institutions shall: "5. Be satisfied that banks apply CDD in operations of payable-through accounts and that banks are able to provide information about the originator and the beneficiary, upon request. 6. Apply specific questionnaires to foreign banks with which correspondent relationships are maintained, in order to be sure about their internal policies to prevent ML/TF risks and activities."

CT218. *Criterion 13.3* Section 55 of BCC Inst. 26/2013 establishes that "Entering into correspondent banking relationships with shell banks is prohibited." In addition, Section 54.6, which sets out "6. Apply specific questionnaires to foreign banks with which correspondent relationships are maintained, in order to be sure about their internal policies to prevent ML/TF risks and activities", makes it clear that FIs are required to satisfy themselves that the financial institutions with which they maintain correspondent relationships do not permit their accounts to be used by shell banks.

CT219. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 13 is rated Compliant.**

Recommendation 14 – Money or Value Transfer Services

CT220. *Criterion 14.1* Section 56 of BCC Inst. 26/2013 states that providing money or value transfer services or conducting related transactions without the appropriate licence of the BCC is expressly prohibited. However, since 2013 Cuba's Post Company has been operating in money transfers through the money order service and still does not have the authorization of the BCC. Cuba's Post Company has international links under the Universal Postal Convention.³⁰

³⁰ On 17 December 2014, BCC Res. 152 included Cuba's Post Company as a reporting entity subject to the provisions of DL 317/2013 and empowered the BCC to grant it a license.

CT221. *Criterion 14.2* Section 56 of BCC Inst. 26/2013 sets out that "If FIs identify natural or legal persons that carry out these transfers without a licence or registration, appropriate measures shall be applied." No entity in Cuba may provide money or value transfer services without a licence of the BCC; in case such an activity is detected, one of the administrative sanctions provided for in BCC Res. 108/2013—i.e. a written warning, a fine of up to CUP 5 000 000, or even the withdrawal of the licence—shall be applied, notwithstanding the possibility of imposing a criminal penalty if applicable. However, as at the date of the on-site visit, Cuba's Post Company was operating in money transfers without the proper authorization of the BCC.

CT222. *Criterion 14.3* Section 58 of BCC Inst. 26/2013 establishes that "money or value transfer service providers authorized to operate in the country shall enter into relationships only with other money or value transfer service providers located in third countries that certify compliance with the relevant requirements. Also, they shall ensure that their agents apply ML/TF programmes and shall monitor these programmes." In the case of Cuba's Post Company, once it is included as a reporting entity, it will be required to comply with the above provisions.

CT223. *Criterion 14.4* Section 57 of BCC Inst. 26/2013 requires that "any natural or legal person working as a money transfer agent shall furnish their licence or shall be registered with a competent authority. In any case, transfer service providers shall maintain a current list of their agents accessible by competent authorities." Cuba's Post Company does not have the licence at present but, once it is included as a reporting entity, this situation will be regularized.

CT224. *Criterion 14.5* Section 58 of BCC Inst. 26/2013 lays down that authorized money or value transfer service providers shall ensure that their agents apply the AML/CFT programmes and shall monitor these programmes.

CT225. *Evaluation and Conclusion:* While all the rules applicable to the financial sector are consistent with the criteria of this Recommendation, it was observed that they are not applied to Cuba's Post Company, which currently makes money transfers through the money order service. **Recommendation 14 is rated Largely compliant.**

Recommendation 15 – New Technologies

CT226. *Criterion 15.1* Sections 63.1 and 63.2 of BCC Inst. 26/2013 state that "FIs shall manage the ML/TF risks that may arise in relation to: 1. The development of new products and new business practices, including new delivery mechanisms; 2. The use of new or developing technologies for both new and pre-existing products."

CT227. *Criterion 15.2* Section 63 of BCC Inst. 26/2013 lays down that "risk assessments shall be undertaken prior to the launch of the products and business practices, or the use of new or developing technologies." In addition, Section 3 states that FIs are required to identify, analyse and assess their risks of ML/TF/PW and other similarly serious conduct. FIs' boards of directors shall design and implement their strategy according to the risk profile defined on the basis of the complexity, volume and diversity of operations and transactions, products and services, as well as the countries, economic sectors and customer segments with which they do business. This strategy shall include: 1. Medium- and short-term objectives related to the components of the strategy: prevention, detection, combat, and damage recovery, in order to identify risks, assess them and take actions to mitigate them. 2. Internal control procedures for risk management, administration and mitigation.

CT228. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 15 is rated Compliant.**

Recommendation 16 –Wire Transfers

CT229. *Criterion 16.1* Section 59 of BCC Inst. 26/2013 sets out that "FIs shall ensure that the information accompanying cross-border and domestic wire transfers includes the basic information about the originator and the beneficiary (name, address, national identity number and account number of each, or the transaction reference number)." In addition, Section 64 establishes that "FIs shall ensure that the information on the originators, intermediaries and beneficiaries of transfers sent from abroad is included and maintained throughout the entire payment chain. In any case, they shall require that the above information be completed in the transfers received. If this requirement is not met, FIs shall adopt appropriate measures." Furthermore, Section 65 states that "FIs shall have risk-based procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action. The transaction monitoring system requires all data or "fields" defined as mandatory in the financial messaging systems used in Cuba to be completed.

CT230. *Criterion 16.2* Based on Sections 64 and 65 of BCC Inst. 26/2013, FIs establish procedures with a view to controlling and verifying that wire transfers from a single originator bundled in a batch file for transmission to beneficiaries contain required and accurate originator information and full beneficiary information, that they are fully traceable within the beneficiary country, and that the originator's account number or unique transaction reference number is included. They similarly apply provisions to reject or suspend wire transfers lacking or having incomplete information. It is stated that wire transfers bundled in a batch file shall not be received from foreign banks. In the case of domestic customers, this service requires prior coordination with the commercial bank. Finally, it is important to mention that CDD measures contained in Instruction 26 apply to all wire transfers and that the BCC does not have thresholds established for their application.

CT231. *Criterion 16.3* The above sections referred to in the previous criterion and regulated by BCC Inst. 26/2013 apply to all wire transfers, as the BCC has not set thresholds for their application.

CT232. *Criterion 16.4* Although no restrictions apply as there are no thresholds, Section 40 of BCC Inst. 26 BIS/2013 sets out that "If during the establishment or in the course of the business relationship or when occasional transactions are conducted, an FI suspects that the transactions are related to ML/TF, the institution: (a) shall attempt to identify and verify the identity of the customer and the beneficial owner, either permanent or occasional, and regardless of the designated threshold that would otherwise apply; and (b) shall file an STR with the DGIOF, in accordance with Recommendation 20."

CT233. *Criterion 16.5* Cuban banks exchange international payment messages through the SWIFT system. For domestic wire transfers, messages are exchanged through a domestic wire transfer system called Real-Time Gross Settlement System (*Sistema de Liquidación Bruta en Tiempo Real—SLBTR*), which was developed in consistency with the standards set for international messaging (SWIFT). Section 59 of Inst. 26/2013 states that the rules applicable to cross-border wire transfers also apply to domestic wire transfers, and therefore FIs shall ensure that all wire transfers contain the required information.

CT234. *Criterion 16.6* The provisions mentioned in Criteria 16.1 and 16.5 refer to the availability of the required information in all domestic wire transfers. FIs establish procedures with a view to controlling and verifying that domestic wire transfers received include at least the account number or a unique transaction reference number, so that it will permit the transaction to be traced back to the originator or the beneficiary, and to guaranteeing that the information is kept, so that it can be made available within three business days of receiving the request from the beneficiary FI or from appropriate competent authorities.

CT235. *Criterion 16.7* Section 22 of BCC Res. 51/2013 states that, in case of "the identity of customers on whose behalf accounts are opened or financial transactions and operations are carried out, the information

maintenance period (minimum five years) applies as from the date on which the accounts are closed or the transactions are completed." In addition, Section 20 of BCC Inst. 26/2013 sets out that "the records of each customer and all the documentary and computerized information filed at FIs shall be duly organized and protected for at least five (5) years following the closing of the account or the termination of the business relationship, or for a longer period if requested by a competent authority in certain specific cases."

CT236. *Criterion 16.8* Section 65 states that "FIs shall have risk-based procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action." Section 64 establishes that, if a transaction does not include all the originator, intermediary and beneficiary information, FIs may take appropriate measures, including the possibility of rejecting or suspending a wire transfer lacking the required information about the originator or the beneficiary (name, address, national identity number and account number of each, or the transaction reference number).

CT237. *Criterion 16.9* For intermediary financial institutions, Section 64 of BCC Inst. 26/2013 establishes that "FIs shall ensure that the information on the originators, intermediaries and beneficiaries of transfers sent from abroad is included and maintained throughout the entire payment chain. In any case, they shall require that the above information be completed in the transfers received. If this requirement is not met, FIs shall adopt appropriate measures."

CT238. *Criterion 16.10* In addition to the foregoing, according to paragraph 7 of the Annex of BCC Inst. 7/2012 on Rules on the Organization and Operation of the Real-Time Gross Settlement System, in application of BCC Res. 48/2009 on the SLBTR "participants in the SLBTR are responsible for, inter alia, keeping records of all transactions including those rejected and the adjustments transmitted to or from the System processor, for which they shall have the necessary technological support for the record-keeping and full monitoring of these operations." Likewise, as mentioned above, Section 20 of Inst. 26/2013 and Section 22 of Res. 51/2013 state that records shall be kept for five years once the transaction is completed.

CT239. *Criterion 16.11* Section 64 of BCC Inst. 26/2013 establishes that "FIs shall ensure that the information on the originators, intermediaries and beneficiaries of transfers sent from abroad is included and maintained throughout the entire payment chain. In any case, they shall require that the above information be completed in the transfers received. If this requirement is not met, FIs shall adopt appropriate measures." As mentioned above, possible measures to adopt focus on retaining the operation to investigate or clarify and/or cancel the payment.

CT240. *Criterion 16.12* Section 65 of BCC Inst. 26/2013 states that "FIs shall have risk-based procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action."

CT241. *Criterion 16.13* Section 64 of BCC Inst. 26/2013 establishes that "FIs shall ensure that the information on the originators, intermediaries and beneficiaries of transfers sent from abroad is included and maintained throughout the entire payment chain. In any case, they shall require that the above information be completed in the transfers received. If this requirement is not met, FIs shall adopt appropriate measures."

CT242. *Criterion 16.14* In addition to the previous Criterion, Sections 24 and 29 of BCC Inst. 26/2013 establish that "[...] before providing any service to a potential customer for the first time, FIs are required to identify the customer [...]" and that "[...] the information provided by the customer shall be verified by the FI through the review of the documents requested to the customer for the type of service that the customer requests [...]" This applies to all cases, including those where there is a suspicion of ML/TF.

CT243. *Criterion 16.15* Section 65 of BCC Inst. 26/2013 states that "FIs shall have risk-based procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action."

CT244. *Criterion 16.16* Section 58 of BCC Inst. 26/2013 establishes that "money or value transfer service providers authorized to operate in the country shall enter into relationships only with other money or value transfer service providers located in third countries that certify compliance with the relevant requirements. Also, they shall ensure that their agents apply ML/TF programmes and shall monitor these programmes." Additionally, Section 59 of BCC Inst. 26/2013 sets out that "FIs shall ensure that the information accompanying cross-border and domestic wire transfers includes the basic information about the originator and the beneficiary (name, address, national identity number and account number of each, or the transaction reference number). This information shall be available on a permanent basis and for immediate use, if needed by the authorities, the DGIOF or any appropriate request to take immediate measures with persons and entities designated because of being tied to terrorism and its financing."

CT245. *Criterion 16.17* Section 61 of BCC Inst. 26/2013 establishes that "banks receiving fund transfers or remittances for natural persons shall investigate those that may be suspicious because of their nature, characteristics and frequency. To this end, they shall require the correspondent banks performing them to include in the text of the message all the required information about the originator (name, address, national identity number, date, and place of birth), provided that there are grounds to do so." Additionally, Section 37 states that "any single transaction or series of transactions, whether consecutive or not, exceeding the threshold established for the usual operations of an account in the typical services (deposits; transfers to or from abroad; payment of letters of credit, cash transactions, cheques; transfers of funds between accounts; lines of credit; and other business operations) shall be inspected." Also, Section 77 provides that "STRs shall include attempted transactions stopped by an employee or the permanent or occasional customer himself, regardless of their amount."

CT246. *Criterion 16.18* In addition to the provisions explained in Recommendation 6, Section 20 of BCC Res. 51/2013 stipulates that FIs are required to freeze, without delay, the funds or other assets of any person or entity which is designated by or is under the authority of the UNSC pursuant to UNSCR 1267 and its successor resolutions, or is domestically identified under UNSCR 1373. Likewise, all FIs are required to ensure that no funds are made available, directly or indirectly, to persons identified in any of the ways mentioned in the previous paragraph. In addition, Section 10 of BCC Inst. 26/2013 requires FIs to "freeze without delay and prohibit the disposition of funds to any person or entity designated by the UNSC pursuant to UNSCR 1267 and its successor resolutions, as well as to any person identified domestically or by third countries pursuant to UNSCR 1373 [...]", and Section 66 provides that "making transfers from/to abroad of persons and entities designated in UN lists, such as UNSCR 1267 and its successor resolutions and UNSCR 1373 on the prevention and suppression of terrorism and TF, is expressly prohibited." This is also stated in Chapter VI of DL 317 on Financial Sanctions Related to the Prevention and Combat of TF/PW.

CT247. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 16 is rated Compliant.**

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on Third Parties

CT248. *Criterion 17.1* Section 68 of BCC Inst. 26/2013 stipulates that "as a rule, FIs shall not contract with third parties for DD procedures. In case this is approved by the senior management of the institution, the FI shall ensure that all the steps and requirements related to these practices are fulfilled; that the information is

available every time it is requested; and that the third party is regulated, monitored for and has measures in place for compliance with DD and record-keeping requirements."

CT249. *Criterion 17.2* Section 68 of BCC Inst. 26/2013 mentioned above provides that "as a rule, FIs shall not contract with third parties for DD procedures. [...] The country's risk shall be analysed in those cases where the third party is located outside the national territory."

CT250. *Criterion 17.3* Not applicable as currently there are no financial groups.

CT251. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 17 is rated Compliant.**

Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries

CT252. *Criterion 18.1* Section 3 of BCC Inst. 26/2013 states that "FIs are required to identify, analyse and assess their risks of ML/TF/PW and other similarly serious conduct. FIs' boards of directors shall design and implement their strategy according to the risk profile defined on the basis of the complexity, volume and diversity of operations and transactions, products and services, as well as the countries, economic sectors and customer segments with which they do business. In addition, Section 4 establishes that "the development and implementation of the strategy shall cover all the offices, subsidiaries and branches of each FI."

CT253. *Criterion 18.1 (a)* Section 15 of BCC Res. 51/2013 establishes who shall perform the compliance function. Also, Section 47 of Inst. 26/2013 explains that "the compliance function includes general actions of surveillance, supervision and monitoring of preventive measures, the fulfilment of risk prevention plans, the Strategy and internal control rules." The proper performance of the compliance function is the direct responsibility of the presidents of the institutions, the provincial and territorial directors, and the directors and auditors of branches and offices, supported by the other directors and officers and by the Prevention and Control Committee." Additionally, Sections 48 and 49 explain the appointment and functions of compliance officers at central, territorial, branch, and subsidiary levels.

CT254. *Criterion 18.1 (b)* Section 20 of Res. 8 of the Ministry of Labour and Social Security regulates labour relations and has the principle of proven suitability, which includes the analysis of requirements such as working with the required efficiency, quality and productivity; compliance with general or specific rules of conduct, and personal characteristics required in the performance of certain jobs or positions, laid down in the Internal Disciplinary Rules of the entity, and formal qualifications, expressed in certificates of studies or degrees, in consistency with the requirements for the job or position intended to be held. Also, Section 70 of BCC Inst. 26/2013 provides that "FIs shall implement internal control measures against ML/TF which include the following: 1. Screening procedures for hiring employees; 2. An ongoing employee training programme." Particularly, Section 17 of BCC Res. 51/2013 and Sections 1, 4 and 5 of BCC Inst. 2/2014 specify the characteristics and profile of compliance officers, including suitability, training and registration with the BCC.

CT255. *Criterion 18.1 (c)* Section 25 of BCC Res. 51/2013 resolves that "FIs shall ensure that employees, officers and directors have the appropriate training for the exercise of their functions and shall guarantee the systematic education and training required for the implementation of these provisions." In addition, Section 70 of BCC Inst. 26/2013 stipulates that FIs shall have an ongoing employee training programme, and Instructing Section 2 requires FIs to "prepare and send a schedule of sessions for consideration, as part of the training plans for directors, officers and employees."

CT256. Criterion 18.1 (d) BCC Res. 18/1999 sets out the relations of the Banking Supervision Office with independent auditors and internal auditors of banks and non-banking FIs. Moreover, Section 70 of BCC Inst. 26/2013 requires FIs to apply internal control measures against ML/TF, which contain, inter alia, "Audits to test the system."

CT257. *Criterion 18.2* Not applicable as currently there are no financial groups.

CT258. *Criterion 18.3* Not applicable as currently there are no branches or subsidiaries abroad.

CT259. Evaluation and Conclusion: Cuba meets all the criteria of this Recommendation. **Recommendation 18 is rated Compliant.**

Recommendation 19 – Higher-Risk Countries

CT260. *Criterion 19.1 and Criterion 19.2* Section 11 of BCC Res. 51/2013 resolves that "FIs shall apply enhanced DD to business relationships and transactions with natural and legal persons from countries identified as high risk by the FATF. [...] Measures applied in these cases shall be effective and proportionate to the risks that they represent." In addition, Section 71 of BCC Inst. 26/2013 states that "FIs shall apply enhanced DD measures to transactions with countries qualified as higher risk in their ML/TF prevention systems or as indicated by the BCC. To this end: 1. They shall examine, as much as reasonably possible, the purpose of complex transactions, unusual because of their high amounts or their deviation from usual customer practices. 2. They shall increase the level and nature of the monitoring of transactions or activities that seem unusual, including the request for additional information about the customer or the intended nature of the business relationship. 3. They shall more frequently update the information on customer identification and the source of funds, as well as the reasons for attempted or completed transactions. 4. They shall obtain senior management approval to establish or continue the business relationship. 5. They shall select transaction patterns requiring greater consideration."

CT261. *Criterion 19.3* In addition to the comments made in the above criteria, the BCC Superintendent has issued Circular 3/2014 regulating the mechanism for all FIs and non-banking FIs to release the FATF public statement. Additionally, Section 4 of BCC Res. 51/2013 states that the BCC Superintendent may issue any instructions and regulations required for the implementation of the Resolution on the General Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital, for which the applicable resolutions issued by the UN, the FATF and the GAFILAT shall be taken into account.

CT262. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 19 is rated Compliant.**

Recommendation 20 – Reporting of Suspicious Transactions

CT263. *Criterion 20.1* Section 10.1 of DL 317/2013 establishes that "When one of the reporting entities mentioned in Section 2.1 [Reporting entities] is involved in an operation or financial transaction and suspects or has reasonable grounds to suspect that the funds are the proceeds of a predicate offence for ML/TF/PW and other similarly serious activities, it has the obligation to promptly report its suspicion to the DGIOF, under the procedure established for this purpose." In addition, Section 4.1 of Decree 322 includes any natural or legal person as a reporting entity with the obligation to report to the DGIOF any suspicious ML/TF/PW operations and other similarly serious related conduct. Also, in this sense, Section 18 of BCC Res. 51/2013 and Section 75 of BCC Inst. 26/2013 set out the obligation of FIs to file STRs with the DGIOF when they have reasonable grounds to suspect that the funds of a transaction have an illegal source.

CT264. *Criterion 20.2* Section 10.2 of DL 317/2013 mentions that "suspicions may arise from the monitoring of customers' operations and transactions, without economic or legal justification or with unusual or unjustified complexity. All suspicious transactions, including attempted transactions, are reported regardless of the amount of the transaction." In addition, Section 77 of Inst. 26 BIS/2013 provides that "STRs shall include attempted transactions stopped by an employee or the permanent or occasional customer himself, regardless of their amount."

CT265. Evaluation and Conclusion: Cuba meets all the criteria of this Recommendation. **Recommendation 20 is rated Compliant.**

Recommendation 21 – Tipping-Off and Confidentiality

CT266. *Criterion 21.1* Special Section 2 of DL 317/2013 explains that "the parties subject to this DL, their employees, directors and other legally authorized representatives are exempt from criminal or administrative liability for breach of this DL or any restriction on disclosure of information imposed by contract or by any legislative regulatory or administrative provision, including those relating to bank secrecy, whatever the result of the communication. This provision applies to all members of the BCC DGIOF in the performance of their duties." In addition, Section 23 of Res. 51/2013 states that "the employees of FIs in the National Banking System are exempt from liability for the non-fulfilment of the obligation to report a suspicious operation to the DGIOF, when this includes the restriction on disclosure of information imposed by contract or by any legislative regulatory or administrative provision, including related to bank secrecy, whatever the result of the communication."

CT267. *Criterion 21.2* Section 24 of BCC Res. 51/2013 resolves that "employees of FIs shall not disclose to third parties the fact that an STR or related information is being filed with the BCC DGIOF. Non-compliance with this provision shall give rise to the application of administrative, disciplinary or criminal measures, as the case may be." In addition, Section 80 of BCC Inst. 26/2013 prohibits notifying the customer that an STR has been filed with the DGIOF and Section 84 establishes that staff with access to the Reports shall refrain from disclosing any data or news on the Report, except to the competent authorities.

CT268. Evaluation and Conclusion: Cuba meets all the criteria of this Recommendation. **Recommendation 21 is rated Compliant.**

Designated Non-Financial Businesses and Professions

Recommendation 22 – DNFBPs: Customer Due Diligence

CT269. Based on Cuba's specific characteristics, the following Table discusses the DNFBPs that are not covered or are partially covered by Recommendations 22 and 23, and the reasons:

DNFBP	Reason
22.1 (a) Casinos	According to Law 86 (February 1959) and Section 219 of Law 62, Criminal Code, casinos are prohibited in Cuba.
22.1 (b) Real estate agents	A national resident or permanent resident cannot have more than two homes, one as a residence and another as a holiday home, according to Law 65, General Housing Law. Real estate agents are state entities operating with licences, this activity is state run and regulated. Real estate activity is concentrated in companies of fully Cuban-owned companies.

	<p>For self-employed workers with a licence to manage the exchange, purchase and sale of homes, Res. 42 of the Ministry of Labour and Social Security (22 August 2013) defines activity 148, that of managers, who provide services for managing and arranging the implementation of exchanges, purchase and sale of homes at the request of customers, which excludes the activity of agencies and direct dealing or dealing on behalf of another person.</p> <p>Foreigners interested in investing in Cuba can only do so for tourism purposes, and the real estate sale service is pending enforcement in amendments to the new law on foreign investment. (Foreign Investment Law 118, 29 March 2014).</p>
Dealers in precious metals and dealers in precious stones	<p>In Cuba there are no private dealers in gold and precious stones. This is a state activity, which is concentrated in the Coral Negro company, a Cuban jewellery producer and dealer. It specializes in jewellery production and retail sale. It provides repair, maintenance and assembly services for watches, clocks and jewellery, as well as precious metal appraisal services and jewellery making. There are registration and control procedures in place for purchase and sale transactions. It is audited and monitored by the Auditing Unit of the institution itself and of the body it reports to and by the CGR (as set out in Law 107/2009). Res. 42 of the Ministry of Labour and Social Security (22 August 2013) defines self-employed workers' activities and their scope. Activity 110, repair of jewellery items, does not cover dealing in metals or precious stones.</p>
Lawyers, notaries, other independent legal professionals and accountants in:	
Managing of client money, securities or other assets.	<p>Under Decree-Law 317, the above professions are reporting entities when they prepare for, or carry out, transactions for customers concerning the management of client money, securities or other assets.</p> <p>However, at present this criterion does not apply as lawyers, notaries and other legal professionals and natural or legal persons working as accountants independent or under other forms of non-state management are not allowed to conduct this activity in accordance with the rules governing the powers and activities of each sector (Decree-Law 81 for lawyers and Law 50 for state notaries).</p>
Organization of financial contributions for the creation, operation or management of companies.	<p>Not applicable—these services are not available in Cuba. Lawyers, notaries, other legal professionals and accountants are not empowered to perform these activities.</p>

Creating, operating or management of legal persons or other legal arrangements, and buying and selling of business entities.	This sector is listed in DL 317 as a reporting entity in the creation, operation or management of legal persons or other structures. It should be noted that according to Cuban authorities, lawyers, notaries, other legal professionals and accountants now do not participate in the buying and selling of business entities in Cuba—they only provide consultancy services for foreign investors.
Trust and company service providers in the following cases	
Providers of trust services and acting as a trustee of an express trust or performing the equivalent function for another form of legal arrangement. Acting as a formation agent of legal persons.	Trust services in Cuba are performed through the financial institutions authorized by the BCC. Therefore, all the rules for ML/TF prevention intended for FIs are applied. Providers of the service of acting as a formation agent of legal persons are listed as reporting entities in DL 317/2013, although these functions are not carried out at present.
Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.	These services are not provided for nationals in Cuba. With the economic opening processes, these services are only provided to entities expressly authorized by a licence of the Ministry of Foreign Trade and Foreign Investment, which are required to register with the National Registry of Branch Offices and Agents, Chamber of Commerce of the Republic of Cuba (Decree 206 Section 3).
Acting as a nominee shareholder for another person.	Not applicable, according to the provisions for the records of regular or occasional customers, companies and corporate suppliers of Cuban state-owned corporations.

CT270. *Criterion 22.1* Section 2.3 of DL 317/2013 includes, as reporting entities, lawyers, notaries, other independent legal professionals and accountants when they carry out transactions concerning the purchase and sale of real estate, when they are involved in the creation, operation or management of legal persons or other legal arrangements. It also included any natural or legal person providing corporate services as a formation agent of legal persons and as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons. However, although they are empowered to conduct these activities, in practice they do not perform them. There is no certainty that all non-financial professions assess the risks of performing these activities for AML/CFT purposes.

CT271. Section 7 of DL 317/2013 lays down the CDD requirements and defines CDD as follows: "to identify and verify the information on customers, beneficial owners, whether natural or legal persons; to understand, and where appropriate, obtain information on the purpose and intended nature of the business relationship; to monitor the accounts of customers in proportion to the identified risks; to keep records of customer identification and transactions." Also, Section 9 on Knowledge of Customers requires "to identify always all customers, whether permanent or not, as well as to verify the authenticity of the data and documents submitted. 2. DD in the identification and verification of a customer shall include information about the real owner, the business controller or the beneficial owner." In addition, Sections 6, 12, 13 and 28 of Res. 73/2014

on DNFBPs supplements the provisions on CDD in compliance with Criteria 10.3, 10.5, 10.6, 10.7 (a), 10.8, 10.9, 10.10, 10.16, and 10.20.

CT272. Similarly, in addition to the provisions of DL 317/2013, Section 5 of Res.73/2014 resolves that "CDD measures are applied during the establishment and in the course of the relationship with him, as well as at the stages of identification, verification and monitoring in compliance with Criterion 10.14. It does not provide for the possibility of verifying the identity once the business relationship has begun; therefore, Criterion 10.15 is not applied.

CT273. With respect to Criterion 10.18, Sections 7 and 8 of Res. 73/2014 allow for simplified CDD measures where lower risks have been identified. But simplified measures are not acceptable when there is suspicion of ML/TF or there are higher-risk scenarios. Section 8 identifies such higher-risk activities as the buying and selling of real estate, the creation, operation or management of legal persons and other legal arrangements, to which enhanced CDD should be applied, in partial compliance with Criterion 10.17. However, the legislation does not include the need to apply enhanced CDD to other possible higher-risk activities which may be identified by reporting entities themselves.

CT274. While under DL 317/2013 and Res. 73/2014 a broad framework requires DNFBPs to implement CDD measures, it is not clear that Criteria 10.2, 10.4, 10.7.b, and 10.19 are met. In Cuba, Criteria 10.11, 10.12 and 10.13 do not apply to DNFBPs.

CT275. *Criterion 22.2* Section 8 of DL 317/2013 establishes that "the information obtained by the parties subject to this DL through DD measures shall be kept for a period of at least five (5) years."

CT276. *Criterion 22.3* Section 16 of Res. 73/2014 on DNFBPs states that "the parties subject to these provisions assess risks and apply other measures aimed at establishing DD with foreign or domestic customers who hold or have held prominent public or administrative positions in the country or on behalf of a foreign country and qualify as PEPs." The foregoing also includes determining whether a customer or the beneficial owner is a PEP, obtaining senior management approval to establish or continue the business relationship, and conducting ongoing monitoring on that relationship.

CT277. *Criterion 22.4* Section 9 of Res. 73/2014 on DNFBPs establishes that "the parties subject to these provisions assess risks and apply other measures aimed at mitigating them before launching or using new products, practices and technologies with specific activities and customers."

CT278. *Criterion 22.5* Sections 10 and 11 of Res. 73/2014 on DNFBPs provide that prevention obligations for ML/TF and other similarly serious conduct apply to all subsidiaries and units of the parties subject to these provisions. Additionally, "the parties subject to these provisions may delegate the application of CDD exceptionally, which shall not imply the cessation of the party's liability hereunder."

CT279. *Evaluation and Conclusion:* Although the legislation covers most criteria in Recommendation 22, rules are still unclear as regards compliance with criteria related to CDD and AML/CFT monitoring for certain DNFBPs, particularly notaries, accountants and real estate agents. **Recommendation 22 is rated Largely compliant.**

Recommendation 23 – DNFBPs: Other Measures

CT280. *Criterion 23.1* Section 10 of DL 317/2013 establishes that "When one of the reporting entities mentioned in Section 2 [Reporting entities, including DNFBPs] is involved in an operation or financial transaction and suspects or has reasonable grounds to suspect that the funds are the proceeds of a predicate

offence for ML, or are related to PW and other similarly serious activities, it has the obligation to promptly report its suspicion to the DGIOF, under the procedure established to this end. 2. All suspicious transactions, including attempted transactions, shall be reported regardless of the amount of the transaction."

CT281. *Criterion 23.2* Section 31 of Res. 73/2014 on DNFBPs sets out that "it is the responsibility of the regulatory or oversight body of each party to ensure strict procedures for staff selection as provided for in the Law, provide training or systematic updating of employees, officers and executives, in their sector, area or activity, in order to facilitate the knowledge of typologies, ML/TF modus operandi, predicate offences, and other similar conduct."

CT282. *Criterion 23.3* Section 17 of Res. 73/2014 on DNFBPs states that "the reporting parties subject to these provisions apply enhanced DD, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries identified, due to their strategic deficiencies, in the prevention system for ML/TF and predicate offences."

CT283. *Criterion 23.4* Section 4.1 of DL 317/2013 establishes that "the parties mentioned in Section 2.1, as well as their staff, shall not disclose the fact that an STR or related information is being filed with the DGIOF, unless if requested by a judicial body or a competent authority. 2. Non-compliance with this provision shall give rise to the application of administrative, disciplinary or criminal measures, as the case may be." Also, Special Section 2 of DL 317/2013 explains that "the parties subject to this DL, their employees, directors and other legally authorized representatives are exempt from criminal or administrative liability for breach of this DL or any restriction on disclosure of information imposed by contract or by any legislative regulatory or administrative provision, including those related to bank secrecy, whatever the result of the communication. This provision applies to all members of the BCC DGIOF in the performance of their duties."

CT284. *Evaluation and Conclusion:* While criteria in this Recommendation are largely met, minor deficiencies identified in Recommendation 22 on some of the activities carried out by DNFBPs are also associated with this Recommendation. **Recommendation 23 is rated Largely compliant.**

VI. SUPERVISION

Recommendation 26 – Regulation and Supervision of Financial Institutions

CT285. *Criterion 26.1* Section 46 of BCC DL 172 and Sections 54 and 55 of DL 173 on Banks and Non-Banking FIs empower the BCC and its Superintendent to regulate and supervise FIs and non-banking FIs. Particularly, Section 4 of BCC Res. 51/2013 states that “the BCC Superintendent is responsible for issuing any instructions and regulations required for the implementation of this Resolution, as well as its supervision in the National Banking System, for which the Superintendent shall take into account the applicable resolutions issued by the UN and the FATF and GAFILAT Recommendations on ML/TF/PW prevention and combat.” On the other hand, issuing and delivering money orders is the responsibility of Cuba’s Post Company, a state-owned entity, controlled and monitored by the Ministry of Informatics and Communications (*Ministerio de la Informática y de las Comunicaciones*) and the CGR, as provided for in Law 107/2009. It has a supervisor but is not empowered to supervise the company for ML/TF.

CT286. *Criterion 26.2* Sections 6 and 8 of DL 173 provide that, for FIs and representation offices to establish in the country, the BCC first needs to grant the appropriate licence. BCC Res. 24/1998 regulates the licence application and granting. Additionally, as mentioned in Criterion 13.3, Section 55 of BCC Inst. 26/2013 establishes that “Entering into correspondent banking relationships with shell banks is prohibited.”

CT287. *Criterion 26.3* The Public Administration Code of Ethics, Section 12 of DL 196/1999 on the System of Work for State Employees and the Government and Section 7 of DL 197/1999 on labour relationships of staff appointed to hold positions as leaders or officials explain the ethics, professionalism and merit criteria that all state employees need to adopt. In particular, DL 173/1997 on Banks and Non-Banking FIs states that “to occupy positions in FIs people need to have a high moral standing, full legal capacity to engage in ordinary trade, banking and finance activities, as well as to occupy or have occupied important roles in the economic, banking or finance areas and have proven related capacity.” “Fit and proper” tests are applied to foreign shareholders or representation offices as from the time of the application for the creation or the establishment for representation activity in the national territory of Cuba of FIs, under Chapter II, Subchapter II on the Creation of FIs, Sections 6 to 10, which specify the requirements for obtaining a licence from the BCC, and Sections 11 and 12, which regulate the BCC General Register of Banks and FIs, of DL 173/1997 on Banks and Non-Banking FIs. The types of licences are listed in Section 13, which includes those granted to representation offices.

CT288. *Criterion 26.4* For banking and non-banking FIs, Sections 3, 28, 54, 55 and 59 of DL 173/1997 on Banks and Non-Banking FIs regulate the supervision of the BCC. In particular, Section 28 explains that, in their capital adequacy, all FIs are governed by the solvency and own funds ratios generally or particularly set by the BCC. To this end, the BCC takes into account the Basel Accord on Banking Supervision (although not exclusively) as for the International Convergence of Capital Measurement and Capital Standards. Additionally, Section 87 of Inst. 26/2013 of the BCC Superintendent sets out that, through risk-based supervision, the supervisor shall assess the different business areas of the entities and the quality of their internal controls and management systems to identify the highest-risk and most concerning areas and processes. Supervision shall focus mainly on these areas. Thus, the Core Principles for Effective Banking Supervision (September 2012) of the Basel Committee on Banking Supervision and the FATF Recommendations shall be taken into account as applicable.”

CT289. Under Section 88 of BCC Inst. 26/2013 on the Specific Rules for the Detection and Prevention of Operations in the Combat of ML/TF and the Illegal Flow of Capital, the regional directors of the Western, Central and Eastern areas of the country, reporting to the Superintendent, are responsible for monitoring compliance with these Rules in the offices and branches of banking and non-banking FIs. To identify the

risks of institutions as a whole, matrix tools combining qualitative and quantitative elements are applied for supervisors to know the risks taken by the institutions. These tools provide an up-to-date understanding of ML/TF risks, both in the sector and in each institution.

CT290. *Criterion 26.5* In addition to Section 87 of BCC Inst. 26/2013, BCC ND 1/2014 supports the model of Risk-Based Supervision to be applied by the BCC and bullet 4 of Objectives explains, for example, that the purpose of supervision is to focus resources: They need to be assigned effectively to higher-risk sectors [...]. Complementarity between on-site and distance supervision is an essential tool for supervisors to know FIs. “Risks in the prevention of the misuse of banking services and ML/TF are addressed in a special way and those aspects related to the knowledge of all identified risk events (customers, beneficial owners, proper interpretation of business relationships, products and services, the monitoring of operations, etc.) are assessed in order to determine the consistency of the risk profile established by the FI, in the context of compliance with DD and the simplified or enhanced measures to be applied.” Inst. 26/2013 requires FIs under the supervision of the BCC Superintendent “to identify, analyse and assess their ML/TF/FPWMD risks.”

CT291. *Criterion 26.6* In addition to the previous comments on Section 87 of BCC Inst. 26/2013, Subchapter IV on Risk Matrix of BCC ND 1/2014 explains that the central tool for the Risk-Based Supervision approach is an integral matrix used for the interrelation or synthesis of the different areas that are part of the Model. [...] The Matrix documents, through processes and different business areas, the FI risk assessment in an integrated manner, with a view to focusing on risk areas, an objective diagnosis of their specific situation and the impact on the overall vision of the National Banking System. Then, it comments on the frequency with which “the Supervision Division prepares the On-Site Visit Plan, which may be modified, if necessary, in accordance with the early warning signs resulting from distance supervision. Also, the Plan may vary due to the need to introduce special supervision as a result of new risk situations affecting an FI, identified either by the Superintendent or by sources of information outside the BCC.” The risk matrix of supervision is adjusted on an annual basis and when a risk event occurs that is worth reviewing within the year. It is applied as a central tool for the Risk-Based Supervision approach, is an integral matrix which interrelates the different areas that are part of the Model referred to in Annex 3 of BCC ND 1/2014, which is reviewed on annual basis and adjusted as required.

CT292. *Evaluation and Conclusion:* The supervision of FIs under the scope of the BCC meets all the criteria in this recommendation. However, the ML/TF supervision applicable to Cuba’s Post Company is not clear. **Recommendation 26 is rated Largely compliant.**

Recommendation 27 – Powers of Supervisors

CT293. *Criterion 27.1* Section 46 of DL 172/1997 states that “the Superintendent is responsible for the supervision of FIs and representation offices established in the country. In the performance of his functions, the Superintendent has full autonomy and freedom of action in relation to any leader of FIs and representation offices, except for the President of the BCC, to whom the Superintendent reports, renders an account of his work and identified irregularities, and makes recommendations.” According to Section 7 of BCC Res. 79/1998: “The specific functions of the Banking Supervision Office include: 1. Controlling compliance with monetary, credit, foreign exchange and fiscal policy regulations, as well as with the procedures issued by the BCC. 2. Checking that banks and non-banking FIs take the necessary measures to comply with ML standards and regulations.” In any case, as mentioned above, Section 4 of BCC Res. 51/2013 empowers the BCC Superintendent to issue instructions and regulations related to ML/TF, among others. Non-banking entities licensed by the BCC are also part of the National Banking System and are therefore subject to the regulation and supervision of the BCC Superintendent. Issuing and delivering money orders is a state responsibility and the activity is controlled and monitored by the Ministry of Informatics and Communications and the CGR,

as provided for in Law 107/2009. However, the legislation does not empower these supervisors to monitor ML/TF issues.

CT294. *Criterion 27.2* In addition to the rules mentioned above, Section 54 of DL 173 provides that the BCC is empowered to issue the rules, procedures and regulations considered necessary to conduct banking supervision, the audit and inspection of FIs, representation offices and the BCC. The supervision, inspection, surveillance, regulation and control of FIs and representation offices are the responsibility of the BCC Superintendent. The supervision of the BCC includes any kind of financial intermediation activities carried out by insurance undertakings established and to be established in the country, to which the related regulations issued by the BCC apply. As mentioned above, the Ministry of Communications is the supervisor of Cuba's Post Company but it is not clear that it may conduct ML/TF supervision.

CT295. *Criterion 27.3* Section 55 of DL 173/1997 establishes that "FIs and representation offices are required to provide the BCC Superintendent with the information requested in order to fulfil the powers conferred by its organic law and this DL. In meeting this requirement, the BCC establishes the forms and deadlines to receive the requested information. Section 56. The BCC Superintendent has the required authority to examine the balance sheet and other financial statements, the accounts and operations of the FIs established in the country, as well as to request from these and representation offices as many reports and additional information as considered necessary for the best performance of the Superintendent's supervision functions." In addition, Section 86 of BCC Inst. 26/2013 sets out that "the supervision, inspection, surveillance, regulation and control of the FIs and representation offices authorized to establish in the country are the responsibility of the BCC Superintendent; these are required to report to who orders the required information." However, money order supervisors are not authorized to compel production of any information relevant to monitoring compliance with the AML/CFT requirements.

CT296. *Criterion 27.4* Sections 47.c) and 49 of DL 172 state that the main purpose of the Superintendent is to ensure that FIs and representation offices comply with the laws, decree-laws, regulations, statutes, and other rules governing them and to exert the broadest possible control over all operations and business. The Superintendent's main functions are: [...] c) Applying the sanctions established in this DL, the DL on Banks and Non-Banking FIs and other regulations in force due to the violation of their provisions by persons or entities, or by both simultaneously. [...] Section 49. With the prior authorization of the President of the BBC, the Superintendent may order the total or partial temporary suspension of the operations of any FI for a maximum period that is subject to periodic regulation by the BCC. [...] The Superintendent may request the President of the BBC to withdraw the authorization to operate granted to FIs. In addition, Section 5 of BCC Res. 108 sets out that "according to the seriousness of the violation, the degree of involvement and responsibility of the parties and the consequences of the breach, any of the following sanctions may be applied: a) A written warning; b) a fine of up to CUP 5 000 000 (equivalent to USD 2 083.33) or its equivalent in a freely convertible currency for legal persons, or the percentage to be determined of the total amount of the related operation when appropriate; c) the temporary or partial suspension or modification of the licence granted by the BCC or its final withdrawal." However, the sanctioning regime that may be imposed by money order supervisors is not clear.

CT297. *Evaluation and Conclusion:* The powers of FI supervisors meet all the criteria of this recommendation; however, the ML/TF-related powers of the supervisor of Cuba's Post Company are unclear. **Recommendation 27 is rated Largely compliant.**

Recommendation 28 – Regulation and Supervision of DNFBPs

CT298. *Criterion 28.1* Not applicable.

CT299. *Criterion 28.2 and Criterion 28.3* Section 2 of DL 317/2013 establishes that, for the purposes of this DL, natural or legal persons referred to in paragraph 3 above are subject to compliance with the rules issued by their regulatory or oversight body as regards the prevention of ML/TF and other similarly serious related conduct. Due to Cuba's specific characteristics, the Ministry of Justice is the regulator and supervisor of the activity of notaries and other legal professionals, the Ministry of Labour supervises self-employed accountants and the ONBC is the body that brings together lawyers and is responsible for self-regulation and supervision of this activity. Section 2 of BCC Res. 73/2014 states that “the supervision and control plans of the reporting parties subject to these rules provide for monitoring compliance with the provisions in this Resolution”

CT300. *Criterion 28.4* For notaries: Section 35.a and 35.b of Law 50/1984 on State Notaries sets out that “the Ministry of Justice is in charge of the technical, regulatory and methodological direction of the notarial activity and functions, and so it has the following responsibilities: a) Advising, inspecting and controlling the work of justice divisions in the notarial activity and function; b) conducting or directing the conduct of technical inspections of notaries, notary offices and provincial notarial record archives to monitor compliance with the provisions and legal rules related to this activity.” The Law on Notaries provides, within the process of granting applicants the notary licence, for an investigation to prove that applicants have a good standing. Once the applicant is licensed, before being appointed, which can take up to 5 years following licensing, a new investigation is conducted to guarantee the applicant’s moral standing to act as a notary.

CT301. For lawyers: Special Sections 1 and 2 of DL 81/84 on the Practice of Law and the ONBC explain that “the Ministry of Justice is responsible for the high-level inspection, supervision and control of the activity of the ONBC and its members.” In addition, Section 3 of Res. 142/84 of the Ministry of Justice specifies the requirements to act as lawyer and the ethical and suitability requirements to perform this function. The ONBC also has a systematic supervision system in place for national lawyers, contained in Chapter V, Standard 1 of the Manual of Standards and Procedures that describes the structural and functional organization of the system. The system is mainly intended for the monitoring lawyers' work, including AML/CFT supervision.

CT302. As regards the applicable sanctioning regime, Sections 24 to 27 of DL 81/84 lay down the appropriateness of applying disciplinary measures to members due to the non-fulfilment of any of the duties and obligations set forth in the rules and empower the ONBC to impose disciplinary sanctions on lawyers, varying from a warning through fines and transfers to the final expulsion from the ONBC.

CT303. For self-employed bookkeepers, Res. 41/2013 on Self-Employed Work Regulations, issued by the Ministry of Labour and Social Security, regulates the activity and explains the required steps to apply for a licence for the performance of this activity. However, the Ministry of Labour may neither conduct ML/TF supervision nor apply any sanction to accountants in case of non-compliance.

CT304. *Criterion 28.5* Sections 1.3 and 12 of CGR Law 107/2009 explain the supervision and control actions in the country. In addition, CGR Res. 60/2011 on the Rules of the Internal Control System defines, among other aspects of interest, their components and standards, the concept of risk and risk mitigation, the obligations to assess risks by processes, activities and transactions, as well as to develop and systematically update the Risk Prevention Plan in all domestic entities. During the on-site visit, the ONBC included AML/CFT in its supervision processes. However, the Ministry of Justice and the Ministry of Labour still do not conduct ML/TF risk-sensitive supervision on the other DNFBPs.

CT305. *Evaluation and Conclusion:* All DNFBPs have a supervisor, but not all supervisors use an ML/TF risk-sensitive approach to supervision or have an established range of applicable penalties in the case of non-compliance by a DNFBP. **Recommendation 28 is rated Partially compliant.**

Recommendation 34 – Guidance and Feedback

CT306. *Criterion 34.1* For FIs, the directives are contained in Section 7.5 of Decree 322/2013, which states that the DGIOF has the following functions: Organizing training programmes on the prevention and combat of ML/TF and other similarly serious related conduct. For DNFBBPs, Section 31 of Res. 73/2014 sets out that “it is the responsibility of the regulatory or oversight body of each party to ensure [...] training and systematic updating of employees, officers and directives, in their sector, area or activity, in order to facilitate the knowledge of typologies, the modus operandi of ML/TF/PW, predicate offences, and other similar conduct.” Although it has been noted that the DGIOF can provide feedback to all its reporting entities, it would be appropriate to have regulatory evidence in this respect. In addition, the mechanism used by the ONBC to provide feedback on STRs to its sector is not clear.

CT307. *Evaluation and Conclusion:* Although there is legislation on training, the mechanism to provide feedback on STRs is not entirely clear. **Recommendation 34 is rated Largely compliant.**

Recommendation 35 – Sanctions

CT308. *Criterion 35.1* In relation to Recommendation 6, Sections 57-59 of DL 172 state that FIs may be sanctioned with fines or even the temporary or permanent suspension of their licence if they do not comply with the provisions set out by the BCC. In addition, the following sections of BCC Res. 108/2013 establish: “FOURTH: The following types of conduct are considered violations: a) the failure to apply DD provisions and customer knowledge or to file the STR within the terms set by the legislation in force; b) the failure to observe the DGIOF’s directions within the purview of its powers; c) the failure to meet the obligation to freeze, without delay, the funds of persons and entities designated by the UNSC pursuant to UNSCR 1267 and its successor resolutions, under sanctions against Al-Qaida and the Taliban or domestically designated and listed in cooperation requests from third countries pursuant to UNSCR 1373 and its successor resolutions, as being individuals related to terrorism or terrorist financing; d) the failure to comply with prudential regulations and any other action infringing the rules in force to combat ML/TF and other related conduct.” “FIFTH: According to the seriousness of the violation, the degree of involvement and responsibility of the parties and the consequences of the violation, any of the following sanctions may be applied: a) A written warning; b) a fine of up to CUP 5 000 000 or its equivalent in a freely convertible currency for legal persons, or the percentage to be determined of the total amount of the related operation when appropriate; c) the temporary or partial suspension or modification of the licence granted by the BCC or its final withdrawal.” Although the sanctions imposed by the BCC cover most FIs in the country, the sanctioning regime for the money order company is not clear.

CT309. For DNFBBPs, Section 3 of Res. 73/2014 states that “administrative sanctions shall be imposed on the reporting entities that fail to comply with the provisions of this Resolution, in consistency with the applicable law, regardless of the appropriate criminal and civil actions.” As mentioned in Recommendation 28, the range of sanctions applicable to bookkeepers is not defined.

CT310. For NPOs, at present a new legal provision which sets forth the improvement of forms of association and addresses issues requiring updating, as in the case of the sanctioning system to which such associative forms will be subject and which is not clearly defined in Law 54, is under discussion and subject to approval at the Cuban Parliament.

CT311. *Criterion 35.2* Section 2 of BCC Res. 108/2013 extends measures and sanctions to the following parties: a) FIs, their units and representation offices that are subject to the supervision of the BCC; b) natural persons holding administration and management offices in FIs and representation offices. Furthermore, as



in the above criterion, sanctions for directors and/or senior managers for the applicable cases in Recommendations 8, 23 and for Cuba's Post Company are not clear.

CT312. *Evaluation and Conclusion:* Although there are proportionate and dissuasive sanctions for FIs, the ML/TF sanctioning regime for DNFBPs and NPOs is not clear. **Recommendation 35 is rated Partially compliant.**

VII. LEGAL PERSONS AND ARRANGEMENTS

Recommendation 24 — Transparency and beneficial owner of legal persons

CT313. *Criterion 24.1 (a)* Section 2.1 of DL 226/2002 on Company Registry explains the types of legal persons that may register in the Company Registry to request legal personality: these are a) state companies in business development; b) fully Cuban-owned companies and their branches in the national territory; c) joint ventures; international economic association contracts and fully foreign-owned companies; d) foreign natural persons who, under the current legislation, are authorized to operate in Cuba on their own; e) branches of foreign companies; f) other subjects and acts arranged by the Executive Committee of the Council of Ministers. Considering this last assumption, the law has stated that non-agricultural cooperatives are also registered as subjects in the Company Registry, according to Section 14 of DL 305/2012 on Non-Agricultural Cooperatives.

CT314. *Criterion 24.1 (b)* Processes for creating legal persons are described by DL 226/2002 on the Company Registry, Chapter II on subjects and acts that may be registered in the Company Registry. In the case of non-agricultural cooperatives, DL 305/2012, Section 14, states that "the creation of the cooperative is implemented through public deed before a notary, as an essential requirement to gain validity, but acquires legal personality once registered in the Company Registry." Requirements for records and necessary information comply with the FATF recommendations, including requirements to identify beneficial owners.

CT315. *Criterion 24.2* The National Risk Assessment, which has been carried out by the Coordinating Committee, included many of its reporting entities in the development process. However, in the strategy submitted, legal persons were not included in the risk analysis.

CT316. *Criterion 24.3* According to Criterion 24.1, DL 226/2002 on the Company Registry, Chapter II on subjects and acts that may be registered in the Company Registry, describes for each legal arrangement the information that should be provided to process the registration; in all cases registration includes description, corporate name, address, articles of association, list of administrators, as well as delegation of powers and duties, list of members where applicable, and other legal authorizations for regulation and management, including financial statements, and share registration where allowed. Particularly in the case of state companies, the Resolution creating them and the name of directors are required. In all cases, legal personality is granted when the registration entry is made. Likewise, according to Criterion 24.1, Chapter I on the Company Registry, Subchapter 3, explains that the Company Registry is publicly available and that any duly entitled person may request information related to the content of the Company Registry entries.

CT317. *Criterion 24.5 and 24.7* Sections 2.3, 8.1, 9.1 and 12.1 of DL 226/2002 on the Company Registry, respectively, state that the Company Registry can verify the circumstances registered and reports submitted to the Registry; it is mandatory for registrable subjects to register any agreements or acts where registration entries have been altered or modified, or whose registration is available by law or regulations, among others, including beneficial owners. Additionally, Sections 203 and 204 of MINJUS Res. 230/2002 explain that the Company Registry analyses the contents of the annual account and reports before confirming the deposit, checking their compliance with the following requirements required by the Resolution (including verifying that documents are duly approved and signed, among others actions). If interested parties correct errors or fill out omissions found in the documents within 90 days, the requested registration is made; otherwise, the registration process is cancelled.

CT318. *Criterion 24.6* According to earlier comments, Sections 2.3, 8.1, 9.1, and 12.1 of DL 226/2002 on the Company Registry require legal persons to update information. In addition, according to Chapter II, all legal persons applying for registration before the Company Registry are required to submit various types of

information; among others, information related to number of shares, shareholders, partners, managers, legal representatives, etc.; and in each case the legislator included a subsection allowing requests for additional information, e.g. related to the beneficial owner or the last controlling shareholder of the company. This is possible because all legal persons are required to register any applicable act or circumstance by decision of the subjects, or under legal or regulatory provisions. The procedure is applicable to all subjects on the Company Registry, including companies with participation of foreign shareholders.

CT319. *Criterion 24.8* Regarding wide cooperation with competent authorities, Law 5 on the Code of Criminal Procedure, Section 41, establishes that "state-owned corporations and agencies are required to provide courts, prosecutors, investigating officers or the police with any reports, data and background information required by them for crime investigation as appropriate; and when these requirements are not met, despite authorities' relevant summary processes, they shall address to the Chairmen of State Committees, Government Ministers and other agency leaders so that they provide the required assistance." In addition, DNFBPs are reporting entities that will report any suspicious transactions, as established by Section 3.2 of DL 317/2013 and Section 29 of Res. 73/2014, stating that "subjects to these regulations ensure their collaboration with the competent authorities regarding their objectives."

CT320. *Criterion 24.9* DL 265/2009 on the National Archive System of the Republic of Cuba. Section 18 states that central archives, when an inquiry is no longer frequent, are kept for a period of twenty-five years as a maximum. Section 8 of DL 317/2013 establishes that information obtained by reporting entities through DD measures is kept for a period of at least five years, and as discussed above, should be constantly updated. In addition, Section 20 of BCC Inst. 26/2013 sets out that "the records of each customer and all the documentary and computerized information filed at FIs shall be duly organized and protected for at least five (5) years following the closing of the account or the termination of the business relationship, or for a longer period if requested by a competent authority in certain specific cases. "

CT321. *Criterion 24.10* Under Section 41 of Law 5 on the Code of Criminal Procedure, courts, prosecutors, investigating officers or the police may request all required information for investigating a crime, including beneficial owners, and state-owned corporations and agencies are required to submit such information within 20 days as a maximum. In addition, Section 7.1.c of Decree 322 provides that the DGIOF may receive information that serves to clarify the current analysis and investigations, provided by the AGR, the ONAT, the Superintendence of Insurance or other necessary bodies or agencies, including reporting entities, where specifically requested.

CT322. *Criterion 24.11* Not applicable in Cuba, since no bearer shares are issued.

CT323. *Criterion 24.12* According to Sections 20.e, 20.f, 21.d, 21.e, 23.d, and 23.e of DL 226/2002 on the Company Registry state that companies, joint ventures, and fully foreign-owned companies that issue nominal shares shall inform the Company Registry when shares are issued, including the series number and number of titles in each issuance, interest, revenue, amortization, and premium; and if required, the total number of issued shares and assets, works, rights and obligations affecting their payment, and the appointment and removal of administrators, liquidators and auditors. In addition, the appointment and removal of secretaries and undersecretaries of managing collegiate bodies should be registered, even if they are not members. Moreover, Section 142 of MINJUS Res. 230/2002 states that "the Company Registry to proceed to register the identity of partners who are natural persons, including those who are beneficial owners, records names and last names, marital status, number of ID card and address, and other details required by Section 98 hereof" regarding the identity of the legal person. Also, Section 143 states that "the registration of the identity of members who are legal persons is carried out according to Section 98 hereof.

CT324. *Criterion 24.13* Section 27.1 of DL 226/2002 on the Company Registry sets out that "non-compliance with the terms defined for the registration of subjects and acts defined by this DL and its regulation, is subject to a surcharge on rates as appropriate. 2. Any registration process could be suspended in the case of serious violations to registration proceedings. The suspension ceases when the violation detected is corrected." In addition, surcharges amount to 30% over the value of the proceeding that was not complied with, according to Section 4 of MINJUS Res. 98/2004. All sanctions will be proportionate and dissuasive.

CT325. *Criterion 24.14* According to the Recommendations 37 through 40, Cuba may provide international cooperation under the international conventions it is a party to. Through letters rogatory, according to FGR Res. 27/2013, related to methodological directions for the processing and control of letters rogatory, the FGR may request information from state bodies and agencies in order to assist with foreign cooperation requests. In addition, Section 7.8 and Sections 12-15 of Decree 322/2013 establish information exchange and collaboration between the DGIOF and foreign counterpart institutions.

CT326. *Criterion 24.15* TSP Inst. 214/2012 on the Methodology for the Processing of Letters Rogatory states that the TSP follows up on deadlines for processing of letters rogatory. The Methodology for the Processing of Letters Rogatory and Notes Verbales is established in Section 3. However, it remains unclear whether those related to identification and/or location of beneficial owners can be processed.

CT327. *Evaluation and Conclusion:* The national risk assessment process did not include risk assessment on legal arrangements. **Recommendation 24 is rated Largely compliant.**

Recommendation 25 —Transparency and beneficial owner of other legal arrangements

CT328. *Criterion 25.1* Section 1.8 of DL 173/1997 defines trustee activities as non-banking FIs: "8. Non-banking FI. Any legal entity established according to Cuban or foreign laws that [...] provide financial intermediation services (with the exception of deposit collection services) such as: [...] trust operations [...]." Therefore, it is subject to the same regulations that involve FIs, and it is only carried out by authorized FIs licensed by the BCC. In addition, Section 34 of BCC Inst. 26 BIS/2013 establishes that "in the case of trusts and other legal arrangements, FIs licensed to provide these services shall verify the identity of beneficial owners through the following information: a) the identity of the settlor, the beneficiary(ies), other trustees, if any, and any other natural person exercising ultimate effective control over the trust, including through a chain of ownership, if any; b) the identity of persons in equivalent or similar positions. " Section 20 of BCC 26/2013 states that records will be kept "for at least five (5) years following the closing of the account or the termination of the business relationship, or for a longer period if requested by a competent authority in certain specific cases." Section 34 of BCC 26 BIS/2013 provides that "secret trusts, or the provision of this service, are expressly prohibited when the FI does not know and is unable to identify the applicant and beneficiary of operations." Therefore, Subcriterion (b) does not apply in Cuba.

CT329. *Criterion 25.2* Section 27 of BCC Inst. 26/2013 states that "FIs shall request customers to update information at least every two (2) years, unless they are previously informed of any change in circumstances or their level of risk. In the case of savers, records shall be updated at least every two (2) years."

CT330. *Criterion 25.3* According to Criterion 25.1, secret trusts are not allowed in Cuba, only express trusts are possible; this service can only be provided when a licence is obtained for this purpose. In addition, Section 34 of BCC 26 BIS/2013 establishes that FIs in all cases shall ensure the identification of: "a) the identity of the settlor, the beneficiary(ies), other trustees, if any, and any other natural person exercising ultimate effective control over the trust, including through a chain of ownership, if any; b) the identity of persons in equivalent or similar positions." In terms of the information provided to DNFBPs, Section 34.a of BCC Inst.

26/2013 explains that this does not apply in Cuba, because trusts are not civil bodies; they are only functions of FIs, which in all cases apply the DD and identify settlors

CT331. *Criteria 25.4 and 25.5* Under Section 41 of Law 5 on the Code of Criminal Procedure, courts, prosecutors, investigating officers or the police may request all required information for investigating a crime, including beneficial owners, and state-owned corporations and agencies are required to submit such information. In addition, Section 7.1.c of Decree 322 provides that the DGIOF may receive information that serves to clarify the current analysis and investigations, provided by the AGR, the ONAT, the Superintendence of Insurance or other necessary bodies or agencies, including reporting entities, where specifically requested. All of the above applies to FIs.

CT332. *Criterion 25.6* According to Recommendations 37 through 40, Cuba may provide international cooperation under the international conventions it is a party to. Also, Law 7/1977 on Civil, Administrative, Labour, and Economic Procedures, Section 174, states that "the same regulations established in the last Section of those mentioned earlier [with respect to requests for cooperation to other countries] shall apply to commissions and letters rogatory from foreign courts requiring court proceedings for compliance in the Republic of Cuba." " Additionally, through letters rogatory, according to FGR Res. 27/2013, related to methodological directions for processing and control of letters rogatory, the FGR may request information from state bodies and agencies in order to assist with foreign cooperation requests. In addition, Section 7.8 and Sections 12-15 of Decree 322/2013 establish information exchange and collaboration between the DGIOF and foreign counterpart institutions.

CT333. *Criteria 25.7 y 25.8* Considering that the settlor is always identified and that trusts are non-banking FIs, the applicable regulation is that which applies to all FIs. Therefore, Section 27.1 of DL 226/2002 on the Company Registry sets out that "non-compliance with the terms defined for the registration of subjects and acts defined by this DL and its regulation, is subject to a surcharge on rates as appropriate. 2. Any registration process could be suspended in the case of serious violations to registration proceedings. The suspension ceases when the violation detected is corrected." In addition, all legal persons refusing to provide the required collaboration with authorities may incur the crime of disobedience and consequently be sanctioned with imprisonment from three up to twelve months or with a fine in one hundred to three hundred instalments, or both, according to Section 147 of Law 62/1987 of the Criminal Code.

CT334. *Evaluation and Conclusion:* Cuba meets all the criteria of this Recommendation. **Recommendation 25 is rated Compliant.**

VIII. INTERNATIONAL COOPERATION

Recommendation 36 — International instrumentalities

CT335. *Criterion 36.1* The Republic of Cuba has signed and ratified the following conventions: the Vienna Convention of 1988; the Palermo Convention of 2000; Merida Convention of 2003; and the International Convention for the Suppression of TF of 1999.

CT336. *Criterion 36.2* Cuba largely implements the Vienna, Palermo and Merida Conventions, and the Convention for the Suppression of TF, and can offer legal assistance in accordance to them. However, according to other recommendations, Cuba has no confiscation regulations, not even when the proceeds of crime have been mixed with legitimate assets; Cuba has no legal provisions particularly related to special investigative techniques and therefore, compliance mechanisms on this issue remain unclear, both at the domestic and international level, according to the same guidelines followed by Conventions it is a party to.

CT337. *Evaluation and Conclusion:* Cuba has ratified all United Nations Conventions and other related instruments. However, there are some aspects in domestic legislation that should be reinforced for full implementation. **Recommendation 36 is rated Largely compliant.**

Recommendation 37 — Mutual legal assistance

CT338. *Criterion 37.1* According to Section 12.b) of the Constitution of the Republic of Cuba, the country "establishes its international relations based on [...] the other principles proclaimed in the United Nations Charter and in other international treaties which Cuba is a party to". In addition, Section 20 of Law 59 (Civil Code) states that "should an accord or an international treaty which Cuba is a party to set forth different rules from those expressed under the preceding Sections or that are not contained therein, the rules of said agreement or treaty shall be applied." Sections 39 and 175 of Law 5 on the Cuban Criminal Procedure provide for the possibility for proceedings to be requested outside the national territory. Section 316 allows the consideration of "evidence" collected abroad.

CT339. Section 11 of Law 83 (11 July 1997) on the FGR, states that "the General Prosecutor's Office is the FGR's governing authority and has been granted the following attributions: k) issuing judicial assistance requests or promoting letters rogatory to the prosecutor's offices, offices, bodies within the Office of the Public Prosecutor or foreign judges, and resolve, through the channels established in each case, requests received from similar foreign entities or authorities, in accordance with the treaties and agreements which the Republic of Cuba is a party to." In addition to the international treaties previously mentioned, Cuba has signed 25 relevant bilateral agreements.

CT340. *Criterion 37.2* The Ministry of Foreign Affairs is the central authority primarily receiving requests for legal assistance, as well as the MINJUS, as provided for by international agreements Cuba is a party to. The MINREX submits foreign requests to the Independent Department of International Relations (formerly known as the Department of Judicial Cooperation of the Directorate of Scientific, Disclosure and Judicial Cooperation) of the Supreme People's Court, the General Prosecutor's Office, and the Ministry of Justice, as appropriate. The Independent Department of International Relations of the TSP has set up a comprehensive system for the follow-up of assistance requests, with organizational and individual responsibilities, as well as deadlines, allowing periodic evaluation of issues and solutions performed by the parties inside the mutual legal assistance chain (Instruction 214/2012 of the Supreme People's Court, Methodology for the Processing of Notes Verbales and International Judicial Cooperation requests); in addition, Resolution 27 (13 September 2011) of the General Prosecutor's Office of the Republic contains methodological directions for the processing and control of letters rogatory in the FGR. However, the criteria for forwarding requests to the

MINJUS, FGR or TSP (depending on phases of judicial proceedings, on the types or severity of crimes or on requesting countries, etc.), and processes for the prioritization and timely execution of mutual legal assistance requests remain unclear.

CT341. *Criterion 37.3* There are no barriers to mutual legal assistance; only when judicial assistance hinders or contravenes domestic law, may it be refused considering that cooperation is based on mutual support and friendly relations provided that they do not damage or injure domestic regulations or the interests of the State requested.

CT342. *Criterion 37.4* In Cuban domestic law, there are no obstacles preventing the provision of financial data and no apparent rejections of judicial assistance request due to banking secrecy reasons or tax issues.

CT343. *Criterion 37.5* Cuba bases international cooperation on international conventions (Section 12.b of the Constitution of the Republic of Cuba and Section 20 of the Civil Code), abiding by all their principles, including the principle of information confidentiality. This guarantee is also found in the fundamental principles of domestic law for information management, DL 199/1999 on Security and Protection of Official Information."

CT344. *Criteria 37.6 and 37.7* Section 12 of the Constitution of the Republic of Cuba states that if double criminality is not present, Cuba can provide judicial assistance based on the principle of reciprocity. This includes aspects related to proceedings such as notification or transfer of documents or judicial resolutions, as well as probative evidence, interpreted in a more flexible manner.

CT345. *Criterion 37.8 (a)* As discussed in Recommendation 31 and according to FGR Res. 27/2011, including methodological directions for the processing and control of letters rogatory in the FGR, Cuba may cooperate in creating records held by FIs, DNFBPs and others, search of persons, taking witness statements, and seizing and obtaining evidence.

CT346. *Criterion 37.8 (b)* As discussed in Recommendation 31, Cuba has no special legal provisions regulating the use of special investigative techniques. Cuba states that a wide range of investigation techniques and powers can be used in order to answer mutual legal assistance requests, according to conventions signed; however, the country has not included special investigation techniques as evidence elements in its legal system³¹.

CT347. *Evaluation and Conclusion:* Cuba's legal system does not provide for the use of special investigation techniques; therefore, international cooperation in this area could be limited. **Recommendation 37 is rated Largely compliant.**

Recommendation 38 — Mutual legal assistance: freezing and confiscation

CT348. *Criterion 38.1* As discussed in Recommendations 3, 4 and 5 regarding attachment, forfeiture and confiscation of assets, and according to FGR Res. 27/ 2011 concerning methodological directions for processing and control of letters rogatory of the FGR and TSP Inst. 214/2012, Methodology for the Processing of Notes Verbales and International Judicial Cooperation Requests, and conventions Cuba is a party to, the country may cooperate to identify, freeze, seize, forfeit, and confiscate laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in ML, predicate offences or

³¹On 1 April 2015, the Governing Council of the Supreme People's Court issued Decision 443, which clarifies the requirements and guarantees to observe for implementing a "controlled delivery", as a special investigation technique, under international conventions combating illicit trafficking in narcotic drugs and psychotropic substances, organized transnational crime, and corruption. It also establishes its significance as evidence in criminal processes.

TF. Nevertheless, Cuba cannot provide assistance regarding property of corresponding value when the request has been made through confiscation, but it may when the request is made for forfeiture.

CT349. *Criterion 38.2* In the case of receiving a request for non-conviction based confiscation, the FGR starts, according to the arguments in the request, an administrative proceeding of asset forfeiture for illegal enrichment under DL 149/1994, Section 1, on Forfeiture of Assets and Incomes Obtained Through Illicit Enrichment, stating that "the forfeiture and appropriation by the Cuban government is established, with no right to compensation, of assets and income obtained by persons who increase their assets illegitimately and disproportionately to their legal income, directly or through third parties." The Ministry of Finance and Prices will provide for this forfeiture by Resolution and in accordance with provisions of the concerned DL.

CT350. *Criterion 38.3 (a)* Cuba has signed 25 bilateral mutual legal assistance agreements on criminal issues or legal assistance agreements, seven of which include provisions on asset forfeiture and seizure. In addition, the Constitution of the Republic, Section 12, sets forth the principle of reciprocity where there is no cooperation agreement with other countries. Thus, there are no cooperation restrictions in terms of property.

CT351. *Criterion 38.3 (b)* The applicable mechanism to manage or use confiscated assets, as described in Recommendation 4, is regulated by Decree 313/2013 on the deposit, conservation and use of movable assets seized in administrative criminal and forfeiture processes. This detailed proceeding is applicable in cases of international cooperation requests for seizing or confiscating relevant goods; to do so it would be necessary to start a criminal or administrative confiscation proceeding, and the assets seized under these investigations receives the treatment provided in the above Decree.

CT352. *Criterion 38.4* In Cuba, involvement with other countries in confiscated assets is possible following the principle of reciprocity and bilateral agreements on this issue—the country has signed seven agreements. Currently, there is a bilateral agreement providing for the possibility of asset repatriation or partition.

CT353. *Evaluation and Conclusion:* While the implementation of the principle of reciprocity is highly valued, Cuba has signed seven bilateral agreements including measures on property and a cooperation agreement containing references to asset repatriation, and it has a cooperation restriction for property of corresponding value when the request involves confiscation; this does not apply to forfeiture. **Recommendation 38 is rated Largely compliant.**

Recommendation 39 — Extradition

CT354. *Criterion 39.1 (a)* Both ML and TF in Cuba are extraditable offences, considering the provisions included in Sections 435 and 437 of Law 5 on the Code of Criminal Procedure. "Section 435. Extradition may only be requested for a crime under a current law both at the time of committing the crime or conducting the request." "Section 437. The extradition request is applicable: (1) in specific cases as appropriate under existing treaties with the State in whose territory the sought person is located; (2) in the absence of treaties, when extradition derives from the principle of reciprocity." The Republic of Cuba has signed 15 legal assistance agreements covering extradition. In addition, Section 441.7 states that in all cases, when no treaty is signed, a promise of reciprocity shall be made to the foreign Government, thus ensuring the extradition in the above crimes.

CT355. *Criterion 39.1 (b)* Sections 435-441 Law 5 on the Code of Criminal Procedure regulate the proceedings to request or suggest a request for extradition, its formalities and legal terms. Regarding legal terms for processing extradition requests, Section 31 states that when deadlines are not set, resolutions and proceedings are issued and conducted without delay. Cuban authorities stated that extradition proceedings have the highest priority; but this law does not set out the processes governing the prioritization of requests.

CT356. *Criterion 39.1 (c)* In accordance with the provisions of Sections 437, 438 and 441 of Law 5 on the Code of Criminal Procedure, there are no unreasonable or unduly restrictive conditions to the implementation of extradition requests; the first two sections include the authorizing canon for extradition, which is applicable under existing treaties and the principle of reciprocity towards a wide range of subjects; and the last section listed includes formal requirements, meaning that required documents are essentials, and Section 441.7 provides that, in all cases, when there is no signed treaty, the foreign Government should receive a promise of reciprocity.

CT357. *Criterion 39.2* Under Section 6.2 of Law 62 on the Criminal Code Cuban citizens are not extraditable. But thanks to the effectiveness of the Cuban criminal law, its application is extended to Cuban citizens who commit a crime abroad, if they are in Cuba or they are extradited (Section 5.1), and allows prosecution of crimes committed in Cuba or abroad by Cuban nationals who are handed over to Cuba to be judged (Section 5.2), without undue delay, by competent authorities. In addition, according to Section 7.2, it is possible for a Cuban living abroad but present in Cuba to serve a sentence imposed by a foreign court.

CT358. *Criterion 39.3* According to the Constitution of Cuba, the principle of dual criminality is required only where offences resulting in extradition requests are provided for in the Cuban criminal law. Still, it is not necessary to use the same terminology, provided that both countries criminalize the conduct of the offence.

CT359. *Criterion 39.4* From existing treaties for extradition and provisions included in Sections 437.2 and 441.7 on the Code of Criminal Procedure, regarding the applicability of the principle of reciprocity, it is possible to request a simplified extradition procedure, but these procedures are not detailed.

CT360. *Evaluation and Conclusion:* Cuba has a wide framework to provide assistance on extradition; however, passive and simplified extradition procedures remain unclear as these are not explicitly developed in the current applicable legislation. **This Recommendation is rated Largely compliant.**

Recommendation 40 — Other forms of international cooperation

CT361. *Criterion 40.1* Cuba participates in the International Criminal Police Organization (Interpol), the Ibero-American Network of International Legal Cooperation (IberRed), GAFILAT's Asset Recovery Network (RRAG), the International Organization of Supreme Audit Institutions (INTOSAI), and the World Customs Organization. In all these organizations or networks, Cuba exchanges information spontaneously and through requests. Additionally, as at the date of the on-site visit, Cuba had requested for membership at the Egmont Group and the Association of Supervisors of Banks of the Americas (ASBA).

CT362. *Criterion 40.2 (a)* As discussed above in other Recommendations, Cuba has a legal basis supported by the Constitution of the Republic, the Civil Code, The Criminal Code, and the Code of Criminal Procedure for cooperation purposes. In addition to the above: Section 7 of Decree 322/2013 empowers the DGIOF for cooperation on ML/TF and related offences; Section 12 states that the DGIOF "collaborates with counterpart entities in other countries on a mutual understanding, rationality and reciprocity basis, in accordance with their legal systems, in order to increase compliance with legal provisions designed to prevent impunity of offenders in terms of ML/TF/PWTF and other similarly serious related conduct". In addition, Section 2.9 BCC ND 1/2013 explains that "in the framework of international agreements and conventions in this field, DIOF counterpart bodies may collaborate, receive, share or exchange information with the DGIOF" and that "if no convention/treaty has been signed, the law allows to apply the general principle of reciprocity and subjection by foreign authorities to the same professional secrecy obligations of other nations".

CT363. Also, in the case of the BCC as supervisor of FIs, Section 29 of DL 172 of 28/1997 of the BCC includes promoting cooperation with other central banks and specialization of employees and technical staff of the BCC as one of the functions of the BCC. Moreover, Section 3 of Res. 79/1998 sets out the main objectives of the Superintendent who shall, in addition: "Cooperate, according to the principle of reciprocity, with supervising authorities of both countries where the headquarters of foreign FIs operating in Cuba are located and countries where Cuban financial institutions operate". In addition, the BCC has signed guidelines for cooperation among FIs supervisors of GAFILAT member countries.

CT364. In the case of PNR, Section 1 of MININT Res. 12/2014 appoints the PNR General Directorate to centralize information and coordinate actions, among others, with "foreign police services and entities with respect to combating ML/TF/PW and illegal flow of capital."

CT365. In the case of Customs, Section 16 of DL 162 provides that the Customs functions are "to develop international relations with other customs and specialized international entities, in order to maintain control systems constantly updated and to establish cooperation for combating illegal activities within its area of competence, as well as to develop custom relations in compliance with the regional economic integration policy."

CT366. *Criterion 40.2. (b)-(e)* With the legal basis discussed above and using as platforms the organizations Cuba participates in according to Criterion 40.1, the different authorities comply with Criteria 40.2 (b), (c) and (e). However, the process of prioritization for a timely execution of requests remains unclear.

CT367. *Criterion 40.3* Cuba has no international cooperation restrictions and if there are no conventions signed, it may cooperate following the principle of reciprocity, enshrined in the Constitution.

CT368. *Criterion 40.4* Regarding the above legal basis and the principle of reciprocity, it is possible to provide and receive information on the use and usefulness of the information obtained.

CT369. *Criterion 40.5* In accordance with the legal bases mentioned by Criteria 40.1 and 40.2, there are no unreasonable or unduly restrictive conditions to exchanging information or providing assistance, or the circumstances listed in (a), (b), (c), and (d) of Criterion 40.5.

CT370. *Criteria 40.6 and 40.7* DL 199/1999 on the Security and Protection of Official Information ensures the privacy and protection of exchanged data and information, and of all similar information provided by domestic sources, particularly Sections 5-20 on the classification and treatment of information.

CT371. *Criterion 40.8* According to procedures defined by Recommendation 37, the PNR may start investigations on behalf of foreign counterparts. Additionally, under the powers granted by Sections 7.8 and 12 through 15 of Decree 322/2013, the DGIOP may cooperate broadly.

CT372. Section 16 of DL 162/96 on Customs provides that Customs has the following powers and main functions: h) to develop international relations with other customs and specialized international agencies in order to establish cooperation for combating illicit activities; and i) to comply and ensure compliance treaties, conventions and agreements on customs issues, and others affecting the customs activity, in which the Republic of Cuba is a signatory; this includes, according to regulations, the possibility to carry out investigations on behalf of a foreign authority.

CT373. *Criterion 40.9* See Criterion 40.2 (a)

CT374. *Criterion 40.10* See Criterion 40.4

CT375. *Criterion 40.11* As discussed above, particularly in Recommendation 29, Decree 322/2013 and ND 1/2013 clearly stipulate that the DGIOF may share information with foreign counterparts; and regarding the principle of reciprocity, this includes information obtained directly or indirectly by the DGIOF in order to respond to a specific cooperation request.

CT376. *Criterion 40.12* See Criterion 40.2 (a)

CT377. *Criteria 40.13, 40.14 and 40.15* Based on the principle of reciprocity, the BCC exchanges regulations, experiences in the area of supervision and financial regulation, and specific financial information according to the principle of confidentiality agreed upon by the parties. As explained in Criterion 40.2 (a), as an FI supervisor, the BCC may establish cooperation relations; in addition, the development of cooperation in the area of banking supervision is related to the process to join the ASBA, the Bank for International Settlements, the Basel Committee on Banking Supervision, and the Centre for Latin American Monetary Studies (CEMLA). In addition, Cuba has currently signed memoranda of understanding addressing these criteria in particular with: the Bolivarian Republic of Venezuela; China; GAFILAT member countries (Brazil, Ecuador, Uruguay, Paraguay, Peru, and Panama), and Russia; these countries participate in exchange activities and workshops and seminars, according to the annual schedules of these organizations.

CT378. *Criterion 40.16* Safeguarding information is included in the signed conventions; for all other cases, the provisions in Criterion 40.6 apply.

CT379. *Criterion 40.17* See criterion 40.2 (a)

CT380. *Criterion 40.18* As discussed above, Sections 119-240 of Law 5 allows police, investigating officers and prosecutors to investigate cases, including the tracing of assets that are the proceeds of crime, and contain the following: Section 119 describes the powers granted to the police and actions to take when detecting the criminal act. Starting from Section 122, the law describes the investigating officer's actions to verify the offence, including actions such as the reconstruction of the facts (Section 133), the seizure of weapons, instrumentalities or the proceeds of crime (Section 135), the defendant's identity (Section 151), the defendant's statement (Section 161), witnesses' statements (Section 167), the confrontation of witnesses (Section 196), the expert opinion and experts (Section 200), the house search (Section 215), the review and retention of correspondence (Section 228). Under the international treaties signed by Cuba and the powers of its institutions, all of the above may be applied to support and respond to international cooperation requests. In addition, as noted above, the police participate in Interpol, IberRed, RRAG, INTOSAI, and the World Customs Organization.

CT381. *Criterion 40.19* Cuba allows the possibility of forming joint investigation teams based on the principle of reciprocity. In the framework of UN conventions (Vienna, Palermo and Merida), Cuba has provided assistance on this matter.

CT382. *Criterion 40.20* Under the international conventions, treaties and memoranda of understanding signed by Cuba, there are no restrictions to cooperating with competent authorities which are not counterparts.

CT383. *Evaluation and Conclusion:* Cuba has a broad framework of other forms of cooperation, considering the possibility of providing assistance based on the principle of reciprocity; however, prioritization procedures for the timely execution of requests have not been defined and remain unclear. **Recommendation 40 is rated Largely compliant.**