



# Anti-money laundering and counter-terrorist financing measures

## **Cabo Verde**

### **Mutual Evaluation Report**

MAY 2019





The Inter-Governmental Action Group against Money Laundering (GIABA) is a specialized institution of ECOWAS and a FATF Style Regional Body that promotes policies to protect member States financial system against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter terrorist financing (CTF) standard.

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## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Cabo Verde as at the date of the on-site visit (27 November, 2017 to 13 December, 2017). It analyses the level of compliance with the FATF 40 Recommendations, the level of effectiveness of its AML/CFT system and makes recommendations on how the system could be strengthened.

### Key Findings

- Cabo Verde concluded its National Assessment (NRA) in early November 2017. The NRA reflects the main money laundering and terrorist financing (ML/TF) risks the country is facing and identified the main vulnerabilities related to ML/TF.
- Despite the significant efforts made in the identification and shared understanding of risks by all stakeholders at the national level, the methodology and approach adopted for the assessment of certain sectors, notably Designated Non-Financial Businesses and Professions (DNFBPs), especially real estate, dealers in precious metals and stones and other high value good, and non-profit organisations (NPOs), is inadequate.
- Understanding of ML/TF risks is very low among operators in the entire DNFBP sector, including those sectors with the highest risk. Supervisors are yet to have the necessary mechanisms to develop supervisory activities in to prevent and combat ML/TF on a risk-sensitive basis. The supervisory activity based on compliance with legal requirements by the entities supervised for AML/CFT (rules-based approach) is either very limited or non-existent in the sectors of higher risk (e.g., real estate and NPOs).
- Cabo Verde did not conduct an in-depth assessment of the risk of terrorist financing of the country, nor give relevance to the risk of collecting resources within the country to finance terrorist activities, considering that the country is not very attractive for these purposes.
- Those who participated in the NRA process do not have the same level of information and a uniform commitment to AML/CFT risks.
- The NRA identified legal persons as high risk, however, there are no mitigating measures in place to address this risk.
- Although Cabo Verde referred to a National Program for Internal Security and Citizenship targeted at TF, the country does not have a National Strategy document for preventing and combating ML/TF and financing of proliferation.
- Financial institutions (FIs) have limited knowledge of the UN Sanctions Lists, and in the case of DNFBPs this knowledge is virtually non-existent.
- The legal and regulatory frameworks governing AML/CFT supervision are acceptable and have a wide range of administrative, pecuniary and criminal sanctions as well as remedial actions in case of non-compliance with AML/CFT requirements. The lack of AML/CFT supervision for the DNFBPs is major gap in the supervisory framework in Cabo Verde.



- The prevalence of cash transactions impedes the ability to track financial information transmitted to the investigating and prosecuting authorities as well as the FIU. This limits the use of such information to establish evidence of ML/TF offences.
- There appears to be limited cooperation between the FIU and supervisory and regulatory authorities. The FIU's ability to collect financial information is also limited by the fact that most DNFBPs do not have internal AML/CFT mechanisms. The FIU does not have the established practice of providing feedback to reporting entities that submit suspicious transaction reports (STRs);
- The NGO Platform is the supervising authority for the NPOs sector. The total number of NPOs established or carrying out their activity in the national country is not known. This impedes any risk analysis for the sector, regardless of the score obtained in the NRA. Despite compliance with reporting requirements at the NPO level, the functioning of the AML/CFT mechanism remains deficient due to lack of supervision and insufficient awareness among NPOs. To date, the NGO Platform has not provided any information to the FIU due to lack of resources that will enable it to perform its supervisory functions.
- Most DNFBPs, with the exception of some institutions that are affiliated to international groups that apply the FATF standards and procedures in the jurisdiction of the parent institutions, do not understand their AML/CFT obligations. Even those affiliated to foreign groups have not submitted STRs to the FIU. Identifying beneficial owners is a major challenge for all DNFBPs. Therefore, the implementation of preventive measures remains weak among DNFBPs and has a negative impact on the effectiveness of the implementation of preventive measures in the Cabo Verdean AML/CFT regime in general.

### ***Risks and General Situation***

2. The Republic of Cabo Verde is an archipelago comprising 10 islands<sup>1</sup> with a total surface area of 4,033km<sup>2</sup>, in the central Atlantic Ocean, about 570 km off the West Coast of Africa (Senegal). Cabo Verde is a country of emigration. The value of immigrant remittances is remarkable, accounting for about 11.5% of GDP. The country has a relatively low rate of violent crimes. Due to the geographical location of the archipelago, the Republic of Cabo Verde is a transit country for people, goods and resources, including resources of illicit origin, between Latin America and Africa, and between these two regions and Europe. The country is also a transit country for drug trafficking to Europe, thus making the country vulnerable to money laundering (ML) risks.

3. The NRA identifies drug trafficking as the main predicate offence of ML, even though crimes against property (such as theft and robbery) is becoming the crime with the largest share of criminal offences recorded in the Cabo Verdean territory. The NRA further indicates that the risk of ML in Cabo Verde is high. In particular, the NRA rated the banking sector, other financial institutions (OFIs), sectors that provide products on financial inclusion, as well as DNFBPs as high risk. According to the NRA the risk of terrorist financing is medium to low.

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<sup>1</sup> Santiago, São Vicente, Santo Antão, Fogo, Sal, São Nicolau, Brava, Maio, Boa Vista and Santa Luzia.

The most significant vulnerability identified is related to customs and border control - by air, due to some difficulty in controlling any money transfers by post and by sea, given the insular characteristics of the country and its geographical location.

4. Despite the conclusions of the NRA and the new AML/CFT legislation in force since 2016, incorporating the new FATF standards, the lack of technical and human resources in regulatory and supervisory entities, particularly in areas such as real estate, casinos, NPOs and OFIs, are an additional element of vulnerability in relation to the system for preventing and combating ML/TF/PF.

### ***Overall Level of Effectiveness and Technical Compliance***

5. Cabo Verde has implemented an AML/CFT system with a moderate and low level of effectiveness among financial institutions and DNFBPs, respectively. There are significant deficiencies in the application of risk-based supervision covering all financial sectors (and its absence in the DNFBP sector is noted), as regards the transparency of the regime applicable to the NPO sector (there being no supervision activity), and regarding the prevention and supervision measures of the DNFBP sector in general.

6. Significant improvements are needed in sectoral ML/TF risk assessments, the dissemination of the Sanctions List to reporting entities; the use of "financial intelligence" and other information with special focus on mechanisms for reporting suspicious transactions to the FIU and its feedback to reporting entities; establishment of risk-based prevention mechanisms by FIs and DNFBPs; enhancing the understanding of regulators and supervisors, as well as at risk entities - notably NPOs regarding the prevention of TF.

7. With regard to technical compliance, the legal framework is generally strong, with areas dealing national coordination, wire transfers, new technologies powers of supervisors and cash couriers, requiring significant improvement.

### ***C.1 Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1, R.1, R.2, R.33)***

8. Generally, Cabo Verde has a moderate level of understanding of ML/TF risks. Supervisors and operators in the financial sector have low knowledge of ML/TF risks in the due to the lack of sectoral elements that would have allowed the supervisor to develop a risk-based supervision plan and take the necessary mitigating measures. The understanding of ML/TF risks among entities in the DNFBP sector is very low. The Bar Association, Real Estate and NPO lack understanding of ML/TF risks. The NRA is a key step in sharing knowledge on risk among public authorities and the private sector entities involved. Both public and private entities participated in the NRA thereby providing a general overview of ML/TF risks in Cabo Verde.

9. The data and information used in the NRA do not appear to be of acceptable standards, in terms quantity and quality. In particular, the lack of depth of ML/TF risk assessment of the sectors impacted on the analyses despite the quality of the methodology and the tools deployed.

10. Cabo Verde does not have a centralized policy on coordination and implementation of AML/CFT and counter-proliferation financing (CPF) measures. The country lacks effective



institutional and policy coordination. Despite the responsibilities and functions of the FIU regarding AML/CFT policies and measures, the FIU is not the appropriate entity to carry out such coordination, despite the efforts made by the FIU at the operational level to collaborate with the BCV.

***Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IO 6-8, R.3, R.4, R.29, 32)***

11. Competent authorities in Cabo Verde have mechanism in place that demonstrates that ML investigations and predicate offences are consistent with the country's ML risk profile. In particular, Cabo Verde has prosecuted and convicted offenders for third party ML and self-laundering.

12. The FIU disseminates financial intelligence and other relevant information to the JP on exceptional basis. Thus, the extent of usage of financial intelligence in investigating predicate offences and TF activities is rare. The FIU database has no case referred to the JP in this precise manner. This could hinder the effectiveness of the AML/CFT control system. Criminal sanctions applied on conviction of ML are proportionate and dissuasive. However, legal persons are prosecuted and sentenced to a lesser extent than natural persons.

13. Cabo Verde does not have comprehensive statistical information on cash seized by the Directorate General of Customs in relation to illegal cross-border movements of currency and bearer negotiable instruments. Even in this context, there is general lack of comprehensive and concrete statistics on administrative offences on illegal cross-border movements of currency and other bearer negotiable instruments, and on the amount of fines imposed.

14. Information sharing among competent authorities in Cabo Verde is limited as some of the information are not available or the law enforcement authorities in do not have direct access to comprehensive databases held by relevant agencies in a timely manner. This is due to the fact that some of the competent authorities do not have computerised databases. Thus, the dissemination and use of information for ML/TF investigations is impaired.

15. Cabo Verde does not have robust inter-agency collaboration and cooperation. In particular, the Asset Recovery Agency (GRA) does not have a memorandum of understanding to engage in cooperation and exchange of information with other counterparts. International exchanges of financial information among the authorities of Cabo Verde and similar institutions of other States are very limited.

16. Cabo Verde lacks human and technical resources (capabilities, resources and tools) to undertake specialised financial investigation for most drug and ML cases. The GRA has not yet carried out an investigation with an international dimension.

***Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8).***

17. Generally, LEAs do not pay attention to the TF vulnerabilities in Cabo Verde. Thus, terrorism and terrorist financing do not seem to be a priority in Cabo Verde. There has been no criminal investigation or prosecution of TF in Cabo Verde. This is partly due to the size, culture, and geographical location amongst other circumstances of the country. There was no evidence of Cabo Verde cooperating with the security services other countries on TF activities.

***Preventive Measures (Chapter 5 - IO 4; R.9-23)***

18. FIs, including banking entities of systemic importance in the Cabo Verdean financial sector, have low understanding of ML/TF risks is due to their failure to carry out internal ML/TF assessment with a view to identifying and evaluating exposure to ML/TF. The AML/CFT measures adopted by each FI are not based on ML/TF risk, but rather based on Notice 5/2017 of November 2017). The Risk Based Approach to AML/CFT compliance is a new issue for FIs in Cabo Verde and is in its initial implementation phase.

19. FIs are aware of and apply customer due diligence (CDD), record keeping and customer transaction monitoring and mitigation measures in high risk situations of ML/TF, namely in relation to politically exposed persons (PEPs), electronic transfer and correspondent banking. Most FIs are not conversant with their legal duty to apply targeted financial sanctions. Compliance with the obligation to identify and verify BO is a concern, considering that FIs had not applied this measure to their existing customers before the entry into force of the AML/CFT legislation and there was no confirmation from the supervisor as to whether inspection of FIs revealed that FIs are fulfilling this obligation. FIs are aware of the legal obligation to report suspicious transactions, it was not possible to determine if the number of STR submitted by each FI is consistent with their respective risk profile.

20. With the exception of those entities that are affiliated international groups (e.g. auditors), most DNFBPs have limited understanding of ML/TF risks. Also, the DNFBPs are unaware of their obligations in preventing and combating ML, and do not have a good understanding of beneficial ownership, and thus, do not apply any measures for the effective identification of the beneficiary (ies). DNFBPs generally do not know when and how to apply enhanced due diligence measures.

21. Generally, DNFBPs are not aware of their AML/CFT reporting obligations. In particular, casinos, real estate agents and NPOs do not have good knowledge of ML/TF risks and thus, do not apply any of the measures contained in the legislation in force. DNFBPs have not detected TF cases.

***Supervision (Chapter 6 - IO 3, R.26-28, R. 34-35)***

22. Supervisory authorities of the financial sector (Bank of Cabo Verde (BCV) and General Audit of Securities Markets) base their understanding of the ML/TF risk on the NRA completed a week prior to the on-site visit.

23. The BCV is aware, through the NRA, of the overall ML/TF risk of the financial sector. However, the BCV lacks is not aware of the ML/TF risk to which each individual institution is exposed, as the tool or matrix for classifying ML/TF risk of each FI is still limited. The BCV is yet to conduct risk-based AML/CFT supervision on. The BCV is collaborating with foreign counterparts to develop procedures, mechanisms and tools to implement risk-based supervision. The BCV applies good market entry procedures to prevent criminals and their associates from owning or controlling financial institutions. The BCV has a set of corrective measures that are adequate to dissuade violations by FIs and has issued some guidelines for the prevention and control of ML/TF for the supervised sector. The BCV has not commenced off-site supervision of FIs.

24. Supervisory authorities of DNFBPs have very limited understanding of sectoral risks, as well that as of each DNFBP. Supervision in relation to preventing and combating ML/TF is non-existent, with some DNFBPs refusing to apply the provisions of the AML Act and CFT Laws (lawyers). Given the characteristics of the Cabo Verdean economy, even in the sectors where informality is greatest (real estate and traders of goods of high value), the supervision carried out is limited to granting of licenses to carry out the activities and to verifying compliance with the requirements for access to activities. There is no focus on the ML/TF issues.

25. Regulators/supervisors for DNFBPs lack capacity to deploy statutory remedial actions and sanctions regimes in the DNFBP sector. Supervisors of DNFBPs focus more on market entry level activities such as fit and proper tests in order to prevent criminals or their associates from owning or controlling the sector especially casinos and real estate. Risk-based supervision under ML/TF in the DNFBP sector is non-existent. The sector supervisors have not issued any guidelines nor provided relevant information on ML/TF related issues. There are no ML/TF related sanctions applied in the DNFBP sector and no training by supervisors to increase the level of knowledge and understanding of AML/CFT by the DNFBPs.

#### ***Transparency of Legal Persons and Legal Arrangements (Chapter 7 - IO 5, R. 24-25)***

26. Basic information on the creation and types of legal persons are available online to the public. However, there is no assessment of ML/TF risks for all types of legal persons. There is no full understanding of ML/TF risks associated with legal persons, and the NRA has not indicated the legal persons that are likely to be abused and misused for ML/TF. Despite the fact that Cabo Verde has measures in place for the transparency of basic information of legal persons created, the country has not applied sanctions for non-compliance with information and transparency requirements regarding legal persons. The failure to apply sanctions for non-compliance with information and transparency requirements relating to legal persons does not seem to be effective or dissuasive.

#### ***International Cooperation (Chapter 8 - IO 2, R. 36-40)***

27. Cabo Verde provides a range of international cooperation, including mutual legal assistance (MLA), extradition, intelligence/information on fiscal and other matters, freezing of suspected proceeds of crime. Feedback received, though very few, indicates that the quality of assistance is generally good and timely. However, the authorities expressed their frustration of not receiving responses to their requests for international cooperation. Generally, the country lacks comprehensive data on incoming and outgoing international cooperation on ML and associated predicate offence, as well as TF. The authorities did not provide information on the use of complementary channels for obtaining and exchanging information.

#### ***Priority Actions***

28. The priority actions to be carried out by the country, based on these findings are as follows:

- Improve the methodology and approach adopted for the assessment of the DNFBPs sector and review the number of specific sectors, notably real estate, traders in precious stones and metals, and other high value goods; and not-for-profit organizations (NPOs) in order to provide a more comprehensive view of ML/TF risks in the country.
- Designate an authority or have a coordination or other mechanism that is responsible for AML/CFT policies.
- Define a comprehensive AML/CFT program, with focus on higher risk areas, aiming at a better understanding of ML/TF risks by supervisory authorities and reporting entities.
- Provide supervisory and regulatory authorities of DNFBPs with the necessary human and technical resources to implement their AML/CFT obligations.
- Establish adequate mechanisms to provide DNFBPs with the necessary information to meet AML/CFT requirements, in order to facilitate STRs reporting.
- Establish mechanisms to allow supervisors of DNFBPs to know the number of regulated entities (e.g., real estate sector, NPOs) to enable them to undertake appropriate sectoral ML/TF risk analysis.
- Adopt a CFT strategy to address issues relating to the geographical proximity of the country with high risk zones and the absence of any national focus in this area.
- Create effective mechanisms that enable supervisors of FIs and DNFBPs to conduct risk-based AML/CFT supervision.

### ***Effectiveness and Technical Compliance Ratings***

#### ***Effectiveness Ratings (High, Substantial, Moderate, Low)***

IO.1- Risk Assessment, policy and coordination	IO.2 – International Cooperation	IO.3 – Supervision	IO.4- Preventive Measures	IO.5 – Legal Persons and Legal Arrangements	IO.6- Financial Intelligence
Low	Low	Low	Low	Low	Low
IO.7 – ML Investigation and prosecution	IO.8 – Confiscation	IO.9 – TF Investigation and Prosecution	IO.10 – TF Preventive Measures and Financial Sanctions	IO.11 – Proliferation Financing Financial Sanctions	
Low	Low	Low	Low	Low	

**Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)**

R.1	R.2	R.3	R.4	R.5	R.6
PC	PC	C	C	LC	PC
R.7	R.8	R.9	R.10	R.11	R.12
LC	PC	C	PC	LC	LC
R.13	R.14	R.15	R.16	R.17	R.18
LC	LC	PC	PC	PC	PC
R.19	R.20	R.21	R.22	R.23	R.24
PC	PC	C	PC	LC	LC
R.25	R.26	R.27	R.28	R.29	R.30
LC	PC	PC	PC	LC	C
R.31	R.32	R.33	R.34	R.35	R.36
C	PC	C	LC	LC	LC
R.37	R.38	R.39	R.40		
C	LC	C	LC		

## MUTUAL EVALUATION REPORT

### Preface

1. This report summarises the AML/CFT measures in Cabo Verde as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Cabo Verde's AML/CFT system and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by Cabo Verde, and information obtained by the evaluation team during its on-site visit to the country from 20 November to 1 December 2017.
3. The evaluation was conducted by an assessment team consisting of:
  - Juliao Vieira Insumbo, Prosecutor, Prosecutor-General's Office, Guinea Bissau, Legal Sector Expert;
  - Ibrahim Salvaterra, Inspector, Financial Institutions Supervision, Central Bank of Sao Tome and Principe, Sao Tome and Principe, Financial Sector Expert;
  - Francisco Julio Sanha, Guinea Bissau, Coordinating Inspector of Criminal Investigations, Judiciary Police, Guinea-Bissau, Law Enforcement Expert;
  - Francisca De Brito, Director, Financial Intelligence Unit, Angola, Operational/FIU Expert;
  - Tiago Lambin, Senior Inspector, Institute of Public Markets, Real Estate and Construction (IMPIC), Portugal, DNFBPs Sector Expert
4. The team was supported by the GIABA Secretariat represented by:
  - Dr. 'Buno Nduka, Director of Programmes and Projects;
  - Mrs. Gina Wood, Legal Officer;
  - Mr. Devante Alibo, Programme Officer; and
  - Miss Naponcia Dias Gomez, Bilingual Secretary.
5. The report was reviewed by:
  - a. Mr. Jose Carapinha, Senior Legal Counsel, Financial Intelligence Unit, Macau
  - b. Aminu Buhari Isa, Senior Policy Analyst, Financial Policy and Regulation Department, Central Bank of Nigeria, Abuja; and
  - c. The FATF Secretariat (External Reviewer).
6. Cabo Verde previously underwent a GIABA Mutual Evaluation in 2007, conducted in accordance with the 2004 FATF Methodology from 30 April to 15 May, 2007. The Mutual Evaluation Report (MER) was adopted in November 2007 and was published in November 2008 following the adoption of an automatic publication policy by GIABA. The MER, as well

as the First to Eleventh Follow-Up Reports of Cabo Verde have been published and are available at [www.giaba.org](http://www.giaba.org).

7. The first Mutual Evaluation concluded that Cabo Verde was Compliant (C) with 0 Recommendations; Largely Compliant (LC) with 3; Partially Compliant (PC) with 16; Non-Compliant with 29 and Non Applicable (N/A) with 1 Recommendation. Cabo Verde was rated compliant or largely compliant with 1 of the 16 Core and Key Recommendations.

8. Key Milestones:

- a) November 2007 – Adoption of MER.
- b) November 2008 - Plenary placed the country on the Expedited Regular Follow-Up process.
- c) November 2008 – Publication of MER following adoption of automatic publication policy.
- d) November 2009 – 1<sup>st</sup> Follow-Up Report (FUR), (Expedited Regular Follow-Up)
- e) November 2010 – 2<sup>nd</sup> FUR, (Expedited Regular Follow-Up)
- f) November 2011 – 3<sup>rd</sup> FUR, (Expedited Regular Follow-Up). Placed on Enhanced Follow-Up.
- g) May 2012 - 4<sup>th</sup> FUR (Enhanced Follow-Up)
- h) November 2012 – 5<sup>th</sup> FUR (Enhanced Follow-Up)
- i) May 2013 - 6<sup>th</sup> FUR (Enhanced Follow-Up) (Removed from Enhanced Follow-Up and placed on Expedited Regular Follow-Up).
- j) May 2013 to May 7<sup>th</sup> to 9<sup>th</sup> FUR
- k) May 2017 - Exit from the Follow-Up process due to its impending second on-site mutual evaluation.

9. It is important to state that the GIABA Mutual Evaluation Process and Procedures (P&P) for the first round of mutual evaluations did not permit re-rating of Recommendations (see paragraph 48(c) of P & P).

## CHAPTER 1. ML/TF RISKS AND CONTEXT

1. The Republic of Cabo Verde is an archipelago composed of ten islands<sup>2</sup> of volcanic origin, with a surface area of 4,033 km<sup>2</sup>, in the central Atlantic Ocean, about 570 km off the west coast of Africa (Senegal), with clearly marked territory discontinuity and a population

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<sup>2</sup> Santiago, São Vicente, Santo Antão, Fogo, Sal, São Nicolau, Brava, Maio, Boa Vista and Santa Luzia.



distributed in a territory with only 10% of agricultural potential and limited mineral resources. Despite the arid climate and mountainous terrain, Cabo Verde has been developing rapidly, largely due to its tourism industry. In addition to encouraging tourism, the government is making efforts to transform the islands into a trade and transportation center. The Cabo Verdean economy is mainly focused on tourism and foreign investments. The gross domestic product (GDP) of Cabo Verde in 2016 was \$ 3.583 billion (USD), with GDP per capita of \$ 6,700 (USD) in the same period.

2. Cabo Verde is a country that is strongly marked by the emigration of its population at various times in its history. According to data from INE, between 1970 and 2010, the population of Cabo Verdeans living abroad was twice that of Cabo Verdeans living in the country. Between 1970 and 2015 the population density increased sharply from 67.2 inhabitants / km<sup>2</sup> to 131.7 inhabitants / km<sup>2</sup>. (source: [www.ine.cv](http://www.ine.cv)). In 2016, the population of Cabo Verde was more than half a million inhabitants (531,239). In 2008, Cabo Verde was removed from the UN category of the Least Developed Countries and is now classified<sup>3</sup> by the World Bank in the Group of Middle Income Countries.

3. Portuguese is the official language used in schools, public administration, the press and publications. The national language of Cabo Verde, the language of the people, is the Cabo Verdean Creole. Cabo Verde is a semi-presidential Republic within the framework of a representative democracy, sovereign, unitary and democratic that has been independent since 1975. The National Constitution - adopted in 1980 and revised in 1992, 1995 and 1999 - defines the basic principles of state policy.

4. The President is the Head of State and is elected by popular vote for a term of five years. The Prime Minister is the Head of Government and proposes the appointment of other Ministers and Secretaries of State. The Prime Minister is appointed by the President and subject to approval by the National Parliament, whose members are elected by popular vote for five-year terms. There are three parties with seat in the National Parliament: the African Party for the Independence of Cabo Verde (PAICV), the Movement for Democracy (MPD) and the Independent and Democratic Cabo Verdean Union (UCID). Politics in Cabo Verde has generally been consensus-oriented, with majority governments, and civil liberties widely respected. Since its independence from Portugal in 1975, Cabo Verde has been experiencing political stability and elections are considered free and fair, and parties in power have alternated regularly.

5. In view of its location, the country is the point of passage of several commercial routes between Latin America, Africa and Europe, being also, for that reason, a transit point for drug trafficking routes. In view of the large investments made in the islands of Boa Vista and Santiago, in the gaming industry - more specifically casinos - the country has become more attractive to those who intend to use the sector to launder illicit proceeds.

## **ML/TF Risks and Scoping of Higher-Risk Issues**

### *Overview of ML/TF risks*

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6. Cabo Verde faces some significant risk of money laundering arising from activities both domestically and abroad. In view of the commitment made by the Government of Cabo Verde to attract more and more foreign investment, namely in the tourism and gambling sectors (creation of resorts with casinos), the risk of these sectors becoming subject to abuses related to money of illicit origin - drug trafficking or others - is high. The intensive use of cash in the economy, the absence of limits to cash transactions, and the enormous size of the informal economy in Cabo Verde bring about the risk that money of illicit origin may be introduced into the legal/formal economy. The extent of exposure of Cabo Verde to terrorist financing risk appears to be moderate.

7. The lack of regulations in the real estate sector, the ever-increasing demand for the acquisition of high-value real estate by foreigners, makes the real estate sector highly susceptible to these risks.

8. Cabo Verde was affected by the recent international financial crisis leaving the country vulnerable to the actions of transnational criminal organizations, exploring these gaps in the country.

### ***Country's risk assessment***

9. Cabo Verde conducted its National Risk Assessment (NRA), using the World Bank Tool and with the support of the World Bank and GIABA, from August 2016 to October 2017. The Cabo Verdean Financial Intelligence Unit (FIU) coordinated the NRA process. Both public and private sector entities, with representatives of the relevant supervisory and regulatory authorities participated in the conduct of the NRA. Six working groups were formed for data collection and analyses using the nine modules of the World Bank Tool.

10. The NRA involved analysis of national and sectoral ML risk, threats and vulnerabilities. It also involved analysis of TF risk at the national level. The NRA analysed the main threats, based on the main types of predicate offences such as drug trafficking, corruption and tax fraud, and identified the main vulnerabilities, such as lack of knowledge and access to information on the beneficial owner, lapses in border controls, lack of coordination and defined policies and strategies to prevent and combat ML/TF, lack of information due to absence of integration, centralization of statistical data, to allow cross-checks and adequate analysis of the information, and also inefficiencies and/or weaknesses of DNFBPs, in particular with regard to dealers in vehicles, jewellery, and precious stones, and real estate agents.

11. As regards terrorist financing, the NRA considered that the country has a medium-low risk of terrorist financing, a conclusion based on the non-existence of criminal investigations related to terrorism and its financing, the absence of court cases, the small number of TF related STRs and the insignificant exchange of international information involving Cabo Verdean nationals.

12. Overall, the NRA did not reveal new risk areas as expected. For instance, despite the use of electronic money transfers, the NRA did not include analysis of transfers related to rapid money transfer platforms. This could have enabled the authorities to assess the risk of such platforms to ML/TF, particularly in relation to use of multiple accounts and monitoring of thresholds for such transactions. Furthermore, there was been no thematic or sectoral risk assessment prior to the NRA so there was no benchmark to measure the reasonableness or

consistency of the conclusion of the NRA with the results of those assessments. Inherent ML/TF risks relating to drug trafficking (Cabo Verde being a transshipment point for narcotic drugs and psychotropic substances, existence of international financial institutions, cash transactions are discussed under section 3.1, paragraph 234 to 244 of the first MER published at [www.giaba.org](http://www.giaba.org), continue to exist.

### ***Scoping of Higher Risk Issues***

13. The areas of greater (or lesser) attention during the on-site visit and in the MER were identified and discussed by the assessment team, according to the overall risk profile and the specific threat scenario for Cabo Verde. In deciding the areas to be prioritized, the assessment team revisited the material sent by Cabo Verde as well as existing open source material, with particular relevance to the findings of the NRA. The following were considered as high priority:

- a) ***DNFBPs:*** One of the issues that deserved the attention of the Assessors is the assessment of the capacity of FIs and DNFBPs to identify, assess and understand the inherent ML and/or TF risks in their operations. In addition, the assessors took special interest in the supervisory regime, including the application of risk-based supervision for the DNFBPs in view of the fact that the NRA identified some sub-sectors of the DNFBPs as high risk.
- b) ***Effectiveness of Supervisory framework for financial institutions:*** The BCV's almost exclusive focus on ML, due to its perception of the country's TF risk, as evidenced in the NRA, results in the absence of supervisory measures to prevent and combat TF, even taking account of the existing relevant legal instruments. There was lack of evidence of actions, action plans, inspections, checks, procedures, guidelines or other measures regarding ML/TF prevention requirements, particularly those targeted at TF. As stated in Paragraph 285 of the NRA, the effectiveness of supervision in the securities sector is somehow undermined by insufficient staff, on one hand, and limited financial resources, on the other, resulting in lack of inspections. In view of the vulnerabilities, the assessors placed increased focus on the ability of the supervisors to undertake risk-based AML/CFT supervision and supervisors' understanding of the ML/TF risks in the businesses of the entities they supervise.
- c) ***Cash based economy:*** In the previous reports, especially in the 2007 MER, references were made to the intensive use of cash and its weight in the Cabo Verdean economy. The International Monetary Fund's "Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism - April 2009" states in paragraph 487 that "The economy of Cabo Verde is cash-intensive, and its financial system is at its early stages of development. There is no information available about any plans to encourage the use of advanced technologies in the financial system to minimize ML risks posed by the intensive use of cash, and there was little evidence of such technologies being in place. The assessors' focus on available information about the cash-intensive situation in the country and its impact on combating ML/TF.
- d) ***Financing of terrorism:*** The legal instruments in Cabo Verde are mainly silent on preventive measures especially reporting of suspicious transactions relating to the financing of terrorism. There is exclusive focus of the Central Bank of Cabo Verde

(CBV) on money laundering, and there is no concern, even from the point of view of the analysis of relevant legal instruments, regarding measures to prevent and combat terrorist financing. This absence will impact the powers of competent authorities to supervise and ensure compliance by financial institutions and DNFBPs in relation to the financing of terrorism.

- e) ***Economic crimes:*** The 2007 MER indicates that Cabo Verde is a transshipment point in the movement of drugs between South America and Europe. As such there are persons in Cabo Verde who play various roles in this process and who will, from time to time, be in receipt of some of the proceeds from drug trafficking. Cabo Verde provided some concluded cases on drug trafficking and money laundering and indicated that it has amended the non-customs tax offences legislation of 2013 in order to improve the tax system and thus combat the phenomenon of tax crimes. Thus, the evaluation focused on investigation and prosecution of drug trafficking and tax crimes, including how the Public Prosecutor pursues cases relating to these crimes, as well as money laundering.
- f) ***Transparency and beneficial ownership of legal persons:*** The legal framework regarding the incorporation and registration of commercial companies in Cabo Verde does not comply with the requirements of Recommendation 24 because it does not contain legal provisions in line with the requirements of criteria 24.4, 24.6; 24.8, 24.9, 24.10, 24.11, 24.12, 24.13, 24.14 and 24.15. Furthermore, the country did not assess the types of legal persons that can be abused for ML/TF purposes. Generally, the NRA rated the availability and access to beneficial ownership information, including BOI of legal persons, as very low due to issues regarding the creation, integration and centralisation of databases, access to and analyses of such information, as well as absence of exchange mechanisms between public entities and reporting entities, and lack of list of PEPs. Consequently, the incorporation and registration of commercial enterprises, as well as the extent of accessibility and availability of BOI was an area of intense focus during the on-site visit to Cabo Verde.

## ***Materiality***

14. Cabo Verde is a country with a service-based economy, primarily in the tourism sector. Diversifying the economy remains a priority for long-term sustainable growth. Services account for about 70% of the GDP, of which tourism represents 20%. The Cabo Verdean economy depends heavily on tourism, which accounts for 47% of goods and services exported. Manufacturing and catering will likely expand over the next three years. Despite weak growth in Europe, remittances (which represented 11% of the GDP in 2016) are expected to continue to increase, contributing to economic growth. , The islands with the highest concentration of business activity are Santiago, São Vicente, Sal and Boa Vista, representing approximately 78.9% of the total number of active companies, 91.9% of the total number of employees and 97.1% of the total business volume generated by the companies<sup>4</sup>.

15. Since 2015, the government has focused on fiscal consolidation, increasing pressure on the Public Investment Program and expanding the tax base. The budget deficit fell from 4.1%

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<sup>4</sup> The Annual Business Survey Report (ABSR) (2014) of the National Institute of Statistics (INE).

of GDP in 2015 to 3.3% in 2016. However, public debt increased from 71.9% of GDP in 2010 to 130% in 2016. To change the course, the government aims to mobilize domestic resources, increase efficiency of public spending and reduce debt related to public enterprises. The budget deficit reached an estimated 4.1% in 2017 and is projected at 4.4% in 2018. In 2016, inflation was -1.4%, mainly due to low energy and food prices. Inflation was estimated at 1.1% in 2017 and is projected to increase to 2% by 2019. The current account deficit shrank to 5.4% of GDP in 2016 due to rising tourism, weaker oil prices and higher remittances of foreign nationals. The expectation is to rise to 7.2% in 2017, following the rise in oil prices. Total reserves grew from 4.5 months of imports in 2013 to 6.5 months in 2016, mainly through lower imports and reduced spending on public investments.

16. Cabo Verde developed a new Sustainable Economic Development Plan in 2017. that the Plan focuses on promoting the private sector, stimulating economic transformation and diversification to improve resilience to climate change and strengthening regional integration in the Economic Community of West African States (ECOWAS).

17. The 2014 Annual Statistics Yearbook of the INE indicates that the business universe in Cabo Verde comprised 9,185 active companies (an increase of 1.5% in relation to 2013), employing approximately 52,524 people (increase of 3.0% in relation to the year 2013) and generating a turnover in the order of 246.753.310.000\$00 CVE (2.3% less compared to the 2013 economic year). The INE study in report of 2015 stated that the country had 33,228 Informal Production Units (UPIs), which in turn represented 12.1% in terms of GDP, despite a downward trend from 25% in 2009 and an annual turnover of USD 180 million.

18. Large investments in tourism, which began in the first half of 2016 and contributed to the diversification of the tourism product, will give the required boost to growth over the next three years. The increase in Foreign Direct Investment (FDI) combined with policy reforms to improve the investment climate is expected to support domestic demand. Prices are expected to remain low due to a combination of local and international developments, providing the basis for a continued easing of monetary policy. In this context, the economy is expected to grow between 3 and 4% of GDP between 2016 and 2017.

19. Cabo Verde is a highly dependent country and thus has been severely affected by the international financial crisis. Economic recovery after the international financial crisis in 2008 remains fragile. The slowdown in growth since 2010 reflected a decline in FDI, one of the country's main growth drivers, as well as the continued rationalization of public investment (in the last three years) in a context of debt growth. Economic activity was further affected by anaemic growth in lending to the private sector. With the slowdown in investments, the associated import expenditure declined and contributed to a better position of the external current account balance in 2015. The external balance benefited from a notable increase in private remittances as well as reduced repatriation of profits by foreign firms. Reserves remained rather robust, well above the domestic 3-month import reference.

20. According to the report on the state of the economy published by the Bank of Cabo Verde in 2016, there was a positive development, compared to 2015, of around 25% of foreign direct investment, reaching 7.3% of GDP. In 2016 immigrant remittances reached 18 billion escudos, representing 11.5% of GDP.

21. After a weak GDP growth, with an average of 1.8% between 2010 and 2015, the economy recovered in 2016, registering growth of 3.8%, driven by agriculture and services (mainly tourism). Domestic demand showed signs of recovery after an increase in government spending and private sector credit. The trend continues, with GDP growth estimated at 4% in 2017 and projected at 4.1% in 2018, driven by the recovering tourism sector.

22. The size of the financial sector is significant and larger than what would be expected given the country's level of economic development. As of end-2016, financial sector assets were estimated at 139 percent of GDP (approximately USD 2 billion) and have increased by about two thirds since 2010. The banking sector, which has more than 85 percent of total financial sector assets, is highly concentrated with two out of seven licensed banks dominating the credit and deposit markets with a combined market share of almost 70 percent.<sup>5</sup>

### ***Structural Elements***

23. The main structural elements required for an effective AML/CFT regime exist in Cabo Verde. Cabo Verde is a politically and institutionally stable country, based on accountability, transparency and the rule of law. Responsibility for the development and implementation of the AML/CFT policy in Cabo Verde is shared among relevant authorities, whose statutes and functions are well defined.

### ***Background and other Contextual Factors***

#### ***(a) AML/CFT Strategy***

24. Cabo Verde has enacted AML and CFT laws to comply with the FATF Standards and adopted an NRA report as part of its political commitment to fight against ML/TF and other transnational organized crime. The country claimed the existence of a national AML/CFT strategy with no supporting document evidencing such. Also, there are no documents to support the existence of a national strategy to combat TF.

#### ***(b) Legal and institutional framework***

25. The legal framework of AML/CFT issues in Cabo Verde is set in the AML/CFT Acts, regulations and related documents adopted by the National Assembly and competent authorities in line with the Constitution of the country. The framework covers national coordination, preventive measures and supervision; provisional measures to prevent the dissipation of suspected proceeds and instrumentalities of crime, as well as terrorist funds and other resources; confiscation of proceeds and instrumentalities of crime; targeted financial sanctions (TFS); and international cooperation, including MLA and extradition. The formulation and implementation of AML/CFT measures in Cabo Verde involve an array of

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<sup>5</sup> Cabo Verde: Access to Finance for MSMEs (P163015), The World Bank, Appraisal Stage | Date Prepared/Updated: 02-Nov-2017 | Report No: PIDISDSA23210

competent authorities and self-regulatory bodies. The Ministry of Justice plays a leading role in the overall coordination of AML/CFT measures.

26. The following are the main ministries and authorities responsible for formulating and implementing the government's policies on AML/CFT and combating proliferation financing:

- ***The Attorney General of the Republic (AG)*** is responsible for instituting criminal proceedings in the country. The AG has the power to initiate an investigation and order the investigation of any criminal offence, including ML, TF and PF. The Criminal Procedure Code of Cabo Verde mandates the Public Ministry to assist other authorities, including law enforcement agencies, in the exercise of their functions in carrying out criminal proceedings.
- ***Police Force:*** The criminal police organs comprise all entities or police agents with the power to execute the orders of judicial authorities or other actions in accordance with the Criminal Procedure Code or the criminal investigation law and may have general or specific functions. These bodies are responsible for investigating crimes under the direction of judicial authorities.
- ***National Police:*** The National Police investigates contraventions, maintains public order and provides support to the Judiciary Police (JP) in investigations that appear more serious, when this is necessary. Therefore, the National Police does not have powers to investigate serious offences, although the AG may delegate such powers to the JP in certain circumstances, after hearing the JP.
- ***The Judiciary Police (JP)*** is the specialised criminal police body for the investigation of crimes, having powers reserved for the investigation of the most serious crimes, including ML and TF in Cabo Verde, although, by delegation, guidance and inspection of the Public Ministry. The JP is a criminal police agency under the jurisdiction of the Ministry of Justice and functionally under the AG.
- ***Financial Intelligence Unit (FIU):*** The national center mandated to receive and analyse suspicious transaction reports (STRs) and disseminate financial intelligence regarding transactions and/or activities suspected of constituting an offence of ML and TF.
- ***The courts*** are responsible for resolving conflicts, prosecuting crimes, suppressing violations of democratic legality and ensuring the protection of the rights of citizens. The High Court of Cabo Verde has original jurisdiction for adjudication of cases relating to ML/TF.
- ***The Asset Recovery Office (GRA)*** works as a task force consisting of members of the Judiciary Police, of the Directorate General of the Registers and Notary, of the Tax Administration and of Customs. It has investigation powers of judicial police and is in charge of identifying, locating and seizing assets and proceeds of crime. The GRA conducts financial investigations as instructed by the Attorney General or by a prosecutor in case involving offences punishable by a prison sentence of three years or more, or when the assets identified in a case amount an estimate of at least 1million CVE (more than 12,000 Euro).
- ***Ombudsman:*** The Ombudsman is, above all, a defender of the citizens against every form of abuse perpetrated by the central and local public administration and by any other public powers.



- **Regulatory and Supervisory Bodies:** The Bank of Cabo Verde (BCV) is the entity responsible for the regulation and supervision of AML/CFT compliance by financial institutions and the capital market.
- **Reporting Entities:** Several reporting entities are responsible for implementing specific policies in Cabo Verde. In other words, they are the final recipients of the entire AML/CFT prevention measures, those who are obliged to execute the obligations imposed by law.

*(c) Financial sector and DNFBPs*

27. General information on the types and make of the financial and DNFBP sectors are provided below.

*Financial sector (revisit)*

28. The size of the financial sector is significant and larger than what would be expected given the country's level of economic development. As of end-2016, financial sector assets were estimated at 139 percent of GDP (approximately USD 2 billion) and have increased by about two thirds since 2010. The banking sector, which has more than 85 percent of total financial sector assets, is highly concentrated with two out of seven licensed banks dominating the credit and deposit markets with a combined market share of almost 70 percent.<sup>6</sup> The banking sector poses a higher risk of ML in Cabo Verde.

29. The Cape Verdean insurance market comprises 2 insurers, 3 brokerage firms, 2 legal persons and 56 natural persons. The companies provide services relating to life, health, accident fire and other damage, automobile, transportation, civil liability and miscellaneous matters. Based on the accumulated data of December 2016, 75,744 policies were in effect on this date, of which 6,979 were life insurance<sup>7</sup>, 68,765 non-life insurance companies, including 35,253 auto insurance policies. A significant number of shareholders of insurance companies reside outside the country, particularly Portugal. The NRA adjudges the insurance sector of being at medium risk due to the number of investigations conducted involving insurance companies, 3 representing 0.75% of ML cases investigated in the financial sector.

30. Cabo Verde has a small microfinance sector which relies mostly on non-profit institutions that have other social objectives, rely on donor funding. In 2015, the Government approved a new legal regime for microfinance institutions that requires institutions with microfinance operations to professionalize and separate their microcredit business from their other (social) activities by December 31, 2018. However, the assessment team was informed that the authorities had extended the date for the legal regime to enter into force as the NGOs

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<sup>6</sup> Cabo Verde: Access to Finance for MSMEs (P163015), The World Bank, Appraisal Stage | Date Prepared Updated: 02-Nov-2017 | Report No: PIDISDSA23210

<sup>7</sup> The "Life" segment has, over the past few years, seen significant growth, driven mainly by increases in the sale of insurance linked to mortgage loans. Commercial banks began to encourage customers to get an insurance to ensure continuity of monthly payments in case of death or borrowers' inability to fulfil their responsibilities (2012 Annual Report of BCV).

felt that they did not have the means or the structure to become FIs capable of complying with all legal and regulatory requirements of the State and the BCV. The BCV supervises the microfinance sector.

31. Table 1.1 below highlights the types and number of FIs in Cabo Verde prior to the on-site:

**Table 1.1 Financial Institutions**

Financial Sector	N.º de Entities
General Authorised Credit Institutions	8
Restricted Credit Institutions	5
Insurance Companies	2
Foreign Exchange Agencies	2

### ***DNFBPs***

32. The types and sizes of the DNFBPs in Cabo Verde are presented in the table below.

**Table 1.2: DNFBP by number and type**

DNFBP sector	No. of entities / operators	Sources
Construction and Real Estate	410	IGCI
Car Dealers	263	INE
Dealers in Precious Metals and Stones	10	IGAE 2013 Report
Auditors, Accountants and Tax Advisors	332	Official Gazette no. 27 of May 31st 2017
Lawyers	190	OACV
Solicitors	2	
Trainee Lawyers	172	
NGOs	297	NGO Platform
Casinos	1	IGJ
Lotteries and other Games of Chance	3	INE

Notaries and Registrars	32	DGRNI
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33. **Real Estate:** Construction and real estate activities represent 9.38% of the total business volume, which corresponds to approximately 85% of the total number of the DNFBPs listed on the table, hence the relevance of those activities in the context of the sector under assessment.

34. **Casino:** There are still no updated statistical data representing the weight of casinos in the overall weight of the gaming sector. However, it should be noted that the country already has the first casino in the Island of Sal, in operation since December 2016, and another one is under construction, on the island of Santiago, which will include online gambling.

35. **Lawyers:** As far as Notaries are concerned, although privatization is already foreseen, legislation has not yet been amended to allow the existence of private notary offices, so at the time of the on-site visit, existing notaries pertained to the public administration.

36. **NPOs:** Consist of NGOs that must be registered with the Commercial Registry Office to obtain and acquire legal personality. The NGOs carry out various activities, such as health care, education, sports, religion, social solidarity, cooperation and development, and carry out their functions at local, national and international levels. NGOs in Cabo Verdean normally receive funds from Nordic countries, mostly European, and these NGOs are solely answerable to their donors and not to government agencies. Another important sector involving NGOs in Cabo Verde is the micro-financing activity, which also receives funds from European and US cooperation, usually from public resources. These resources are used to provide small loans to members, which normally do not exceed 500,000 escudos (€ 4 545) per member. Law no. 15/VII/2007 empowers the BCV register microfinance institutions and control their activities. However, according to the information gathered during the assessment, the legislation in question was suspended at the request of the NGOs because the NGOs felt that they did not have the means or the structure to become FIs capable of complying with all legal and regulatory requirements required by the State and the BCV.

### ***Preventive measures***

37. **The AML and CFT Acts** are the main national legal instruments related to AML/CFT preventive system, where supervisory and regulatory entities, the FIU and the AG play a central role.

38. Notices 3 to 5 of the BCV, together with Law 61/VIII/2014 and 62/VIII/2014, constitute the core legislation for the supervision of the FIs exercised by the BCV. Also, under the scope of preventive measures, the BCV issued Technical Instruction No. 167/2012 of November 12, which contains instructions for insurance companies and intermediaries in the fight against ML; Notice no. 4/2014 of October 17, on the qualification and professional qualification requirements of members of the administrative and supervisory bodies of FIs. The BCV issued Notice No. 5/2017, of September 7, establishing the conditions, mechanisms and procedures necessary for the effective AML/CFT preventive obligations by FIs relating to the provision of financial services and subject to the supervision of the BCV. Notice No. 5/2017 repealed Technical Instruction No. 149/2009, of November 4, was aimed to prevent the financial system from being misused for ML purposes.

39. Despite designating most main activities in the non-financial sector as part of those to be regulated and supervised for AML/CFT purposes, the supervisory authorities have not issued regulatory instruments for AML/CFT purposes. No specific sector or activity exemptions were found for the set of activities defined as relevant to the FATF. There is insufficient application of AML/CFT legislation and total lack of supervision in the non-financial sector.

### *Legal persons and legal arrangements*

40. The Commercial Registry Law and the Civil Code govern the creation of legal persons and legal arrangements in Cabo Verde. The most common types of companies are partnerships (*sociedades em nome colectivo*), limited liability companies (*sociedades por quotas*), and cooperative companies (*sociedades cooperativas*), while there are very few joint-stock companies (*sociedades por acções*). All the companies must be registered in the commercial registry to obtain legal personality. Foreign companies that intend to do business in Cabo Verde must comply with one of the types of entities set-out in the company code and register the company in the commercial registry. The Conservator verifies compliance of an application to register a company under the Companies Registry Law, while the public prosecutor verifies compliance of companies with company rules and prosecutes those who violate such rules. The prosecution may result in the winding up and the liquidation of the company.

41. Article 51 of the Constitution of the Republic of Cabo Verde (principle of freedom of association) and the Civil Code govern the creation of associations, subject to freedom of association. The Constitution and the Civil Code are applicable to associations, foundations, and unincorporated associations, providing for the constitution, basic internal organization, legal motives for extinction and effects of the Code. Associations obtain legal personality upon registration with the commercial registry.

42. The concept of express trusts and similar legal arrangements does not exist in the Cabo Verde legal system and therefore express trusts and legal arrangements cannot be created or recognized as such. However, reporting entities are obliged to ML/TF preventive measures to trusts created in foreign countries.

43. Article 140 (c) of the Commercial Registry Code requires for coverage of international elements in particular, insofar as the country functions as an international center for the creation or administration of legal persons or legal arrangements (even if only as a reference jurisdiction), and to what extent legal persons and legal arrangements created in another jurisdiction (or under the law of another jurisdiction) have assets or are used in the country.<sup>8</sup>

### *Supervisory arrangements*

44. Article 5(a) of the AML Act designates the BCV as the competent authority responsible the AML supervision for the financial system in general and the financial markets in particular. The powers of the BCV regarding CFT, as specified under Article 13 (d) of the CFT Act, is

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<sup>8</sup> See paragraph 48 to 56 of the 2007 MER published at [www.giaba.org](http://www.giaba.org).

restricted to foreign trade operations. Article 13(d) of the CFT Act states that Entities with their own or delegated competence to concede prior authorization for the carrying out of foreign trade operations: deny, condition or revoke foreign trade operating licenses with designated persons or entities, or those involving them, in accordance with the restrictive mechanisms applied under the terms of the present Law. In addition, Article 1(f) of the CFT Act defines “Regulatory and supervisory entities” to include *entities with their own or delegated authority to concede prior authorization to carry out foreign trade operations, and those which come to be so determined by law*, thus restricting the reach of the BCV in relation to TF.

45. The DNFBP sector, under AML supervision, comprises both supervisory bodies and self-regulatory entities (Association of Professional Auditors and Certified Accountants, Bar Association). In particular, the following constitute the supervisory authorities of DNFBPs in Cabo Verde:

- The General Games Inspection, created by DL no. 30/2010, of August 23, for natural or legal persons that exploit casinos, games of chance, lotteries, bets and promoters of games of chance (Law 77/VI/2005 and Law 62/VII/2010);
- The Bar Association (DL n.º 51/2000, of December 4), regarding Lawyers and Solicitors;
- The General Directorate of Registries, Notaries and Identification, in relation to Notaries and Registrars;
- The General Inspectorate of Constructions and Real Estate, in relation to entities engaged in real estate development, real estate brokerage, real estate purchase and sale, as well as construction companies that directly sell real estate (Decree-Law 60/2013: construction activity; Decree-Law nº 59/2010: real estate promotion activity and Decree-Law no. 57/2010 of 6 December - establishes the exercise of the activities of mediation and real estate acquisition).
- The Order of Professional Auditors and Certified Accountants, regarding Auditors, Accountants and Tax Consultants;
- The General Inspection of Economic Activities (Regulatory Decree 1/1999 of March 29) regarding traders of high value goods, namely vehicles, works of art, antiques and jewellery;
- The NGO Platform, in relation to Civil Society Organizations;
- The Financial Information Unit, in relation to entities that are not subject to the supervision of another authority.

46. The definition of regulatory and supervisory authority in the CFT Act does not appear to cover the supervisory authorities of DNFBPs as enumerated in the AML Act.

### ***International cooperation***

47. Considering the unique geographic location of Cabo Verde, its historical ties with other Portuguese-speaking countries, as well as the huge Cabo Verdean diaspora, the country maintains close socio-economic relations with many countries around the globe. These

relations are also reflected in the level of international cooperation in AML/CFT issues with the USA, Portugal, the Netherlands, France, Brazil and the United Kingdom as major essential partners for the country. The Attorney General is the main agency for mutual legal assistance for both incoming and outgoing requests. Also, the FIU and other competent authorities have international cooperation arrangements with foreign counterparts.

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### Key findings

- In general, Cabo Verde has some level of understanding of the ML/TF risks in the country through the NRA findings. While the financial institutions have a good understanding of their ML/TF risks, the understanding of ML/TF risks is very low in the overall DNFBP sector, including those sectors with the highest risk.
- Supervisors do not yet have the necessary mechanisms to develop AML/CFT Risk-Based supervisory activities. The current rule-based AML/CFT supervisory framework is very limited and do not cover higher risk sectors (e.g. real estate and NPOs).
- The supervisory authorities of some DNFBPs do not have requisite capacity to supervise the sector given the level of ML/TF risks in their sector.
- The conduct of the National Risk Assessment involved the participation of both public agencies and private entities in the financial and non-financial sector. Nonetheless, the low quality and quantity of data with respect to the non-financial sector has the potential of negatively affecting the results obtained by the NRA.
- Cabo Verde does not have a body or mechanism for coordinating the development and implementation of policies to combat ML/TF and, where appropriate, the financing of proliferation of weapons of mass destruction.
- Cabo Verde does not accord priority to TF risks in the country despite the NRA noting TF as a concern.

#### Recommended Actions

Cabo Verde should:

- Organise programmes supervisory authorities and reporting entities in the DNFBP sector to increase their level of awareness of ML/TF risks and legal obligations;
- Ensure that supervisory authorities apply Risk-Based approach to AML/CFT supervision
- Ensure that national authorities in the DNFBP sector obtain and improve statistics on regulated and audited economic sectors to facilitate the implementation of risk analysis measures that permit the determination of ML/TF risks in each sector.
- Provide competent authorities in the DNFBP sector with the necessary human and technical resources to enhance their capacity and enable them to perform their functions effectively.



- Designate a competent authority or put in place a mechanism to develop and coordinate the application of AML/CFT/PF policies and to serve as a platform for national coordination and cooperation both at operational and policy levels.

48. The relevant Immediate (I.O) considered and assessed in this Chapter is IO 1. The relevant Recommendations for assessing the effectiveness under this section are R1-2.

### **Immediate Outcome 1 (Risk, Policy and Coordination)**

#### ***Country's understanding of its ML/TF risks***

49. Generally, there is moderate level of understanding of the risks of ML and terrorist financing in Cabo Verde. In the financial sector, there is insufficient knowledge of ML/TF risks largely due to the lack of sectoral elements that allow the supervisor to develop a risk-based supervision plan and take the necessary mitigating measures. The understanding of ML/TF risks in the DNFBP sector is generally very low.

50. Cabo Verde conducted its National Risk Assessment (NRA) in 2017 with the participation of both public and private entities. The NRA has provided a platform for sharing the knowledge of ML/TF risk and a general view of the ML/TF risks in the country. However, the data and information used in the NRA do not appear to be of acceptable standards, in terms quantity and quality. The process of identifying and understanding these risks is limited by the absence of a policy and a coherent strategy for the collection, management and dissemination of statistical data and sensitive information. This impacted on the quality and comprehensiveness of the NRA data regarding DNFBPs (NPOs, real estate and legal professionals). The scarcity or absence of data in these sectors undermines the conclusions of the NRA, as well as reliability of the results obtained and quality of the mitigating measures adopted or to be adopted with the approval of the respective action plans. The results of the NRA was further impacted by the absence of sectoral risk assessments as these did not enable the country to conduct a more comprehensive and effective national assessment.

51. Also, Cabo Verde is yet to develop a national AML/CFT Strategy based on the outcomes of the NRA.

52. Cabo Verde considers the risk of FT from within the country to be low or at best moderate. The authorities of Cabo Verde define the TF risk to national security through a multi-agency approach which is coordinated by agency responsible for information service of the Republic. Cabo Verde indicated that the low TF risk index is based on the full range of potential TF activities.

53. Cabo Verde informed the assessment team that emerging ML/TF risks, such as abuse of virtual currency and activities of individual terrorists in other countries, are continually being assessed and, if necessary, preventive measures are taken. However, the authorities of Cabo Verde do not consider TF as a matter of priority because they are of the view that the country is not very attractive to terrorism and its financing.

54. As shown in Table 2.1 below, 57 representatives of 40 public and private sector entities participated in the NRA:

**Table 2.1: Distribution of Participants at the NRA**

Entities Represented	N.º of Participants
AGMVM	1
National Association of Cabo Verde Municipalities	1
Bank of Cabo Verde	5
Banco de Fomento Internacional –BFI	1
Banco Comercial do Atlântico – BCA	1
Cabo Verde Stock Exchange	1
Sotavento Chamber of Commerce, Industry and Services	1
Banco Interatlântico	1
Caixa Económica de Cabo Verde	2
Anti-Drug Committee	1
Insurance Company	1
Cabo Verde Postal Services	1
National Directorate of the National Police	1
National Directorate of Judiciary Police	2
Directorate General of Registry, Notaries and Identification	1
Directorate of Tax and Contributions	3
Directorate General of Customs	2
Office of Asset Recovery	1
Ecobank-Cabo Verde	1
Federation of Cabo Verdean Associations in the area of Micro-finance	1
Garantia and Insurance	1
Inspector General of Constructions and Housing	1
IFH – Institute for Housing Promotion	1
Inspectorate General of Economic Activities	1
National Statistics Institute	1
MAXSPAY	1
Inspectorate General of Games/Gaming	1
MORABI	1
Higher Institute of Law and Social Sciences	1
National Intelligence Service	1
FIU	8
University of Cabo Verde	1
Attorney-General	2
Jean Piaget University	1
Cabo Verde Bar Association	1
OPACC	1
SIGMA	1
Spencer Construction Company	1
Platform of NGOs	1
SOLMI – NGO	1
Total	57

Source: FIU

### *National policies to address identified ML/TF risks*

55. The period between the validation of the NRA and the on-site mutual evaluation is inadequate for the Assessment Team to determine any meaningful outcomes of the NRA findings and recommendations in the implementation of AML/CFT policies and measures for the analyses of ML/TF risks and their mitigation. Cabo Verde is yet to develop a national

AML/CFT Policy based on the outcomes of the NRA, however, the country has developed detailed and specific action plans for each of the identified nine (9) focus areas (National Threat; National Vulnerability; Banking Sector Vulnerability; Securities Markets Vulnerability; Insurance Sector Vulnerability; OFI Sector Vulnerability; DNFBP Sector; Financial Inclusion Products Vulnerability; and Terrorism Financing in the NRA. Each chapter of the NRA has a set of recommendations to be implemented in order to improve knowledge of the ML/TF risk in Cabo Verde. These recommendations are made at two levels, at the national level and the sectoral level, for supervisors, regulators and auditors of the financial sector and DNFBPs.

56. The country believes that the implementation of the proposed action plans will enable reporting entities and supervisory authorities responsible for preventing and combating ML/TF to track related ML/TF matters in line with the country's main threats and the Government's "multi-year strategic plan".<sup>9</sup>

57. The Assessment team noted that given the enormity of actions outlined in the nine plans and the expected implementation period for each of these actions seems to be too ambitious especially as some of the recommended measures have high financial implications. Most of the national authorities and entities interviewed during the on-site visit stated that they lack the required technical and human resources to undertake the activities in their various action plans.

58. Despite the strong political will of the country in combating ML/TF in the country, there is the need to pursue the main ML/TF risks identified in the NRA as national priorities through well-crafted national AML/CFT policies, and activities implemented on risk-sensitive basis. The assessment team noted that because of considerable level of understanding of ML/TF risks in the financial sector, it will be much easier and faster to implement AML/CFT measures in this sector, thus efforts should be re-directed to the DNFBPs, including NPOs sector with little or no understanding of ML/TF risks.

59. Despite the absence of a national AML/CFT Policy framework, Cabo Verde indicated that its overall national security strategies are designed to address major predicate offences of ML and terrorism. The authorities did not provide the assessment team with any evidence to justify the claim and to ascertain its effective implementation.

60. At the sectoral level, supervisory activity is more developed in the financial sector, with the BCV having the means, technology and knowledge that can allow the most appropriate AML/CFT supervision. However, the Risk Assessment and Control System (RAS), developed in cooperation with the Central Bank of Brazil, is still at an early stage of implementation. The BCV has been more focused on prudential supervision and has not yet given the necessary attention to ML/TF matters in terms of supervision.

61. With the exception of the BCV, no other regulator or supervisor has an area dedicated to ML/TF risk analysis within its institution.

62. The Assessment Team consider the Action Plans as comprehensive, relevant and ambitious documents that could, over several years, serve as a basis for the implementation of measures relevant to the effective implementation of AML/CFT prevention and supervision

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<sup>9</sup> Paragraph 816 of the NRA.

policies in Cabo Verde. However, the achievement of this goal is predicated on the availability of adequate technical and financial resources as the lack of resources will be a major impediment to accomplishing the action plans.

### ***Exemptions, Enhanced and Simplified Measures***

63. The legislation provides for simplified and enhanced due diligence measures, in general, based on a case-by-case verification of the requirements set out therein. To date, there is no risk analysis that demonstrates the existence of situations likely to warrant the application of simplified CDD measures in the ML/TF Laws. Cabo Verde's legislation sought to follow the best European legislative practices - largely based on the Portuguese system. The NRA did not identify or classify any sector of as low risk thereby necessitating application of exemptions or simplified due diligence measures, despite the mechanism being described in the AML Act. Cabo Verde has not demonstrated that the non-prioritization of TF has led to application of exemptions or simplified measures.

### ***Objectives and activities of competent authorities***

64. The objectives and activities of most competent authorities are yet to be aligned and consistent with the identified ML/TF risks as indicated in the NRA. The BCV incorporates elements of analyses of ML/TF risks in its supervisory framework, however, the BCV focuses more on compliance with licensing requirements and analyses of operational issues, and not on ML/TF.

65. Given that the NRA was concluded recently, there are still no connections between the results obtained in the analysis of national ML/TF risks and the priorities in the sectoral risk analysis conducted by competent authorities.

66. The development and implementation of a national AML/CFT strategy is expected to assist the authorities to develop integrated and more convergent AML/CFT measures and actions in order to make the system more effective. Also, the government should ensure the provision of adequate resources to facilitate the work of competent authorities.

### ***National Coordination and Cooperation***

67. The FIU played a leading role in the NRA process. However, there is no clear coordination mechanism in place in Cabo Verde to ensure proper and regular cooperation and coordination at both operational and policy levels for the development and implementation of policies to combat ML/TF. There have been some efforts at operational cooperation between the various competent authorities. The BCV, as the supervisor of the financial sector, facilitates cooperation with criminal and judicial investigation authorities, as well as with the FIU.

68. Also, the competent authorities stated that there is an appropriate level of cooperation between them, both through formal and informal mechanisms.

69. The representatives of competent authorities who participated in the NRA process are now focal points for the FIU, thus facilitating timely exchange of information between the FIU and competent authorities. However, Cabo Verde should put in place wide-ranging arrangements for AML/CFT coordination and cooperation to facilitate the sharing of strategic

and tactical information. The public version of the NRA was not available hence its quality could not be ascertained. Also, the assessment team could not establish if the NRA process had helped to identify and include new partners/stakeholders for AML/CFT issues.

***Private sector's awareness of risks***

70. Given the fact that the NRA process was only concluded a few days before the on-site visit, the assessment team could not ascertain when the final conclusions in the NRA will be officially disseminated to regulatory/supervisory and to self-regulatory bodies involved.

71. Cabo Verde indicated that there are plans to disseminate the final approved version of the NRA to the various stakeholders involved in the implementation of the FATF standards. The country is enjoined to organize awareness-raising and sensitization programs on the outcomes of the NRA to the private sector.

***General findings regarding IO. 1***

72. Overall, Cabo Verde has taken concrete steps to identify and assess its ML/TF risks. The completion of the country's first NRA is a key step in that direction. The level of understanding of the ML/TF risks is moderate and not uniform among the competent authorities and reporting entities. Combating TF is yet to be a priority, and there is no defined cooperation and coordination mechanism for the development and implementation of AML/CFT policies in Cabo Verde. The quality and comprehensiveness of the data for the NRA are not of acceptable standards. In particular, there are doubts about the findings, with regards to the NPOs, real estate and legal professions given the scarcity/non-existence and reliability of data. Also, the data relating to the gaming sector referred to in Table 32 of the NRA does not include Casinos, as there was no casino in Cabo Verde at the date of publication of those statistical data.

73. **Cabo Verde has achieved a Low level of effectiveness for IO.1.**

## CHAPTER 3 - LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key findings and Recommended Actions*

#### *Key Findings*

##### *Immediate Outcome 6*

- The FIU and other operational authorities are not widely receiving and using financial intelligence and other relevant information for ML/TF investigations.
- There is no formal system for exchange of financial information between competent authorities, and request for information is also rare between the FIU and JP, and between the JP and AG.
- The FIU analyses and dissemination rarely support the operational needs of other bodies such as the JP as request for information is rare between the FIU and the JP.
- Requests for exchange of information with the FIU are made through official notes whose security is questionable.
- Competent authorities rarely use financial intelligence to support investigations of ML/TF or associated predicate offences

##### *Immediate outcome 7*

- Cabo Verde has mechanism to identify and investigate ML cases. However, the number of ML cases prosecuted are not commensurate with the country's risk profile due to inadequacy of institutional structures for investigation of ML and predicate offences.
- The competent authorities involved in the investigation and prosecution of ML cases have some tools to obtain information and also cooperate to some extent. In particular, the Economic and Financial Crimes Department cooperates with law enforcement authorities and the FIU in exchange of data.
- Sanctions imposed on natural and legal persons are effective, proportionate and dissuasive. Available statistics data show that only three legal persons have been convicted.
- Competent authorities are autonomous and independent in the discharge of their duties, thus preventing likely political or administrative interference in the investigation and prosecution of ML offences.

##### *Immediate Outcome 8*

- Cabo Verde deploys a variety of tools for conviction in ML cases such as administrative forfeiture and criminal confiscation but has not applied non-conviction-based confiscation.
- Cabo Verde has an Asset Recovery Office (GRA), a multidisciplinary institution responsible for identifying, tracing and seizing criminal property both domestically and internationally.
- The country has pre-emptive measures for the management of confiscated assets. Likewise, and pursuant to Article 49 (2) of the AMLL, the country has in place procedures on the sharing of assets between the competent national authorities and their foreign counterparts.
- Customs has the power to seize funds in case of non-compliance with obligations to declare currency and bearer negotiable instruments (BNIs).

- Cabo Verde has established a joint team to control cross-border transportation of cash or remittances from migrants.

*Recommended Actions*

***Immediate Outcome 6 – Financial Intelligence***

- The FIU should improve its level of spontaneous dissemination of financial intelligence relating to ML and TF.
- The authorities of Cabo Verde should improve the human and technical resources of the FIU to enable more effective operations and increase capacity for conducting strategic analysis.
- FIU should have an integrated network to enable it to have access to the databases of competent authorities and reporting entities in an automated manner to facilitate the receipt of STRs and the conduct of intelligence analysis.

*ML investigation and prosecution (immediate outcome 7)*

*Cabo Verde should:*

- Intensify efforts to pursue the investigation and prosecution of ML/FT cases.
- Improve the use of the capacities within the PJ to facilitate the investigation of ML offences, using ML joint investigation teams and special investigative techniques.
- Put in place the conditions for reporting the outcome of criminal investigations and convictions or the operation of criminal intelligence in the context in which data and information has been exchanged between the AG, the JP and the FIU.
- Maintain comprehensive statistics on criminal activities with a higher ML risk, focusing on the number of investigations related to ML practices; number of inquiries dismissed; number of cases charged; number of prosecutions and number of convictions related to ML.

*Immediate Outcome 8*

*Cabo Verde should:*

- Ensure that relevant competent authorities pursue asset recovery as an AML/CFT policy objective.
- Improve the GRA's access to information held by banks and public bodies (FIU, Civil Identification, Registries and Notaries, Tax and Contributions General Office, Customs, Social Security, Insurance, Securities Market), in order to articulate financial investigations within the period of the investigation.
- Promote training activities to ensure that staff of the GRA members have a full, constant and up-to-date knowledge in the field of financial investigation in order to ascertain all the assets that constitute the defendant's property.
- Promote judicial cooperation and exchange of best practices between staff members of the GRA and other counterparts in financial investigation cases where it is necessary to trace and seize proceeds of crime and other property of the defendant located abroad.
- Promote a close functional relationship between the GRA and the central authority at national level, in particular with regard to requests for MLA related to the

identification, tracing and seizure of property of criminal origin at national and international levels.

- Create comprehensive and available statistical data on proceeds of crime located and confiscated.
- Take advantage of information obtained in the scope of ML/TF to gain knowledge of the defendant's fiscal situation.
- Adopt the best practice of exchanging customs information with the Judicial Authorities and LEA regarding the prevention and repression of ML/TF offences.

74. The relevant Immediate Outcomes considered and assessed in this chapter are IOs 6-8. The FATF Recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

#### *Use of financial intelligence and other information*

75. Operational authorities of Cabo Verde are not widely collecting, producing, disseminating and using financial intelligence and other information for AML/CFT purposes. This is due to lack of resources, including staff, for most competent authorities. The FIU, which should be playing a key role in the collection and dissemination of financial intelligence it receives, does not collect cash transactions reports (CTRs<sup>10</sup>), it only receives STRs, thus limiting the possibility of detecting suspicious transactions. The FIU maintains all the STRs it receives in its own internal database, which allows for data mining to link newly received STRs based on previously identified suspicions, confirmed by the Attorney General or not. The FIU does not have direct access to information held by other competent authorities (Tax and Customs Authority (AT) database information on income, taxes paid, value of property etc.). The FIU only has indirect access to information on car ownership, drivers' licenses, gun permits, individuals under arrest warrants; or bank accounts held in the database of the JP. The FIU requests for further information on suspected individuals, activities and accounts from reporting entities to use in its analysis. The Assessment Team reviewed samples of requests made by the FIU to financial entities, supervisory and judicial authorities requesting for information regarding possible bank accounts and other information relating to subjects of STRs. Some of these requests yielded positive results.

76. Cabo Verde recently commenced the implementation of cross-border declaration of currency and BNIs and new forms of disclosure are under way. Although customs is required to file reports under the AML Act, and also has a focal person at the FIU, the FIU provided copies of reports on cash seized by customs and handed over to the BCV. It is unclear as to how the FIU is able to use such information, if at all, and whether the FIU receives the information in a timely manner. Thus, there is the need for customs to submit reports on declaration of currency and bearer negotiable instrument directly to the FIU as required by Article 11(2)(f) of the AML Act.

77. LEAs, mainly the PJ and the relevant Prosecution service (DCIAP), rarely use financial intelligence for criminal investigation and tracing of proceeds of crime related to ML, associated predicate offences and TF. The AG does not have direct access to the databases of

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<sup>10</sup> The FIU is mandated to collect CTRs (Article 34)



the JP or other competent authorities. While STRs are a key component of the financial intelligence, there is no evidence that competent authorities widely use financial intelligence generated from STRs for investigative purposes. Overall, LEAs do not seem to prioritize the collection and use of financial intelligence. Cooperation between the LEAs and the FIU does not seem to be effectively coordinated. There are virtually no requests by the PJ to the FIU for financial intelligence and other information.

78. In terms of proceeds and instrumentalities of crime, the GRA conducts financial investigations as instructed by the AG or by a prosecutor in case involving offences punishable by a prison sentence of three years or more, or when the assets identified in case amount to an estimate of at least 1million CVE (About 12.300 USD or 9.000 EUR). The GRA can access a wide range of sources of information, including social welfare information, the stock exchange and central bank, and engage in international cooperation with foreign counterpart institutions.

79. Competent authorities of Cabo Verde do not use financial intelligence for international cooperation. The authorities provided the assessors with multiple cases on drug trafficking, abuse of exercise of official function and ML.

80. The quality of financial intelligence is potentially hampered by the significant lack of feedback between competent authorities as to how financial intelligence is used (if used at all), and the outcomes of its use. The FIU rarely receives feedback from other agencies, with the exception of irregular feedback from the AG. This situation may be attributed to the fact that the FIU disseminates the results of its analyses to the AG, and sometimes the PJ.

#### *STRs received and requested by competent authorities*

81. The FIU received 499 STRs, analysed 263 and disseminated 181 intelligence reports to the AG from 2013 to November 2017. The table below provides a breakdown of STRs received and analysed by the FIU as well as intelligence reports disseminated to the AG.

**Table 3.1: STRs Received and Disseminated**

SUMMARY STATISTICS ON STRs						TOTAL
YEAR	2013	2014	2015	2016	2017	
STRs from last year being analyzed	22	66	71	95	197	451
STRs (new entries)	93	43	73	186	104	499
Total Verification Processes (VP)	115	109	144	281	301	950
VP handled (FIRs)	49	38	49	84	43	263
Disseminated to AGO	27	33	20	74	27	181
VP with freezing	0	0	0	6	0	6
VP archived	22	5	25	10	16	78
VP being analyzed, carried over to next year	66	71	95	197	N/D	
Spontaneous dissemination (FIU counterparts)	0	4	2	38	2	46

**Table 3.2: STRs Received by Reporting Entities**

STRs PER ENTITIES SUBMITTED						TOTAL	%
YEAR	2013	2014	2015	2016	2017		
Banking Institutions	89	41	60	174	94	458	92%
Notaries and Registrars	0	0	1	3	0	4	1%
Insurance Companies	1	1	0	0	0	2	0%
Real Estate	0	1	2	0	0	3	1%
Customs	2	0	1	1	0	4	1%
Payment Entities	0	0	0	0	7	7	1%
Counterpart FIUs	1	0	9	3	2	15	3%
Other Entities	0	0	0	5	1	6	1%
<b>TOTAL</b>	<b>93</b>	<b>43</b>	<b>73</b>	<b>186</b>	<b>104</b>	<b>499</b>	<b>100%</b>

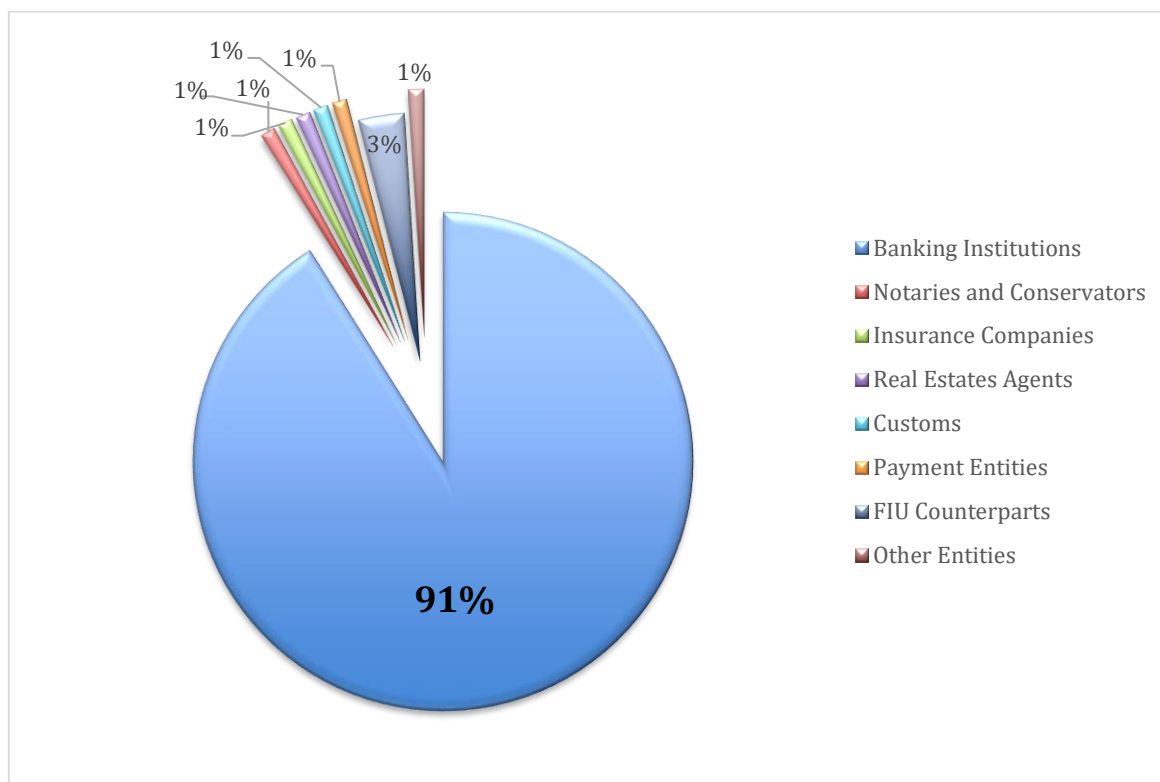
Source: FIU Activity Report (2016) FIU database until November 2017

82. The banking sector contributes 91% of the STRs submitted to the FIU. Between 2013 and 2017, insurance companies and real estate agencies submitted two and three STRs, respectively. In general, non-financial reporting entities and their supervisory<sup>11</sup> bodies have not been filing STRs. There is no evidence of such reporting from traders in high-value goods, real estate agents, lawyers and accountants.

83. The very low number of STRs submitted by non-bank financial institutions and DNFBPs demonstrates the lack of supervision of these sectors as well as limited understanding of risk of ML/TF and AML/CFT obligations. This impacts the ability of the FIU to obtain sector specific to enable it to undertake strategic analyses who results can facilitate successful investigation and prosecution of ML/TF cases. Given the risks associated with this sector, the poor reporting of STRs by DNFBPs, the authorities need to pay attention to this sector in order to protect it from abuse. The FIU should collaborate with the BCV and relevant SRBs to undertake further outreach to the DNFBPs regarding their reporting and other obligations to ensure the inflow of financial intelligence that can facilitate AML/CFT actions.

<sup>11</sup> As required by Article 37 of the AML Act.

**Figure 3.1: Sectoral STR Reporting**



84. The database of the FIU does not comprehensively separate STRs from other forms of information. Assessors noted that this procedure for collecting and maintaining statistics by the FIU does not clearly demonstrate the number of STRs, requests for information or provide information on spontaneous basis. Thus, it does not show that the FIU is performing optimally. There are no statistics for CTRs even though this is required by law.

85. During the on-site, some reporting entities acknowledged that they usually hold informal discussions with the FIU when they come across a potentially suspicious situation to determine whether to file an STR or not. The FIU should continue to dialogue and cooperate with the private sector, both formally and informally, to increase guidance and awareness. The entities should carry out their own assessments and decide whether to report or not. This responsibility cannot be delegated to the FIU. Furthermore, the FIU should establish more formalized communication practices, channels and procedures adapted to the needs of each reporting sector, with the objective of aiding private sector entities to fulfil their reporting obligations.

86. The STRs are not always of good quality. The FIU also noted that some private sector entities, such as Money or Value Transfer Service (MVTs) providers, do not use the standard template for filing STRs, which is time-consuming and places constraints on the resources of the FIU in analysing such STRs. The FIU informed the assessors that it had organized several outreach programmes for reporting entities aimed at sensitizing them on the need to provide relevant documents and improve the quality of STRs. Though, the NRA did not identify the insurance sector as high-risk, the FIU has organized training program for the sector on AML/CFT requirements. Also, limited training was provided to judges. More targeted training

should be organised in order to improve the quality of STRs, especially for high-risk reporting sectors.

87. lawyers in Cabo Verde do not recognize the need to file STRs nor submit any other type of information to the FIU. The lawyers indicated that the AML/CFT Act does not place any reporting obligation on them. Also, the lawyers complained about lack of training on AML/CFT issues.

#### ***Operational needs supported by FIU analysis and dissemination***

88. The FIU conducts operational analysis of STRs received but the information in the analyses is not detailed enough to facilitate timely investigation by LEAs. Thus, the extent to which the FIU's analyses and dissemination support operational needs of LEAs is very limited. The FIU does not disseminate the results of its operational analyses spontaneously. It rarely requests for additional information since final analytical reports are forwarded to the AG who collects elements to conduct its own interviews with reporting entities or ask the police to conduct surveillance on a suspect to gather further information. The FIU also uses open-source materials, as well as requests to domestic and international partners. Thus, it was not clear how analysts/investigators obtain access to any previous analyses conducted by the FIU in order to add significant value to the information contained in the STRs.

89. The FIU does not conduct strategic analysis due to lack of human resources. The FIU uses manual analysis (Excel tool) which means that the FIU is unable to effectively prioritise STRs, nor communicate with counterparts in an effective manner, and streamline statistical information on STR reporting. This has a significant impact on the effectiveness of the AML/CFT framework as a whole, and there is no in-depth, cross-sectoral understanding of ML/TF trends and typologies to identify risks, inform policy, strategic initiatives or training.

90. It is not clear how the output of the FIU is a useful source of information but that further analyses is often required since suspicious financial movements are not often sufficient to build a tax-related case for the AG. Although STRs are starting points for investigations, they do not seem to merit collection and use of this underlying information and supporting documentation for other services such as tax services and customs. Access to that information is not easy due to lack of comprehensive information for those services.

91. Authorities noted that, although TF is considered to be a low/medium risk in Cabo Verde, they have never been confronted with a potential case of TF. There are no STRs related to TF. Intelligence services reported that although organized, they could use more technical and human resources for their task. Domestic and international data can be assessed due to existing protocols. The UN lists were mentioned. However, it was not clear if the procedures to access the list are clear for the authorities. It was noted that there had been no hits whether nationally or internationally.

92. The assessment could not confirm if there have been regular operational meetings between the FIU and competent authorities receiving intelligence to discuss investigative priorities, analytical processes, development of indicators and assistance in the use of financial intelligence.

#### ***Cooperation and exchange of information/financial intelligence***

93. There is limited level of cooperation and exchange of information and financial intelligence among competent authorities. There is lack of formal processes, procedures and cooperation between authorities. Financial information to and from the various Cabo Verdean authorities involved in ML/TF is not widely circulated to the relevant bodies, both for prevention and for investigation and through formal and informal channels. For example, the Prosecutor’s office did not seem to cooperate on specific cases with supervisors of financial and non-financial institutions. Some concerns were expressed regarding the timeliness of some feedback provided during the investigation phase. The FIU disseminates the final analytical report that it produces on the basis of STRs to the Prosecutor’s office. The FIU requests additional information for its analyses before sending the final analytical report to the AG. There is no evidence that significant informal requests occur.

94. LEAs do not have direct access to the database of the FIU thus limiting enforcement efforts and support to investigation. Information is shared through the focal points at the FIU who are subject to confidentiality rules.

95. At the international level, the FIU receives requests from other FIUs for information. The FIU also sends requests for information to its foreign counterparts. The following table illustrates the relationship between the FIU and its foreign counterparts:

**Table 3.3: Exchange of Information**

EXCHANGE OF INFORMATION BETWEEN THE FIU AND ITS FOREIGN COUNTERPARTS					
		2014	2015	2016	2017
1	Number of similar requests received	0	3	3	2
2	Number of similar requests dispatched	4	4	38	24

Source: FIU Activity Report (2017) FIU database until November 2017

96. Requests for information by foreign counterparts of the FIU is quite low compared to the number of requests made by the Cabo Verdean FIU to its foreign counterparts. The FIU’s primary international partners are Spain, Germany, Portugal, and other Portuguese speaking countries. In addition to the formal international exchange of information, the FIU mentioned that it also receives information that is spontaneously provided by its international partners. Cabo Verde did not provide concrete information on the type of formal information exchanged with counterparts and how this information requested to Cabo Verde or by Cabo Verde was used for analysis or investigations.

97. **Cabo Verde has achieved a low level of effectiveness on IO 6.**

***Immediate Outcome 7 (ML investigations and prosecution)***

98. In Cabo Verde, the AG is the only authority responsible for prosecution, and no criminal proceedings or investigation may be initiated by the police or by any other body. One of its main duties is to be the holder of the criminal action, and the exercise of this duty is guided by the principles of impartiality and legality. All police authorities, authorities or agents of the Public Administration are obliged to report the offences they are aware of to the AG.

Thus, in accordance with the principles of impartiality and legality, the AG decides whether or not to open criminal proceedings.

99. Criminal police agencies assist the Public Prosecutor's Office in the performance of its functions is assisted.

100. Competent authorities co-operate and share information on investigation of complex ML cases that require special investigative skills. In urgent cases where it is not possible to obtain the authorization of the AG, the FIU can forward the final analytical report to the judiciary police and inform the AG as soon as possible.

101. The main ML investigations are almost exclusively related to predicate offences. For this reason, the AG focuses investigations more on drug trafficking because it is the crime with the highest risk of ML. Furthermore, LEAs are not adequately resourced to identify and investigate ML, including conducting parallel financial investigation.

102. In practice, the communication of information on a ML crime, or the result of investigation of predicate crimes or information from Criminal Police Agencies, determines the decision of the Prosecutor's Office to open the investigation. The PJ has precautionary powers but may conduct criminal investigations on delegation by the PPO in accordance with article 151(b) of the Penal Procedure Code.

103. The Public Prosecutor's Office has two Sections specialized in economic and financial crimes investigation, including ML, one in the AG's Office (AG) in Praia (2 Magistrates) and the other in the AG's Office (AG) in São Vicente (1 Magistrate).

104. The Public Prosecutor's Office recorded eighty six (86) ML criminal proceedings from the 2015 to 2017 judicial year. Only five (5) of the cases have been successfully prosecuted.

105. On the other hand, and although statistics on the average proportion of investigations initiated from intelligence reports were not known, statistics available at the FIU covering 2012 to 2016, showed that the FIU disseminated a total of 166 intelligence reports to the Office of the AG.

106. While noting that ML investigations may also result from informal cooperation through the domestic exchange of information with supervisors of FIs and non-FIs or through complaints/denouncements to the Public Prosecutor's Office, Assessors observed that there was no available statistics or examples of such cases that resulted in ML investigations.

107. The JP, upon delegation of powers, conducts ML investigations through the Drug Trafficking and Money Laundering Crimes Brigade within the Economic and Financial Crimes Section of the JP based in Praia, Sal and São Vicente.

108. Although the JP is not empowered by law to initiate ML investigations based on the intelligence reports forwarded to it by the FIU, where there is an urgency and it is impossible to obtain the authorization from the AG, the JP did not provide any statistics showing the number of ML investigations initiated by the JP based on intelligence reports submitted by the FIU.

Table 3.4: Investigation and of **Predicate Offences Initiated by the Judiciary Police**

<b>Drug Trafficking</b>	<b>Corruption</b>	<b>Theft</b>	<b>Robbery</b>	<b>Falsification</b>	<b>Fraud</b>	<b>Fiscal Fraud</b>	<b>Total</b>
575	19	3,823	12,173	453	657	1	17,701
<b>Table 3.4B: Investigated Predicate crimes disseminated to the Public Prosecutor's Office</b>							
378	3	1,393	2,302	163	163		4,402

109. Relevant to the fight against ML is the common awareness that results from consultations with the Attorney for the District of Praia (2 Magistrates), Judges (2 Magistrates) and PJ (Director and Inspector) that more important and demanding for the investigations, prosecutions and trials of stand-alone ML offences and ML predicate offences committed abroad is the use of international cooperation instruments applicable in the area of ML, a better utilization of the capacities of Magistrates and Police with a view to making it easier to identify the main ML risks and the promotion of training activities, both domestic and abroad, to ensure full, permanent and up-to-date knowledge among Magistrates and Police of ML related issues.

110. The National Police Directorate Informed Assessors that gold and cash have been found and seized as a result of customs controls at the Praia airport. Although the Police informed that the case concerning the transportation of undeclared cash was communicated to the BCV for the purpose of initiating administrative proceedings, no information was provided as to whether ML investigations were initiated relating to these cases.

111. In the case of property investigations, LEAs have made efforts to trace and identify the property/assets of the accused, and in ML cases, the Public Prosecutor's Office has the authority to directly apply for pre-emptive measures to preserve property, breach of bank secrecy and accounts statements. A number of financial investigations have been carried out, and there are cases with international dimension, resulting in requests made regarding tracing, seizing or freezing of assets, but without positive results yet.

112. Among the requests received for cooperation relating to property investigations in order to determine the assets of an accused person, the head of the Central Authority cited a request received from the International Criminal Court to freeze assets belonging to an ex-vice President of an African country.

***Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies***

113. Cabo Verde's risk profile indicated in the NRA report identifies drug trafficking as one of the criminal activities with a higher risk of ML. However, resources are not prioritized and allocated towards pursuing the ML offences. The level of cooperation among the competent authorities (PPO and JP) involved criminal investigation has improved since the last evaluation. Nonetheless, the assessors noted a low propensity for the use of some of the special criminal investigative techniques other than the traditional ones, with the exception of joint investigation teams, interception of communication and controlled deliveries.

114. Cabo Verde is yet to pay special attention to the criminal investigation of the stand-alone offences and foreign predicate offences. There is the need to strengthen the concerted actions of judicial, law enforcement and FIU entities, as well as and several other bodies involved in the fight against ML.

115. Prosecution of ML cases is focused on natural persons. In a certain way, this is consistent with the risk profile of Cabo Verde. Obviously, Cabo Verde does not know the ML/TF indicators associated with all types of legal persons, as it did not conduct a comprehensive NRA on legal persons. However, the Cabo Verdean authorities convicted three legal persons for ML and related predicate offences in the LV case in 2013<sup>12</sup>.

116. On the other hand, information gathered at the meeting with the Prosecutors of the Praia District (2 Magistrates), demonstrated a case in which the liability of legal persons was reported. There was information that a commercial bank was accused of contraventions, and the case proceedings was underway at the BCV, the intervention of the supervisory and regulatory authority was requested and the facts for which evidence of contraventions committed were extracted from a criminal process.

117. The assessors noted during the on-site that some institutions with broad competence in ML investigations were not able to provide statistical data on the number of ongoing investigations or concluded cases sent to the MP, as well as concluded cases at the GRA, specifically the PJ. Cabo Verde is yet to leverage on the legislative improvements AML regarding the means and instruments that can be deployed for investigation, hence criminal investigators are not able to achieve satisfactory results due to dispersion of information.

### *Types of ML cases pursued*

118. The authorities demonstrated that Cabo Verde to a limited extent prosecute ML cases involving ML committed by third party and the stand-alone crime of ML. However, the country pursues more prosecution of the predicates of ML. The assessors were informed that the results obtained with the investigation of the LV case (2013) allowed the AG to file charges for predicate offences (drug trafficking, falsification of documents and retaining and deposit of arms and ammunitions). The NRA did not indicate that LEAs in Cabo Verde are able to identify certain components of ML such as ML facilitator as a standalone offence as a priority.

119. The meeting with the PJ (Director and Inspector) showed that authorities in Cabo Verde prioritise pursuing ML activities through different types of criminal activities with a higher risk of ML. However, the few successful cases resulted from information exchanged internally: although the competent authorities recognize that information sharing has achieved tangible results, they admitted, however, that information flow can be improved through the creation of databases and an information exchange network whose function will facilitate cooperation and exchange of information on ML criminal investigations and financial investigations.

120. There is lack of cooperation at the international level. Officials of the police force informed assessors that due to the lack of cooperation from the requested country when investigating a stand-alone ML offence and predicate crimes, they are unable to meet the

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<sup>12</sup> Although the timing of the case is out of the prescribed period, the results achieved is worthy of note.



deadlines set by the MP when delegating powers for conducting the investigation and have to return the casefiles to the AG.

121. The meeting with the Police (Director of the PJ and Inspector) also revealed that there is a legal framework for prioritizing crimes for investigation. Investigations can take place regarding ML cases in which competent authorities have decided to seize assets or proceeds of crime or cancel the registration of property notwithstanding the expiration of the period of time granted to the Prosecutor for prosecution (8 months, under Article 46(4) of AML Act, and end up ensuring speed in the exercise of the duties legally attributed to them.

122. It is certain, however, that in the VD (2010) and YF (2014) cases, prosecution and convictions ML related cases were based on predicate offences, so also are seizure and confiscation of instrumentalities used for the ML and predicate offences.

**Table 3.5: Illustrative examples of ML investigation originated by complaint made to the JP**

The investigation began with a complaint made to the JP on 23 October 2013 against the captain and owner of a recreational vessel of German flagship named F III, for alleged drug trafficking and smuggling of illegal products in Cabo Verde (on the islands of Santiago, Maio and São Vicente) and The Gambia, Senegal and Brazil. As a result of the investigation, it was discovered that M is the holder of several bank accounts domiciled in Cabo Verde, where he made cash deposits, and there was a strong possibility that the bank accounts were used to conceal the proceeds obtained as a result of acts committed that could constitute ML crimes. The investigations carried out by the PJ made it possible to ascertain that after the bank account transactions conducted by M with Bank Y, it was verified that his personal account number xxx was credited with several amounts, between 18.01.2013 to 23.10.2013, the balance of 10,138,818.13 CVE, of which 5,398,571.40 CVE resulted from seven (7) transactions of sales of foreign currency and bills.

In Mr. M's account number XXXX in bank F, it was found that between September 21, 2011 and March 28, 2014 the account was credited with several amounts, and had a balance of 9,692,294.00 CVE, 6,395,370 CVE of which originated from the sales of foreign bills.

On 03.28.2014, the PJ seized 678,050 euros and 5,900,000.00 CVE, all in the possession of Mr. M, who did not declare in a timely manner the amounts in excess of 1,000,000 CVE that he had brought into Cabo Verde, as required by Law no. 38 / VII / 2009 of 27 April.

The PJ discovered 5,665,725 CVE worth of financial flows from fifteen (15) sales transactions of currency and bills conducted between January 17, 2010 and March 26, 2014 deposited in Bank H and destined for the companion of Mr. M, Ms. A. 1,000,000.00 CVE of the amounts was paid to Mr. M on January 31, 2013.

Several amounts were deposited in a separate account held by Ms. A in bank R, and between January 1, 2013 and October 21, 2013, and the account had a balance of 4,019,159 CVE from eight (8) sales transactions of bills conducted at the said bank. She also held an account in bank L, which was credited with various amounts, and between January 21, 2013 and March 18, 2014, had a balance of 4,019,290 CVE, of which 3,801,290 CVE originated from ten (10) sales

transactions of foreign bills in the said bank. Mrs. A also had an account in bank P, which was credited between January 21, 2013 and March 18, 2014 with an amount of 4,005,290 CVE, of which 3,801,290 originated from ten (10) transactions of bill purchases. Likewise, in the account that Ms. A had in bank T, during the period between 17.13.2013 to 10.10.2013, the amount of 4,019,159.00 CVE resulted from eight (8) transactions of purchase of bills and currency.

The total financial flows identified in the banks in which Mr. M and his partner, Ms. A had their accounts domiciled, amounted to 33,521,286.63 CVE. The PJ's investigation also revealed that Ms. A was transferring money to two people (W and D) in country G through Western Union. These persons were arrested red-handed by the PJ, the Anti-traffic Airport Cell at the Praia International Airport. One of them (W) had in his possession the sum of 25,260 € and 5000 Naira, and an A5 envelope bearing the name of the sender, Mrs. A, and containing a photocopy of Mr. M.'s passport. From June 11, 2012 to October 22, 2013, Mr. W performed twenty-seven (27) transfer operations through Western Union to Country Q, totalling 1,427,811 CVE. For the transfer of these amounts, Mr. W paid the 95,014 CVE in fees. Between the 01.02.2013 and 29.10.2013, Mr. W's account in bank S was credited with an amount of \$637,000.00, resulting from eleven (11) credit transactions.

The funds in all the bank accounts were seized and deposited in the safe of the PJ, while weapons and ammunition were confiscated to the State in accordance with Article 33 to 35 of Law 38 / VII / 2009, of April 20.

The crimes investigated included ML, possession of weapons and munitions of war and falsification of documents.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

123. The judiciary of Cabo Verde have applied sanctions to legal persons convicted of ML offences. An analysis of the LV (2013) and PN (2016) cases revealed that the courts with jurisdiction over criminal cases in Cabo Verde have applied criminal sanctions to legal persons, being the LV case serves as one of the measures that should have the greatest practical impact on how to investigate legal persons who commit ML crimes. For instance, in the LV case, eight individuals were convicted of ML and predicate crimes and sentenced to prison terms between 9 and 22 years. Three legal entities were fined, and the Court confiscated real estate (over twenty buildings and pieces of land), fourteen vehicles, a boat, cash, fifty six bank accounts, securities and shares in company capital, including the assets of held by the heirs of a deceased suspect.

124. It should also be noted that in the context of ML, and in addition to the LV case, other cases which achieved convictions are: i) YF (2014), iii) CL (2015). Even if there was no conviction for ML, the others are not unrelated, because the convictions were based on drug trafficking, one of Cabo Verde's high risk criminal offences: (i) PN (2016), (ii) P III (2017).

**Table 3.6: - Convictions for ML offences and predicate offences**

Year	Cases	Offence		Convictions		Assets seized; confiscated
		ML	Predicate Offences	Natural Persons	Legal Persons	
2013	LV	ML	Drug trafficking; Falsification of documents; Possession and deposits of weapons of war	9 Natural Persons	3 Legal Persons	Real Estate - 2,000M CVE; Movables - 56M CVE; Bank accounts 122,533,751.00 CVE; Money (Cash) 12.M CVE; Bonds in the Stock Exchange 30M CVE
2014	YF	ML	Aggravated scam; Falsification of documents	2 Natural Persons		In excess of 35M CVE, in various currencies.
2015	CL	ML	Abuse of Trust	1 Natural Persons		A vehicle; Part of a property valued at 6,291.\$475.00 CVE
2016	PN		Arms possession; Aggravated Drug Trafficking	7 Natural Persons	8 Legal Persons	
2017	P III		International Drug Trafficking, Illegal possession of arms	5 Natural Persons		Fire arms; Mobile phones; 2 Vessels

125. Cabo Verde mostly imposes custodial sentences. For instance, in the CL case the court sentenced the defendant to 7 years and 6 months in prison for ML and abuse of trust. The Assessors consider that the punishments imposed in relation to the offences committed are effective and proportionate enough (given the offences committed) to dissuade potential criminals from carrying out proceeds-generating crimes and money laundering.

***Alternative criminal justice measures***

126. The AML Act and the Criminal Procedure Code establish mechanisms that allow alternative criminal justice measures to be applied for the recovery of assets rather than a ML conviction. Thus, for example in Cabo Verde, the convictions of legal persons (eight) and natural persons (twelve) in the PN (2016) and P (2017) cases were based on drug trafficking and possession of illicit arms (predicate offences). Where competent authorities find it impossible to convict accused persons for the crime of ML, they convict them for the predicate offences. In this case, and under the convictions achieved for the predicate crimes in the above-

mentioned cases, the authorities confiscated property, which included firearms, mobile phones and two (2) vessels.

127. When the Public Prosecutor's Office is investigating ML crimes and it proves impossible to convict the offender for the ML crime because the offender has absconded, the PPO must, under Article 48(2) of the AML Act, request the Court to confiscate all the proceeds related to ML activities.

128. Although there were no examples to demonstrate the implementation of the strategy that allows the prosecution of cases in a fast and expeditious way, it is also important to point out that when a predicate offence is punishable by a prison sentence of a term not exceeding five years or with a different sanction other than imprisonment, Cabo Verde's legal system permits the application of an alternative approach to criminal justice by means of the temporary suspension of the process by decision of the Judge upon request by the Public Prosecutor's Office, for a period of not more than two (2) years, provided that the accused person agrees to comply with the financial sanctions and preventive measures imposed on him pursuant to Article 318 of Decree-Law no. 2/2005, of 7 February (Criminal Procedure Code).

### **General conclusions on IO. 7**

129. Cabo Verde has legal and institutional frameworks for ML that empower the AG, and in certain cases, the JP to investigate ML and predicate offences of ML. District Courts have powers to adjudicate on ML cases. The courts have applied effective, proportionate and dissuasive sanctions.

130. Notwithstanding the following is noted:

- There is no available statistical information on the number of ML cases and convictions based on the total number of investigations initiated from intelligence reports generated by the FIU.
- There are no statistical data or examples of cases available that show ML investigations through informal cooperation with supervisors of FIs and non-FIs or through complaints/denouncements to the AG.
- There is no statistics on investigations resulting from cross-border declaration of currency and BNIs.
- There is no available statistics showing the number of ML investigations initiated by the JP on delegation by the Attorney General.
- There are no examples of cases demonstrating the establishment of joint investigation teams to investigate ML crimes.
- There are no examples of cases demonstrating the use of special investigative techniques in ML crimes.

131. **Cabo Verde has achieved a Low level of effectiveness on IO. 7.**

### ***Immediate Outcome 8 (Confiscation)***

***Confiscation of proceeds, instrumentalities and property of corresponding value as a policy objective***

132. The authorities of Cabo Verde pursue the seizure of assets through provisional measures for the recovery of assets, rights and values generated in the context of criminal activities as a policy objective. In this context, and particularly in combating economic and financial crimes that could generate substantial profits, Cabo Verde has established the Asset Recovery Office (GRA) under Law no. 18/VIII/2012, of September 13, 2017 to identify, locate and seize the assets and proceeds of crime at national and international levels. The country has also established an Asset Management Office (GAB) to manage such property. These facilitate the confiscation of proceeds of crime to the State.

133. Information gathered at the meeting with the AG demonstrates the importance of investigations for the detection and tracing of the proceeds of crime so that the perpetrator is not only punished with criminal penalty. It also points out that the property and financial investigations for the recovery of proceeds of crime require spontaneous exchange of information in the possession of public authorities or private entities. For this reason, and despite few positive responses, Cabo Verde has requested for cooperation from foreign countries to trace assets located outside the country. In addition, the authorities have also been receiving requests from some countries and responding positively to requests for tracing and freezing the proceeds of crime.

134. The concern with matters relating to the administration of property/assets seized during the investigation phase became clear from the meeting with the AG. Assets identified, located and seized can be confiscated to the State. Therefore, it is therefore necessary for the authorities of Cabo Verde to improve a robust system to ensure the evaluation, use, administration and disposal of property seized or forfeited, and thus ensure that assets do not depreciate.

135. The approach of tracing and freezing the proceeds of crime at the investigation phase to deprive criminals of the proceeds of crime is a more effective means of stopping criminal activity. Table 3 below illustrates the value of property seized with a view to rendering crime unprofitable.

Table 3.7: Types of seized assets (Cabo Verde Escudos)

Year	Immovable Assets	Movable Assets	Bank Accounts	Cash	Various Items	Bonds	Firearms	TOTAL CVE
2007	73.122.100	49.200.000	105.572	6.050.000	0	0	0	128.477.672
2008	266.327.638	53.600.000	20.714.940	15.652.501	0	0	0	356.295.079
2009	97.962.622	20.300.000	372.754.563	61.870	5.059.975			496.139.030
2010	0	0	603.000	155.685	1.688.900	0	0	2.447.585
2011	0	48.400.000	101.684.980	13.147.374	1.300.000	0	0	164.532.354
2012	1.628.912.129	49.065.700	47.796.296	59.045	265.433	8.779.000	0	1.734.877.603
2013	0	0	0	0	0	0	0	0
2014	81.825.088				200.000		210.000	82.235.088
2015	0	0	0	0	0	0	160.000	160.000
TOTAL	2.148.149.577	220.565.700	543.659.351	35.126.475	8.514.308	8.779.000	370.000	2.965.164.411

Source: AG Office (AG)

***Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad***

136. Cabo Verde has a broad legal and institutional framework for coordinating actions to confiscate proceeds of crime located in and outside the country; conducting financial investigations regarding suspected proceeds of crime and applying pre-emptive measures to freeze and seize such proceeds. However, available statistics shows that actions to identify and trace assets and funds, as well as confiscate, freeze and seize criminal assets are only related to assets located in Cabo Verde. The same is true of financial and property investigations, since there is no statistical data on goods frozen and goods seized abroad. The assessors noted that there is general lack of requisite expertise among the competent authorities to pursue complex international ML schemes or investigation of professional money launderers.

137. There is no evidence to demonstrate that the country utilizes different confiscation tools such as non-conviction-based forfeiture, administrative forfeiture and criminal confiscation, including the use of these tools to provide MLA for freezing and seizure. Also, Cabo Verde did not provide any evidence that all predicate offences of ML are covered by the power to confiscate instrumentalities.

138. Article 32 of the AML Act allows for the suspension of suspicious transactions before the opening of a criminal investigation. Reporting entities are required to refrain from conducting transactions they know or suspect to be related to ML offences. Upon receipt by the FIU that a transaction has been refused, the AG or a Public Prosecutor designated by the AG, may confirm the freezing of the transaction within a maximum period of three (3) days, as well as the seizure of the funds involved.

139. The authorities indicated that the process for depriving criminals of the financial benefits of their criminal activities can be initiated even before starting a criminal investigation. This approach provides an effective mechanism to ensure that funds and assets cannot be dissipated after detection.

***Table 3.8: Examples of STRs that led to freezing***

	Year: 2013	Ano: 2014	Ano: 2015	Ano: 2016	Ano: 2017 <sup>(*)</sup>	
STRs under analysis carried over from previous years	22	66	71	95	197	...
STRs (received)	93	43	73	186	104	499
<b>Total de Inquire Cases (IC)</b>	<b>115</b>	<b>109</b>	<b>144</b>	<b>281</b>	<b>301</b>	...
Processed IC (FIRs)	49	38	49	84	43	263
Disseminated to the AGO	27	33	20	74	27	181
Ics with freezing	0	0	0	6	0	6
ICs Dismissed	22	5	25	10	16	78
Ics under analysis carried over to following yaear	66	71	95	197	N/D	...
Spontaneous Dissemination (Counterpart FIUs)	0	4	2	38	2	46

Source: FIU 2016 Activities Report. | (\*) Until Novembre 2017.

**Table 3.9: Courts confiscated assets located in Cabo Verde**

Year	Cases	Offence		Assets seized; confiscated
		ML	Predicate Offences	
2013	LV	ML	Drug trafficking; Falsification of documents; Possession and deposits of weapons of war	Real Estate - 2,000M CVE; Movables - 56M CVE; Bank accounts 122,533,751.00 CVE; Money (Cash) 12.M CVE; Bonds in the Stock Exchange 30M CVE
2014	YF	ML	Aggravated scam; Falsification of documents	In excess of 35M CVE, in various currencies.
2015	C	ML	Abuse of Trust	A vehicle; Part of a property valued at 6,291.\$475.00 CVE
2016	PN		Arms possession; Aggravated Drug Trafficking	
2017	P III		International Drug Trafficking, Illegal possession of arms	Fire arms; Mobile phones; 2 Vessels

Source: FIU

140. The evaluation team was also informed of cases representing the restitution of assets located in Cabo Verde. Although it has not provided specific information on this case, the repatriation of property is an integral part of Cabo Verde's policy of confiscation and cooperation actions. For instance, the country responded to the request of the International Criminal Court to freeze and subsequently repatriate of the assets of a former vice-president of an African country.

***Confiscation of falsely or undeclared cross-border transaction of currency/BNI***

141. Cabo Verde has a policy for confiscating currency and BNI that are falsely declared/disclosed, or those that are not declared or disclosed at points of entry and exit of the country. Outbound and inbound travellers are obliged to declare cash equal to or greater than one million escudos (1,000,000.00, equivalent of \$10,361.16) by means of a mandatory declaration form. Customs authorities highlighted the constraints related to the distribution of the forms to passengers (departing and arriving) due to the works being carried out at the airports.

142. Customs authorities stated that they had not seized any currency and did not have record of voluntary cross-border declaration of currency by travellers. Therefore, there was no statistics on cross-border declaration of cash and bearer negotiable instruments.

143. According to the Cabo Verdean authorities, awareness of the risks of cross-border transportation of cash has propelled the joint investigation team at the ports, coordinated by the

JP, and initially focused on investigating drug trafficking, to extend its focus to other offences, including tax and customs offences. However, the authorities did not provide any evidence of seizure of currency/BNI suspected to be proceeds of crime or funds intended to be used in financing terrorism. Also, the country did not demonstrate that the LEAs proactively investigate declarations of substantial sums of currency for suspicion of ML.

144. Even in the case of gold seizures, the assessors were not informed of the administrative sanctions applied by the BCV for such breach, so there is no way of knowing whether the system of cross-border control of cash is dissuasive. In addition, the control of cash movements at the border does not reflect the country's risk profile.

#### **Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities.**

145. Cabo Verde, to a large extent, pursues confiscation in line with its ML/TF risk profile. Examples of confiscation of proceeds of crime located in Cabo Verde are associated with the ML risk profile for Cabo Verde, namely those of criminal association, drug trafficking, corruption and illegal possession of arms.

146. However, the fact that control of cross-border movements of currency do not reflect the profile of the identified ML risks for the country and the absence of financial and property investigation of assets located abroad limit the effectiveness of the confiscation system.

#### **General conclusions on IO. 8**

147. In Cabo Verde, for example, the Public Prosecutor's Office has the authority to directly request a breach of bank secrecy, bank account statements and freezing of accounts in relation to ML offences.

148. The lack of concrete information on samples of property/asset investigation cases; samples of access to the information held by public institutions (FIU, Civil Identification, Registries and Notary, General Directorate of Tax and Contributions, Customs, Social Security, Insurance, Securities Market) access to information held by a commercial bank, namely in identifying bank accounts held by the defendant; sample of financial investigations that have been carried out and which resulted in the identification, tracing and seizure of goods or products related to crimes internationally, the Assessment team was informed that the GAB was not operational, and not in a position to manage and dispose of property seized or confiscated.

149. Although the confiscation of criminal assets and instrumentalities is a policy objective, Assessors were informed at the meeting with the PJ that the GRA has no protocol for judicial cooperation and exchange of information with its other counterparts, despite the fact that it is able to establish cooperation relations with counterpart agencies established by other States. This limited the ability of Assessors to fully assess the extent to which assets obtained through measures of seizure in the investigation phase are subsequently subject to efficient and rational management, including equity increase.

150. **Cabo Verde has a Low level of effectiveness on IO.8.**



## CHAPTER 4 - TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### *Key Findings*

##### *Immediate Outcome 9*

- Cabo Verde does not have a specific national strategy to combat TF. However, the legal framework for the prevention and combating TF in force in Cabo Verde appears robust. No case of TF has been identified and investigated in Cabo Verde. This is in line with the risk profile of Cabo Verde.
- The NRA ranks the risk level of TF as medium-low. However, the perception of TF risk is not consistent among competent authorities.
- TF is not a priority for the Cabo Verdean authorities, despite a high commitment to combat this scourge and a good understanding of TF risks.
- There were no cases of freezing, seizure and confiscation of assets and instrumentalities related to TF activities.
- Cabo Verde is not effectively implementing the system for cross-border declaration of cash and BNIs.
- 

##### *Immediate Outcome 10*

- There is no capacity-building for supervisory bodies of DNFBPs to monitor the implementation of TFS related to TF.
- Cabo Verde did not identify and assess the TF risks to which NGOs are exposed in order to identify the types and features of NGOs that are particularly at risk of being abused for TF purposes and provide for corrective measures to mitigate TF risks. In addition to the fact that it has a poor understanding of the TF risks associated with the sector.
- While NGOs are taxed, there are no tax audits in order to determine tax compliance and thus protect them from being abused for TF or other forms of support to terrorism.
- Some commercial banks and insurance companies do not have IT facilities for blocking the transactions by Designated Persons.
- Consistent with the risk profile, intelligence authorities have been using a range of relevant information to examine TF and the financing of proliferation, and the import and export of dual-use goods.

##### *Immediate Outcome 11*

- The Cabo Verdean legal framework for the implementation of the United Nations sanctions regime against proliferation financing is similar to that of combating TF. Cabo Verde does not have a mechanism for coordinating and implementing policies and activities relating to proliferation financing. No person or entity designated under UNSCRs on proliferation has been identified or deprived of resources in Cabo Verde, nor has there been any case of freezing, seizure and confiscation of PF related assets held by individuals or entities.

- FIs and DNFBPs have very limited understanding of their obligations to implement TFS on PF. Not all supervisory and regulatory authorities have comprehensive knowledge and understanding of these obligations, thus hampering their oversight functions. Import and export control authorities have limited knowledge and understanding of the risks associated with proliferation.

#### *Recommended Actions*

##### *Immediate Outcome 9*

- Cabo Verde should continue ongoing efforts to promote and carry out training and awareness-raising programmes for all stakeholders involved in preventing and combating terrorism and its financing, including FIs and DNFBPs, in order to raise the level of their knowledge and understanding of the risks associated with terrorism and its financing.

##### *Immediate Outcome 10*

Cabo Verde should:

- Conduct a comprehensive review of the NPO sector to ascertain the types and features of NPOs vulnerable to TF risks.
- Put in place robust monitoring framework for the NPOs in order to establish appropriate legal and institutional mechanisms that facilitate the determination of the origin of the funds, accountability in the management of the funds and the beneficiaries in order to ensure they are not used for TF purposes.
- Raise awareness of the regulatory and supervisory body for NPOs on application of a risk base supervision and identification of the NPOs that should prepare financial reports to include the source and origin of funds.
- Establish regulatory procedures for non-bank FIs and DNFBPs to begin implementing TFS.
- Ensure that supervisors of FIs and DNFBPs disseminate UN financial sanctions lists related to TF to entities under their supervisory purview.
- Improve the capacity of Customs on the cross-border transportation of cash and BNI or migrants remittances to TF zones or high-risk countries, and thus monitor flows of funds inside and outside Cabo Verde associated with countries at high risk of terrorism.

##### *Immediate Outcome 11*

Cabo Verde should:

- Establish a mechanism for coordinating and implementing policies and activities relating to proliferation financing.
- Undertake comprehensive capacity building of FIs and DNFBPs to enable them to fulfil their obligations under the United Nations sanctions regime related to the proliferation of WMD.
- Improve the capacity of Supervisory authorities about PF obligations to facilitate appropriate supervision of supervised entities and issue guidelines that facilitate the fulfilment of obligations by supervised entities.

151. The relevant Immediate Outcomes considered and assessed in this chapter are IO. 9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 5-8.

***Immediate Outcome 9 (TF investigation and prosecution)***

*Prosecution / conviction of types of TF activity consistent with the country's risk profile*

152. Cabo Verde has a legal mechanism to prevent and repress terrorism and its financing - Law no. 27/VIII/2013, dated January 21, revised in 2016 by Law no. 119/VIII/2016 of March 24. With the entry into force of the latter law, the system of combating terrorism and its financing has become robust from the formal point of view.

153. The NRA noted TF as medium-low risk. The main justification for determining TF risks as low relates to the fact that there is no case of terrorism-related investigation or its funding, as well as the small number of suspicious TF transactions reports (2) transmitted to Cabo Verde FIU. Despite the unanimous perception and reality of the non-existence of terrorist cases or their financing in Cabo Verde, the Cabo Verdean authorities are aware that, as the country is located in a regional context, where the free movement of people and goods is one of the fundamental principles and the fact that it represents a tourist destination, thus, the country cannot overlook the likelihood of terrorist acts and their financing occurring both now and in the future.

154. Cabo Verde plans to actively pursue combating of TF as evidenced by the rapidity of legislative changes in the prevention and repression of these. In general, Cabo Verdean authorities have demonstrated a good understanding of the risks of TF and are vigilant. The Assessment team was informed that the Information Service of the Republic is the competent authority to carry out the evaluation and management of terrorism risk in the light of the regional and international context. This evaluation is facilitated through multilateral and bilateral mechanisms, both formal and informal, which are used for the exchange of information.

155. There has been no indictment nor conviction of a terrorism case or its financing in Cabo Verde. This is consistent with the country's TF risk profile, as noted in the NRA.

*Identification and investigation*

156. The Public Prosecutor's Office, as the holder of the criminal action, has the power to open investigations and order the investigation of any crime, including terrorism and its financing. In this task, the PPO may be assisted by Criminal Police Organs, especially the JP and the National Police. However, there is no special/dedicated unit for identification and investigation of TF. In order to increase the specialization of judges in matters of economic and financial crime, a section of economic and financial crimes was established, by order of the AG, within the Public Prosecutor's Office. In the scope of ML/TF investigations, the Public Prosecutor's Office has legally established powers to request information from any public or private entity.

157. An Asset Recovery Office was created, in addition to the Republic's Information Service, with a mandate to, inter alia, produce, process and analyse strategic information that

can be used for the investigation of cases of terrorism or its financing, there is a Republic's Information System, that integrates different structures to combat crime, containing strategic information shared by all these structures. Also, the FIU is competent to receive, request and analyse various information. However, notwithstanding the conclusion that TF and terrorism pose a low risk to the country, the low number of STRs (one) submitted at the time of the visit were not sufficient to enable the assessment team to determine the ability of the reporting entities, in particular of FIs, to adequately identify possible cases of TF. There is no evidence that outreach programs have been provided to the private sector that are critical to CFT efforts especially programs that would improve information sharing and facilitate submission of better quality/targeted STRs.

### ***TF investigation integrated with -and supportive of- national strategies***

158. Cabo Verde does not have a specific national strategy to combat terrorism and its financing. The assessors were informed of a National Program of Homeland Security and Citizenship that in general can have some impact on terrorism.

159. Although the NRA reveals medium-low risk of TF, there is a national perception that there is no risk of TF or terrorist acts. This perception has influenced the national authorities, which is why these scourges, although of concern to the authorities, are not a priority for them. However, there is a high degree of commitment on the part of political authorities to combat these phenomena, a commitment that has been translated into recent legislative changes in this area with a view to further prevent and repress terrorism and its financing.

### ***Effectiveness, proportionality and dissuasiveness of sanctions***

160. To date, there have not been any investigation, prosecution or conviction for TF offence in Cabo Verde, hence no sanctions have been applied for TF offence. However, the Cabo Verdean legislation to combat terrorism and its financing - Law no. 27/VIII/2013, dated January 21, republished by Law 119/VIII/2016, of March 24 - establishes dissuasive and proportional criminal sanctions for terrorism crime, including its financing. These criminal sanctions are provided for in terms of Article s 3 *et seq.*, and their maximum limits range from eight to twenty years imprisonment, with the possibility of aggravation, as well as of the legal cluster.

### ***Alternative measures used where TF conviction is not possible (e.g. disruption)***

161. The Cabo Verdean criminal procedure system obliges the authorities to pursue and prosecute offenders, seeking to establish clear evidence that may be produced at trial. During the visit, the team of assessors were informed that Cabo Verdean jurisprudence is very demanding in terms of evidence, particularly with regard to predicate offences, ML and TF. From the meetings held with judicial authorities, asserting other legal provisions was deemed possible when, for lack of sufficient evidence, the conviction for the crime of TF cannot be obtained.

162. However, since there is no case that can attest to this possibility, there was doubt regarding the feasibility and effectiveness of these mechanisms. The fact remains that there are ancillary sanctions provided for in the law on combating terrorism and its financing which can

be applied. However, its application by accessory action depends, first of all, on a conviction, at least for one of these crimes.

163. It is important to note here that the CFT Act provides for the seizure, freezing and confiscation of funds or other assets belonging to individuals or entities suspected of being involved in terrorism and its financing.

164. **Cabo Verde has a Low level of effectiveness on Immediate Outcome 9.**

***Immediate Outcome 10 (TF preventive measures and financial sanctions)***

***Implementation of targeted financial sanctions for TF without delay***

165. Cabo Verde has, through national legal framework, put in place mechanism to implement targeted financial sanctions (TFS) within the context of the relevant UNSCRs covering national designations and responding to request from third countries to take freezing actions without delay. In particular, Law no. 27 / VIII / 2013, of January 1, revised by Law 119 / VIII / 2016, of March 24, establish how the UN sanctions list (UNSCR 1267) and the domestic list under UNSCR 1373 may be communicated to reporting entities or other relevant agencies, as well as the regime for designating persons and entities that finance or support terrorism activities. The AG of the Republic is the competent authority for receiving designations made under UNSCR 1267 and making designations under UNSCR 1373.

166. In the Cabo Verdean law, particularly, in accordance with of Article 12 (3) of Constitutional Law No. 1 / VII / 2010, of May 3, UN-level designations made under Resolution 1267 of the United Nations Security Council and its successor resolutions apply directly without the need to be transposed to the domestic law.

167. Communication of designations to supervised entities is the responsibility of relevant supervisory bodies. The authorities informed the assessment team that the FIU and the BCV publish the list of designated persons, but the latter, as a regulator, does not notify the regulated entities. However, Cabo Verde has not made any domestic designations nor received any request for designation from any country.

168. The Cabo Verdean authorities explained to the assessment team that although there have been no cases where any authority has located relevant assets of persons or entities designated in accordance with UNSCRs 1267 and 1373 and successor resolutions, it is true that not all banking and insurance institutions have computer software available to access the United Nations list. At the time of the on-site visit authorities informed the assessment team of the cases where a bank and an insurance company did not have computer program that allows blocking transactions by PEPs and the Designated persons.

169. In meetings with intelligence services to identify potential TF activities (National Information Service and National Security Council), the team was informed that these services search their databases to determine if listed individuals or entities have any account or property in Cabo Verde and, also, collect information that may lead to discovering acts or indications of TF and terrorist acts. They informed that there are no cases of domestic radicalization.

However, they reported a case of a Cabo Verdean citizen born outside the country and suspected to have radicalized and died in Syria.

170. Cabo Verde has a good understanding of TF risks and the Intelligence Services take appropriate and proportionate measures to mitigate the risks that have been identified in the NRA as medium-low. The country received two former detainees of Guantanamo Bay Prison from the USA (2010 and 2016 respectively). For this reason, the authorities have implemented TF preventive measures, including foreign terrorist fighters (FTF) and repatriates, including generic follow-ups of remittances to the country of origin, migratory flows from TF zones or countries to mitigate TF risks.

171. With regard to the General Directorate of Registries, Notary and Identification, the assessment team was informed that only the Land and Civil Registry data have been computerized. Therefore, the information that has been requested by the FIU, the Police and AG Office (AG) are made available on time. The same does not happen with the information requested by the Commercial Registry and Automobile Registry, whose data are still in manual registration form, and the reason why responses to requests can take an average of three (3) days.

172. There has been no case of refusal to execute deeds of property and real estate contracts by Notaries, the Assessment team was informed that if there are situations in which property and real estate or funds transactions are related to TF designated persons or entities, these shall be frozen immediately. With respect to the types of controls that are carried out on trust, the authorities explained that there are no such controls yet, as the domestic legislation did not provide for the existence of fiduciary funds.

173. The Assessment team advised the relevant authorities to take measures to prevent funds from countries that do not have legislation on or implement CFT measures from being used to carry out terrorist activities by registering such funds in order to know the beneficial owner of the funds.

174. FIs have very limited knowledge of UN financial sanctions lists while this knowledge almost non-existence in the DNFBP sector. For the same reasons, the dissemination and communication (only at the websites of the FIU and the BCV) of UN-related lists of financial sanctions by supervisory and regulatory bodies to supervised institutions is limited and is particularly nil among DNFBPs. This also affects 'proper understanding of FIs/DNFBPs of their screening obligations regarding TFS and the implementation of sanctions without delay. Therefore, there is the need to raise awareness of their obligations and implementation of TF-targeted financial sanctions regime.

175. The implementation of TFS for TF without delay has not been fully tested to ascertain its robustness in terms of what actions Cabo Verde can take to minimize threats posed to the financial system where UN designations encounter delays.

### ***Targeted approach, outreach and oversight of at-risk non-profit organisations***

176. The meeting with the regulator and supervisory entity, and consultation made of the NRA allowed to have information that shows that the risks associated with NPOs were not treated extensively. In addition, despite compliance with reporting requirements among non-

profit organizations, the implementation of the AML / CFT mechanism remains deficient due to lack of supervision and insufficient awareness regarding TF issues. NPOs have never been supervised AML/CFT purposes and are unaware of their preventive duties in relation to TF. The Head of the National Information Service that Cabo Verde informed the Assessment Team that the country is yet to conduct any comprehensive study to identify NPOs that are particularly at risk of abuse for TF purposes. Thus, Cabo Verde has not commenced taking targeted risk-based approach to address likely TF risk facing the NPO sector.

177. NPOs are subject to tax, when they engage in business activities. However, there was no evidence from the meeting with the General Directorate for Contributions and Taxes to demonstrate whether the directorate had conducted tax audits on NPOs in order to determine tax compliance and thus protect NPOs from being abused for TF purposes or other forms of support for terrorism. The NRA noted poor financial management and non-compliance with financial procedures as gaps in the operations of NPOs.

178. The Assessment team was informed through the Head of Civil Society, that the diagnostic study of NPOs in Cabo Verde showed weaknesses in the management of funds. Accordingly, there is a proposal for a change in the structure of the Court of Auditors to enable the court to start requiring accountability from any entity managing public funds.

179. The heads of the Social Reintegration Service (SRS) are responsible for strengthening the municipal institutions and NPOs involved in the family and social inclusion. These NPOs are financed with state funds. Their proposed projects are funded for a period of one year, from the date of selection based on certain conditions usually published with public advertisements for expression of interest. However, SRS are unable to monitor the execution, including the evaluation, of the detailed history of activities carried out by these NPOs to better know the beneficiaries. Also, NPOs have not been inspected to ascertain their areas of activity, nor the impact of social inclusion projects carried out by the NPOs. The SRS did not participate in the NRA process and have not benefitted from any capacity-building activities on TF risks.

#### ***Deprivation of assets and TF instruments***

180. Cabo Verde has no cases of a designated person or entity holding accounts or assets in Cabo Verde under the TF TFS regime. Consequently, there has never been any case of freezing of accounts and assets and instrumentalities of persons and entities in Cabo Verde that have been designated under TFS regimes. However, in case funds or assets of a terrorist are located, the authorities responsible for TF issues will freeze said funds.

#### ***Consistency of measures with the overall TF risk profile***

181. The authorities indicated that there are no TF cases in the country. Cabo Verde is yet to have a strategy to combat the financing of terrorism. However, the Assessment team was informed of a National Program on Homeland Security and Citizenship directed towards combating TF. Despite the absence of a specific legislation on the composition of NPOs for the purposes of monitoring and supervision of the sector, it is important to adequately resource the supervisory and regulatory authorities of the NPOs sector. Due to capacity issue, the supervisory body, despite receiving accounts reports from some of its members, has not transmitted any information to the FIU. In view of the overall TF risk profile as a tourist hub,

Cabo Verdean authorities should undertake a specific study of NPOs as well as comprehensive targeted supervision to determine those at risk of being abused for terrorism and TF purposes.

182. Although Cabo Verde has not made any domestic designations, nor proposed any designations, designations under UNSCRs 1267 and 1373, and successor resolutions apply directly without the need for domestication in the national law. This demonstrates that its legal system recognises the implementation of TFS. However, the greatest shortcomings are at the level of NPOs, as Cabo Verde does not have a good understanding of the NPOs that are vulnerable to TF abuse in order to focus supervision for CFT purposes.

**183. Cabo Verde has a Low level of effectiveness on IO. 10.**

*Immediate Outcome 11 (PF financial sanctions)*

*Implementation of targeted financial sanctions related to proliferation financing without delay*

184. The legal framework for implementing financial sanctions related to proliferation financing (including immediate application) in Cabo Verde is the same for TF. However, Cabo Verde does not have a lead agency for coordinating measures relating to proliferation financing and has not yet implemented the sanctions under UNSCRs 1718 and 1737 and successor resolutions. Cabo Verde has not frozen assets of individuals/entities suspected of being related to PF have been frozen, which seems rational in the Cabo Verdean context, given that the country has no strong financial and trading activities to link it to the financing elements of this IO. The BCV informed Assessors that it disseminates the Lists to the relevant institutions immediately and that any change to the United Nations designations to FIs. The BCV also publishes the sanctions list at its website with guidance which is accessible to FIs. Beyond the CFT Act, Notice No. 5 issued by the BCV contains some general indicators of risk, citing ‘supporters of the promoters of the proliferation of WMD’ as high risk customers. However, the requirements of the Notice focus on ML/TF. In this regard, the assessment team does not consider the Notice comprehensive for purposes of guiding FIs in implementing TFS relating to PF. In addition, considering the fact that the Notice was to enter into force thirty days after its publication (Article 56) and FIs are to comply with the Notice within 180 after publication (Article (54), outside the period of the evaluation, it is not possible to determine the effective implementation of the requirements of the Notice regarding PF.

185. The DNFBP sector is oblivious of the TFS regime regarding PF and therefore not implementing them.

*Identification of assets and funds held by designated persons/entities and prohibitions*

186. The CFT Act empowers the AG (or to delegate the Public Prosecutor’s Office) to update the list of sanctions of national and international persons or entities with new designations and modifications. The Act requires that any identified funds or other assets held by a designated person or entity may be frozen, seized and forfeited to the State. However, in Cabo Verde there has not been any case of freezing assets under the sanctions regime for Iran and the Democratic People’s Republic of Korea (DPRK). Also, FIs have not yet identified any



proliferation-related transactions or assets held in respect of the targeted financial sanctions regime as not all of them have sufficient knowledge of the Sanctions regime and Lists.

187. The Cabo Verdean customs is responsible for the control of imports and exports at borders and ports. Likewise, with the National Police intervening to a certain extent, in the controls of the movements of people and goods at borders and ports. Both customs and National Police agents have a very limited understanding of the prohibitions imposed by the relevant UNSCRs relating to PF.

### ***FIs and DNFBPs' understanding of and compliance with obligations***

188. Some FIs, notably banks, through internal capacity building, have good understanding of their freezing obligations including with respect to PF. In implementing CDD measures, the banks have sanction screening systems, thus appear to fulfil their obligations by verifying promptly the Sanctions Lists including those related to DPRK and Iran-TFS regimes. However, it was not clear if these CDD measures were sufficient to understand the ultimate BO of a customer or party to a transaction. Also, the assessment could not ascertain whether or not Cabo Verde has system in place on how to deal with false positives (name matches).

189. DNFBPs are far less aware of their obligations in implementing TFS relating to PF and have not identified any assets relating to proliferation financing. In addition, the DNFBPs do not understand the essence of checking the UNSCR PF-related list for screening and freezing of assets of designated persons and entities.

190. Relevant sector supervisors have neither organized outreach programs nor issued any guidelines to promote and ensure that the FIs and DNFBPs comply with their TFS obligations relating to PF.

### ***Competent authorities ensuring and monitoring compliance***

191. The BCV is responsible for the supervision of FIs and has published the consolidated list at its website, together with guidance to promote and ensure that FIs comply with PF-TFS measures. However, supervision is not frequent and does not cover obligations on TFS regimes regarding DPRK and Iran related to proliferation financing.

192. Competent authorities for DNFBPs are not ensuring and monitoring compliance with TFS obligations for proliferation financing and have neither identified any breaches to PF-TFS obligations nor conducted any PF-TFS investigations.

193. **Cabo Verde has a Low level of effectiveness for IO 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### Key findings

#### *Immediate Outcome 4 (Preventive Measures)*

#### *Financial Sector*

- There is uneven understanding of ML/TF risks across reporting entities. Although some banks of systemic relevance have installed an automated system to enable them to classify customer risk. In general terms, there is inadequate understanding of ML/TF risk by FIs, including the large banks in the Cabo Verdean, due to absence of internal ML/TF risk assessment that would facilitate identification of their level of risk exposure.
- There is general awareness of Notice 5/2017 issued by the BCV in September 2017, which defines the rules for internal ML/TF risk assessment by FIs. However, FIs are yet to adopt RBA for their AML/CFT compliance functions
- The FIs in Cabo Verde apply CDD, record keeping and customer transaction monitoring requirements. However, FIs have not fully implemented the obligation to identify and verify the identity of BO, since the FIs did not apply this measure to their existing customers before the entry into force of the AML Act. Also, there has been no supervisory evidence through inspections to confirm that this obligation is being fulfilled.
- Reporting entities are yet to fully apply enhanced or specific measures for high risk situations related to PEPs, electronic transfers, correspondent banking, new technologies, TFS and high risk countries due to:
  - absence of a PEP list to facilitate identification of PEPs, especially domestic PEPs;
  - lack of awareness of legal obligation to apply TFS to designated persons and entities.
  - Non-compliance of Cabo Verde's AML/CFT with the FATF Recommendation 16 as enumerated in the TC Annex.
  - Lack of inspection by the BCV to ascertain the level of compliance with these requirements.
- FIs are aware of the obligation to report suspicious transactions. However, some FIs have never submitted a STR to the FIU due to the supervisor's lack of guidance on suspicious transaction indicators, potential red flags and inspection action. In particular, FIs have had difficulty detecting TF related STRs.
- In terms of application of internal controls, most bank alerts are through manual processes with a few banks having automated systems that have never been audited

by internal and external auditors or by a duly certified entity to test the adequacy and efficiency of such AML/CFT internal control system.

- The AML Act does not reflect the requirements of Recommendations 10 to 23 regarding measures to prevent TF.

#### *Designated Non-Financial Businesses and Professions (DNFBPs)*

Understanding of ML/TF risks by DNFBPs is overall low therefore the identification of ML/TF risks is not a priority in the conduct of their day-to-day business.

- Most DNFBPs are not fully aware of their AML/CFT obligations including reporting of suspicious transactions.

#### *Recommended Actions*

- Cabo Verde should amend its AML/CFT legal framework address the technical shortcomings with regard to measures to prevent the TF contained in the FATF Recommendations 10 to 23, as well as the shortcomings identified in the FATF Recommendation 16 on international electronic transfers (see annex to the TC)
- FIs should implement Notice 05/2017 on internal ML/TF risk assessment, taking account of their specific activities, customer base, products and services, country of operation, institutions with which they relate, with a view to identifying the ML/TF risk. They shall also update and review the said risk assessment at least annually.
- FIs should develop robust AML/CFT internal control systems and subject them to internal and external audit testing or to an independent audit to testing ascertain their suitability and efficiency.
- Provide FIs with more training regarding typologies, potential red flags, indicators of suspicions both of ML and FT, especially for insurance companies and money exchange agencies, in order to enable FIs in their analysis of suspicious transactions to increase the number of STR to the FIU.
- The FIU should provide feedbacks to FIs/DNFBPs including on the quality of STRs to assist the reporting entities in detecting and reporting suspicious transactions.
- FIs should update customer records by identifying and verifying the identity of beneficial owners, especially their customers who existed prior to the entry into force of the AML Act.
- Enhance actions aimed at increasing the level of knowledge and understanding of DNFBP sectors with higher risks on AML/CFT requirements and the need for them to adopt risk preventive measures related to their customers.
- Raise awareness of DNFBPs on the need to implement measures for Customer Identification, increase knowledge and understanding of CDD measures, including enhanced measures and Beneficial Ownership measures.
- DNFBPs should develop guidelines and typologies that would help them in identifying red flags and preparing their STRs.

- Increase the level of understanding of TF risks by all sectors.
- The private sector, particularly real estate, NPOs and dealers in precious metals and stones identified by the NRA to be more exposed to ML/TF risks should use the outcomes of the NRA to develop or enhance their risk mitigating measures.

194. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The relevant Recommendations for assessing the effectiveness of this section are R9-23.

#### ***Immediate Outcome 4 (Preventive Measures)***

##### ***Understanding of ML/TF risks and AML/CFT obligations***

195. Reporting entities in Cabo Verde are required to identify, assess and understand their ML risk commensurate with their risk exposure. For the FIs, this requirement is set out in the AML Act and Notice No. 5 of 2017 issued by BCV on 7 September 2017 with guidelines to assist FIs in understanding ML/TF risks and AML/CFT obligations. Apart from the AML Act, supervisors of DNFBPs have not issued any guidelines to enable DNFBPs to understand their ML/TF risks and AML/CFT obligations. The sectoral understanding of ML/TF risks and AML/CFT obligations are provided below.

##### ***Financial Institutions***

196. All FIs met stated that they were aware of their obligations under the AML Act. However, this has not facilitated their understanding of ML/TF risks as this varies, either very low or almost non-existent, given that no institution has identified and evaluated the ML/TF specific risk of its operational reality based on its business model, customer base, products and services, delivery channels and geographical location of operations.

197. The BCV issued the first ML/TF internal risk assessment guideline (Notice 5/2017) for FIs on 7 September 2017. Considering the fact that the Notice was to enter into force thirty days after its publication (Article 56) and FIs are to comply with the Notice within 180 after publication (Article (54), outside the period of the evaluation, it is not possible to determine the effective implementation of the requirements of the Notice regarding PF, it is difficult to ascertain the extent to which the Notice has assisted the supervised entities to identify, assess, understand their ML/TF risks and to put mitigating measures in place.

198. Some branches and subsidiaries of foreign banks are applying group-wide AML/CFT policies and programs. However, these banks deploy customized automated systems set up to classify only customer risk using information obtained in the framework of implementing CDD requirements to generate internal ML/TF risk assessments. Consequently, these banks do not have the technical knowledge to understand their ML/TF risks. Copies of these ML/TF internal risk assessment reports were not available to the assessment team to ascertain the robustness of the risk assessment system.

### ***Designated Non-Financial Businesses and Professions (DNFBPs)***

199. Overall, there is a general low level of understanding of ML/TF risks and AML/CFT obligations among DNFBPs (except Auditors belonging to international group) contacted during the on-site visit. In particular, lawyers, traders in precious stones and metals, and real estate have a very low knowledge of the risks or underestimate their exposure to ML/TF risks. Also, auditors belonging to an international group are the only DNFBPs that had implemented or have ML/TF risk-based analysis models. The DNFBPs do not take account of their AML/CFT obligations in their course of their normal operations and do not take any measures to mitigate the ML/TF risks inherent in their businesses.

200. In general, due to the low knowledge and understanding of ML/TF risks and their AML/CFT obligations, high-risk DNFBPs such as real estate agents, casinos and NPOs as identified by the NRA, focus more on profitability of their businesses, and are less concerned about the phenomenon of ML/TF, which they considered secondary in their activities.

### ***Application of risk mitigating measures***

201. Commercial banks in Cabo Verde have internal manuals and procedures containing AML/CFT mitigation measures. However, these measures are not adequate to mitigate the risks, since the risks have not yet been adequately identified and assessed. The banks in Cabo Verde are still not applying a risk-based approach, but rather a rule-based approach in their compliance functions.

202. Lack of an internal ML/TF risk assessment notwithstanding, the banks interviewed apply enhanced measures in situations of greater risk, namely in establishing a business relationship with PEPs, and in international electronic transfers. Thus, banks integrate risk mitigation measures into their day-to-day operations and they take 'top-down' approach to promote and maintain a culture of compliance in their organizations.

203. The insurance companies informed the assessment team that high risk products are life insurance products in the case of redemption and the non-life insurance in the case of ship acquisition. Insurance companies have internal regulations that provide for adequate measures in these higher risk situations.

204. The supervisor has carried out few inspections of reporting entities to ensure that ML/TF risks are appropriately identified and adequately mitigated in line with supervisory requirements. The supervisor did not provide FIs with feedback on the inspections carried out to enable the FIs to determine whether they are implementing the ML/TF mitigation measures as expected. Also, there is no evidence that the supervisors conduct regular review of the AML programs of the reporting entities that would have fostered dialogue between the FIs and the supervisors.

205. As a consequence of the lack of understanding of ML/TF risks, most DNFBPs, except international group auditors, do not apply risk mitigation measures.

## ***Application of enhanced or specific CDD and record keeping requirements***

### ***Financial Institutions***

206. All the FIs met affirmed that they were implementing enhanced measures of CDD for high risk situations in relation to wire transfers and transactions with PEPs. Also, the FIs implement, record keeping obligation and customer transaction monitoring in line with Article 22(3) of the AML Act

207. FIs informed the Assessment team that they refuse to carry out transactions and terminate business relationships when they are unable to complete the CDD process to determine the legitimacy of the transaction and the sources of funds even though refusing to open an account is not an explicit trigger for STR. The FIs also submit STRs to FIU in such cases.

208. Despite the challenges in obtaining BOI, most banks have demonstrated that they have been complying with the obligation to identify and verify the identity of BOs, by collecting a copy of the identity card for customers (natural persons) and the corporate by-laws for customers (legal persons). However, the Assessors found that FIs had not applied this measure to customers that existed before the entry into force of the AML Act. Also, it was not possible to verify that some banks had issued internal rules to fully implement this measure.

209. The Banks met indicated that they have processes that enable them to monitor transactions. The transaction monitoring system in most banks is done manually, except for few banks that already have the automated alert systems. All banks interviewed have compliance officers at senior management level and responsible for determining whether the transactions detected by the monitoring systems are suspicious or not.

210. There is no evidence that these monitoring systems have been reviewed or tested by auditors or through supervisory programs.

211. In insurance companies, this process is done by the internal auditor, because they do not have compliance officers.

212. However, there were no statistics on the outcome of BCV's inspections to enable the Assessment Team to confirm whether FIs are meeting BO requirements.

### ***DNFBPs***

213. DNFBPs have limited knowledge of their obligations, particularly those related to CDD requirements. In fact, the entities contacted appeared to know that there was a legal requirement for customer identification and for keeping records of information obtained. Reasons for non-implementation of CDD and record-keeping measures by the DNFBPs include absence of regulation, supervision and inspection of AML/CFT requirements.

214. Of the few STRs submitted by DNFBPs, no evidence or examples of refusal or termination of business relationships or occasional transactions related to the inability to fully apply CDD measures even that such STR would be related to problems in collecting the necessary elements for such measures.

215. There is widespread lack of knowledge or understanding of the CDD requirements for the identification of BO among DNFBPs.

#### ***Application of EDD measures***

216. Although banks did not carry out internal ML/TF risk assessment to define specific high-risk situations in order to apply mitigation measures based on the identified risks, the banks demonstrated that they have been implementing measures provided by law to mitigate the risks associated with PEPs, designated persons in line with TFS for TF, New Technologies, and High Risk Countries.

#### ***Politically Exposed Persons (PEPs)***

217. All the FIs interviewed were aware of their obligation to apply enhanced measures in relation to PEPs and, above all, the requirement of approval by senior management before establishing a business relationship or authorizing any transaction with a PEP. However, many banks stated that they experience difficulty in identifying PEPs due to lack of an official list of both domestic and foreign PEPs.

#### ***Correspondent Banking and Electronic Transfer***

218. The banks demonstrated their compliance with the requirements set out Article 16 of the AML Act and Recommendation 13 with respect to the correspondent banking relationship. However, the Assessors were not able to confirm this compliance due to lack of statistics with respect to the findings of the compliance officer regarding correspondent banking relationships.

219. Regarding electronic transfer, the AML Act of Cabo Verde does not provide for many relevant criteria of the FATF Recommendation 16 (16.2, 16.3, 16.4, 16.6, 16.16, 16.17, 16.18). There are no statistics on the outcome of BCV's inspections to confirm whether the banks have been complying with the requirements applicable to electronic transfers.

#### ***Targeted Financial Sanctions (TFS)***

220. The CFT Act requires FIs to apply TFS. However, not all FIs are aware of their obligation to apply TFS related to TF. The FIs interviewed were unaware of the lists of designated persons and entities to apply the TF-TFS.

#### ***New Technologies***

221. The FIs interviewed stated that new products and services based on new technologies are subjected to ML/TF risk analysis prior to their commercialization.

#### ***High risk countries identified by the FATF***

222. FIs have access to the FATF website, through the website of the BCV, where information about high risk jurisdictions is published. Furthermore, Annex 1 to Notice No. 5 provides FIs with a list of indicators for high risk jurisdiction and defines high risk jurisdictions as *countries or jurisdictions with strategic shortcomings in the field of money laundering or*

*terrorist financing, as identified by the Financial Action Task Force in a document published by the Financial Action Task Force on the website [www.fatf-gafi.org](http://www.fatf-gafi.org). However, the Notice was barely in force and effect during the on-site visit and its effectiveness could not be assessed.*

223. DNFBPs met (except auditor from an international group with state-of-the-art computer systems) are not aware of the need to conduct Enhanced Due Diligence (EDD) for PEPs and persons listed on the UN/EU lists.

224. Also, the assessment team was informed that in Cabo Verde, all citizens and residents are related to each, thus, it is almost impossible to have a Cabo Verdean national that is not considered a PEP, in the light of the FATF and AML Act definition. This perception illustrates another reason for DNFBPs' lack of understanding and application of EDD requirements on PEPs in Cabo Verde.

### ***Reporting obligations and tipping off***

225. The AML Act require reporting entities to adequately implement their reporting obligation. However, due to absence of an internal ML/TF risk assessment by FIS, it is therefore difficult to ascertain whether in fact the volume of STRs filed by each FI corresponds to its risk profile. The assessment team noted that some FIs have never submitted STRs to the FIU.

226. The NRA indicated that about 94% of the STRs submitted to the FIU in 2016 were from the banking sector while remaining 6% by the other sectors. Also, the NRA noted that in the last three years there has been an increase in the number and quality of STRs submitted by the banking sector due to staff capacity building and increased focus by the FIU on compliance. Table 5.1 below indicates the number of STRs submitted by sector from 2013 to 2016.

**Table 5.1: STRs submitted by Different Reporting Entities**

Entities	2013	2014	2015	2016
Financial Institutions	89	41	60	174
Counterpart FIUs	1	0	9	3
Registrars	0	0	1	3
Insurance Companies	1	1	0	0
Real Estates	0	1	2	0
Customs	2	0	1	1
Other Entities	0	0	0	5
<b>TOTAL</b>	<b>93</b>	<b>43</b>	<b>73</b>	<b>186</b>

227. Although the Annex of 149/2009 repealed by Notice No. 5/2017 contained some red flags for suspicious transactions, assessors noted that insurance companies were not implementing their obligation to submit STRs to the FIU.

228. The lawyers stated that the communicating STRs implies a violation of their professional obligations (Lawyers), while others stated that they did not know when and how to make such communications (casinos, real estate and traders in precious stones and metal).



Thus, the number of STRs submitted to the FIU by DNFBPs is very low. This reinforces the perception that the sector has a very basic level of knowledge of its AML/CFT obligations. In view of the difficulty of DNFBPs in detecting suspicious transactions, it is therefore important for the FIU and regulators to issue guidelines and provide training to reporting entities in this sector.<sup>13</sup>

229. A major fallout of the limited knowledge about the risk of terrorism and its financing in Cabo Verde is the non-submission STRs on TF by any sector.

### ***Tipping Off***

230. Regarding the prohibition of tipping-off, all FIs interviewed demonstrated their awareness of the legal prohibition of alerting customers when an STR is submitted to the FIU, as well as the consequences for violating such prohibition. They also made it clear that front office staff are not informed when compliance officers submit STRs to the FIU. However, the FIs did not confirm whether the prohibition applies to other categories of staff (current and former directors, officers, employees, agents and contractors) other than the Compliance Officer and front office staff.

231. With regard to Tipping-off, given the very small number of STRs made by DNFBPs, it was impossible for assessment team to ascertain the effectiveness of measures that may have been implemented to prevent tipping-off.

232. According to some of the entities contacted, the fear of tipping-off seems to be one of the justifications for not submitting STRs (the fear of victimization, given the small size of the markets in Cabo Verde).

### ***Internal controls and legal/regulatory requirements impending implementation***

233. Some financial institutions apply group-wide AML/CFT policies and procedures because they are part of the international financial group. However, most FIs, except of some banks where the systems are already automated, use manual system for monitoring and producing alerts on suspicious transaction. The assessors found that the abovementioned AML/CFT internal control systems installed in the institutions interviewed are not fully compliant with the requirements of FATF Recommendation 18, since they were never audited by internal and external auditors or by an independent entity duly certified for this purpose to test their suitability and efficiency. The members of the Board of Directors and the Executive Management have not participated in the training provided to employees of FIs in order to increase the compliance culture with all AML/CFT within the organizations. Consequently, the compliance culture is not yet an institutionalized enterprise-wide practice.

234. Regarding DNFBPs, those entities belonging to large international groups (auditor belonging to an international group) have implemented compliance programs, which are audited internally on a regular basis. The vast majority of DNFBPs, given their small size and the small number of employees, do not feel the need and do not find justification for implementing such mechanisms. On the other hand, the level of knowledge and maturity of AML/CFT requirements is so low it makes it impossible to establish such mechanisms.

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<sup>13</sup> by the FIU.

#### *Overall Conclusions on Immediate Outcome 4*

235. There is inadequate understanding of ML/TF risk in the financial sector due lack of internal ML/TF risk assessment by the institutions in line with criterion 1.10 of the FATF Recommendation 1. The CDD measures adopted by financial institutions are not risk based but rules-based. For the DNFBP sector, the level of awareness, knowledge and understanding of their exposure to ML/TF risks is uneven but generally low and inadequate. The impact of this situation is enormous in view of the low level of implementation of measures to prevent and combat ML/TF in the DNFBP sector and the small number of STRs submitted by the sector to the FIU despite the NRA rating of the ML/TF risks in some of the sub-sectors (e.g. real estate and NPOs) as high.

236. **Cabo Verde has a Low level of effectiveness on IO. 4.**

## CHAPTER 6 - SUPERVISION

### *Key Findings and Recommended Actions*

#### ***Key findings***

##### ***Financial Sector Supervision***

- Cabo Verde has the legal framework for licensing and entry requirements that can prevent entry of criminals and their associates from taking control of financial institutions. However, this legal framework does not empower the Financial Supervisor (BCV) to supervise or monitor and ensure compliance by FIs with their obligations to prevent and control the financing of terrorism. Some money service business (MSB) operate without operating license by the BCV and no supervisory actions has been taken for such breaches.
- The BCV conducts fit and proper test to prevent criminals from entering the market. Identification of beneficial owner is still a major challenge in terms of availability of information. However, the BCV in collaboration with the FIU has conducted some awareness-raising and training activities to assist FIs in implementing their AML/CFT obligations.
- The relevant supervisors of FIs and DNFBPs do not have good understanding of ML/TF risks associated with institutions under their respective supervisory regime. In addition, the supervisors lack of the tool or matrix to classify the ML/TF risk of each individual institution and assess the institutional ML/TF risk.
- The supervisory regime of the BCV is focused on prudential supervision with little or no AML/CFT component. In particular, the BCV does not have specialized AML/CFT inspectors and as such has conducted few AML/CFT inspections of banking institutions while is has never inspected other FIs (insurance companies, money exchange agencies and fund transfer agent - Cabo Verde Post Office) for AML/CFT compliance, thus the level of compliance with the AML/CFT obligations by designated entities cannot be ascertained.
- The BCV does not apply risk-based supervision due to the lack of proper understanding of ML/TF risk at the level of each supervised institution. Therefore, the scope, frequency and intensity of the inspection to be carried out at each institution are inadequate.
- The BCV has made very little use of the sanctioning power conferred to it by law to dissuade non-compliance with AML/CFT obligations by designated entities. Thus, the impact of the supervisory actions cannot be established. In particular, some MSBs operating without approved license have not been sanctioned for such violation.
- Auditor-General of the Securities Market, the supervisory body of the securities sector, is unaware of its AML/CFT supervisory roles and has never carried out AML/CFT supervision of the sector.

##### ***DNFBPs***

- Supervisors in the DNFBP sector have a very limited understanding of the ML/TF risks of regulated economic agents. Only a few supervisors apply suitability rules in order to prevent criminals or persons associated with them from entering the market (casinos and real estate), and still, in a limited way and without focus on preventing and combating ML/TF;

- AML/CFT supervision in the DNFBP sector is very limited or, in most cases, non-existent (lawyers, real estate, NPOs). The focus of the few AML/CFT supervision in the DNFBP sector is based on the verification of one or other legal requirement, that do not integrate or apply any risk analysis. The supervisors of DNFBPs had not applied sanctions for non-compliance with AML/CFT obligations
- DNFBP supervisors in sectors where informal activity is a major problem (real estate) lack the necessary resources to prevent and restrain the unauthorized activities in the marketplace.

### ***Recommended Actions***

Cabo Verde should

- a. amend its AML/CFT legal regime to give financial supervisors powers to supervise or monitor and ensure compliance by FIs with their obligations to prevent and control the financing of terrorism, as required by the FATF Recommendation 27;
  - b. provide adequate resources (human and financial) to relevant sector supervisors to enable the supervisors to fully implement their AML/CFT supervisory responsibilities (licensing, registration, monitoring; sanctioning; etc.);
  - c. take steps to license all unregistered businesses, especially those (MSBs; real estate agents) identified by the NRA as high-risk apply appropriate sanctions for non-compliance with market entry requirements.
- The BCV and supervisors of the DNFBPs should leverage on the outcome of the NRA to develop risk assessment model that would facilitate their understanding of the inherent risk in the entities under their supervisory purview. Supervisors should integrate this risk model into their AML/CFT supervisory plans and adopt the risk-based approach to AML/CFT supervision.
  - Sector supervisors should, in collaboration with other competent authorities (FIU; LEAs; etc.), undertake more outreach programmes on AML/CFT compliance to facilitate implementation of obligations by the supervised entities especially capacity building programs on understanding and identification of ML/TF risk inherent in the operations.
  - Supervisors should provide feedback, apply remedial and enforcement actions that could promote the culture of compliance with AML/CFT obligations across all sectors.
  - Financial sector supervisors should:
    - a) recruit and train inspectors on AML/CFT supervision (off-site and onsite), and intensify the frequency and define the nature and scope of the on-site inspection action according to the risk identified in each FI;
    - b) issue more guidelines and typologies to assist supervised entities to meet their AML/CFT obligations;
    - c) sensitize FIs to comply with the obligation to apply Target Financial Sanctions to designated persons and entities and assess the independence of compliance officers in relation to FIs.
  - Supervisors of DNFBPs should:
    - a) provide information, guidelines or other appropriate mechanisms to increase the level of knowledge and understanding of the risks and legal obligations of those supervised under AML/CFT;

b) consider, as a strategic mandatory implementation measure, ML/TF risk analysis plans appropriate to the regulated sectors and the country's reality.

237. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The Recommendations relevant to the effectiveness assessment in this section are R26-28 and R.34 and 35.

### ***Immediate Outcome 3 (Supervision)***

#### ***Licensing, registration and controls preventing criminals and associates from entering the market***

238. Cabo Verde has in place licensing and entry requirements process for FIs and microfinance institutions (MFIs) that allows the BCV to conduct a rigorous assessment of the suitability, availability, experience and professional qualification either of the beneficial owners or of candidates nominated for membership of the governing bodies.

239. The qualification requirements for managers and shareholders are set forth in the Law on Financial Activities and Institutions, approved by Law 62/VIII/2014, of April 23 and Notices 4/2014 and 5/2014 of the BCV.

240. The licensing process is supplemented by criminal background check and assessment by appropriate law enforcement agency to ascertain the legitimacy of the funds used in the acquisition of shares so as to prevent criminals from controlling the FIs and MFIs. However, the authorities did not indicate the type of measures taken in cases of changes in the ownership and senior management of FIs and MFIs.

241. There were no more statistics on cases of refusal of license application due to lack of suitability of shareholders or managers. Also, no statistics regarding the removal of managers or shareholders for lack of suitability occasioned by the fit and proper test. However, on the website of the BCV ([www.bcv.cv](http://www.bcv.cv) - "Press Room"), its press release of February 25, 2016, indicated the rejection of an application by the Norwich Group, SA to acquire 100% of the shares representing Banco Internacional de Cabo Verde, S.A. (BICV) due to the lack of relevant information on the BO (shareholders) and the suitability of the persons proposed for the senior management positions.

242. The BCV informed the Assessment Team that there was an entity operating a money transfer business without a license issued by the BCV, as is the case of Cabo Verde Post Office. Given that it is a requirement for all money transfer companies or money services business (MSB) to be duly registered and authorized to carry out such business, the BCV did not provide any evidence of regulatory actions taken against the unlicensed MSB.

#### ***DNFBPs***

243. Regulation and supervision in the DNFBP sector is the responsibility of the following entities:

- The General Games Inspection for natural or legal persons who exploit casinos, games of chance, lotteries, mutual bets and promoters of games of chance;
- The Bar Association, in relation to Lawyers and Solicitors;
- The General Directorate of Registries, Notaries and Identification, in relation to Notaries and Registrars;
- The General Inspectorate of Construction and Real Estate, in relation to entities engaged in real estate development, real estate brokerage, real estate purchase and sale, as well as construction companies that sell directly in real estate;
- The Order of Professional Auditors and Certified Accountants, regarding Auditors, Accountants and Tax Consultants;
- The General Inspection of Economic Activities, concerning traders of high value goods, namely vehicles, works of art, antiques and jewellery;
- The NGO Platform, in relation to Civil Society Organizations; and
- The Financial Information Unit, in relation to entities that are not subject to the supervision of another authority. All DNFBPs had supervisory authorities at the time of the on-site.

244. Supervisors of DNFBPs, where professions and activities requiring licensing or registration procedures are concerned, implement fit and proper measures, which are limited to request and verification of the criminal record of applicants.

245. In the gaming sector, an application to establish and operate a casino is granted on verification of the experience, reputation, nature, character and reputation of companies/entities belonging to the same group as the applicant, particularly the dominant partners and significant shareholders (above 5 percent of the capital), as well as managers and the main employees with relevant functions in the casinos (Article 11 of the Gaming Act).

246. A person convicted of an intentional crime with a prison sentence of more than six months, or for a crime provided for in the Gambling Law or violated the prohibition of granting cash loans for the practice of gambling is disqualified from operating, having a significant shareholding or occupying a management position of a casino. However, these measures only apply to a minimum of 60% of the shares that the concessionaires need to have represented by registered or bearer shares, which may imply that the concessionaires may not know the shareholders of the remaining capital.

247. As for the remaining sub-sectors of DNFBPs, real estate, notaries, lawyers, traders in precious metals and stones etc.; the fit and proper tests are only for consultation of the commercial registration certificate, and the Assessors were not informed of cases regarding refusal of applications for licenses for commercial activity, in particular for the commission of ML or TF predicate offences.

248. Despite the NRA identifying traders in precious metals and stones, and real estate sectors as high-risk, these sectors are dominated by unregistered players known to the supervisors. The authorities stated that due to inadequate resources (human and financial), the supervisors lack the capacity to adequately monitor and take any supervisory actions on these

unregistered operators. This informality of these sectors is major concern and remains potential source of higher risk situations for ML/TF in the country.

### ***Supervisors' understanding and identification of ML/TF risks***

249. The BCV does not have good understanding of the ML/TF risks in the financial sector under its supervisory purview. The BCV does not have the ML/TF internal risk assessment reports from each supervised FI nor does it have a ML/TF risk classification tool or matrix for each supervised institution on the line of business, product, service, customer base, delivery channels, geographic locations to allow it to understand and identify the individual ML/TF risk level of each institution with a view to applying a risk-based approach (RBA) to AML/CFT supervision. In particular, BCV does not understand the risk posed by legal persons.

250. Instead, the Bank of Cabo Verde relies on the findings of the National Risk Assessment (NRA), which was prepared a few weeks prior to the on-site visit to facilitate its understanding and identification of ML/TF risks in the financial sector.

251. Cabo Verde in terms of sectoral risk, the NRA indicates the level of risk of each segment of the financial sector (banking, insurance, other financial and financial inclusion products). However, at the level of institutional risk, the BCV has not yet identified the ML/TF risk that each supervised institution is exposed to.

252. Overall, supervisors in the various DNFBP sectors have a moderate to low understanding of ML/TF risks. However, most of the supervisors do not have a good understanding of the size and composition of the sector under their supervisory regime and these reporting entities are not subject to the legal obligations of preventing and combating ML/TF.

253. The supervisors of the DNFbps recognize the informality and the intensive use of the cash as means of payment in some of the sectors as situations that would increase ML/TF risks. However, the supervisors of this sector are yet to put in place ML/TF assessment mechanisms and risk analysis, therefore do not have good understanding of the ML/TF risks inherent in the sector.

### ***Risk-based supervision of Compliance with AML/CFT requirements***

254. In view of the lack of knowledge of the ML/TF risk level of each FI by the BCV, the Assessors noted that the BCV has not been conducting ML/TF risk-based supervision.

255. Due to the lack of a ML/TF risk classification tool or matrix for each FI and lack of ML/TF risk assessment carried out at the level of each FI, the BCV has not been able to determine the scope, frequency and intensity of AML/CFT supervision to be performed at each supervised institution. Furthermore, the BCV is yet to adopt RBA to AML/CFT supervision.

256. The BCV focus more on prudential supervision with limited AML/CFT component in its supervisory regime. The supervision department of the BCV has a small number of inspectors and none have good knowledge of ML/TF Prevention and Control System.

257. From 2012 – 2017 as shown in Table 6.1 below, the prudential inspectors carried out five (5) on-site examinations of the ML/TF prevention and control system in some banking institutions. The other FIs, notably money exchange agencies, insurance companies, fund transfer agents (Cabo Verde Post Office) have never been inspected for AML/CFT compliance.

**Table 6.1: On-site AML/CFT inspections carried out by the BCV**

<b>AML/CFT inspections</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Banks	0	0	1	0	1	3
Insurance Co.	0	0	0	0	0	0
Foreign Exchange Agencies	0	0	0	0	0	0
Money Transfer Agent	0	0	0	0	0	0
Other FIs	0	0	0	0	0	0

258. The assessment team was not provided with the BCV manual of procedure for the AML/CFT supervision and the reports of the AML/CFT inspections carried out, hence the scope, nature and duration of the inspections could not be ascertained.

259. The supervisory action by DNFBP supervisors is very limited, and for prudential purposes only. DNFBPs are not being supervised for compliance with AML/CFT requirements.

***Remedial actions and effective, proportionate and dissuasive sanctions***

260. Cabo Verde has a wide range of administrative sanctions applicable to FIs/DFNBPs including suspension of license and/or authorization to operate, publication of the punitive decision by the regulatory and supervisory authority at the expense of the offender to dissuade sanctionable practices outlined in the Act (Chapter V of the AML Act). Also, in the alternative, there is a general regime of administrative offences (Article 60 of the AML Act) that can be applied. However, the authorities did not provide examples of cases of non-compliance with AML/CFT requirements due to lack of specialized inspectors with adequate knowledge of AML/CFT supervisory framework. Therefore, the effectiveness, proportionality and dissuasiveness of the sanctions cannot be established.

261. Majority of the inspections carried out were of a purely pedagogical in nature aimed at sensitizing designated entities on the need to fulfil their AML/CFT obligations.



262. In January 2017, the BCV fined a credit institution the equivalent of US\$1,034,661.00 for breach of several AML and prudential obligations. The BCV published information regarding the sanction at its website BCV ([www.bcv.cv](http://www.bcv.cv)).

263. The applicable minimum fines for non-compliance with AML/CFT requirements in terms of registration for wholesale and retail traders in jewellery and precious stones, and car dealers is 50,000CVE (Article 74 (2) of the AML Act). This amount is deemed dissuasive when compared with the fine of 5,000 CVE (Article 54 of Decree-Law no. 69/2005, of 31 October) applied to operators of the commercial activity without formal license.

264. With respect to the legal profession, penalties applicable to non-compliance with AML/CFT obligations are provided for in the AML Act. However, due to the lack of supervision and inspection of the sector, there is no record of any administrative or other sanctions (disciplinary for lawyers and solicitors) applied by the Regulatory and Supervisory Entities (RSE) under the AML Act.

265. In the absence of sanctioning measures applied by supervisors of DNFBP, the effectiveness, proportionality and adequacy of the sanctions regime cannot be ascertained.

### **Impact of supervisory actions on compliance**

266. The BCV has conducted a few inspections of banks and has never inspected insurance companies, money exchange agencies and money transfer agents. In this regard; it is difficult to determine the impact of supervisory actions on compliance by entities subject to the AML/CFT obligations legally imposed on them. The BCV expressed the need to give priority to the supervision of the banks on the basis of their systemic risk and the impact on stability of the financial system based on available resources, while the other FIs have residual weight in the financial system. The need for supervisors to prioritise and allocate resources to the sector that represents a high risk of ML/FT is noted, but sectors that pose the lowest risk and of residual weight should not be neglected.

267. Interviews with the private sector reveal that most banks have an acceptable level of compliance with AML/CFT preventive obligations due to the application of group-wide AML/CFT policies. However, other FIs argued that their low level of understanding and the fulfilment of AML/CFT preventive obligations is due to little or no supervision by the Bank of Cabo Verde.

268. There has been no application of sanctions over the last few years that would allow financial institutions to increase their AML/CFT compliance culture. Thus, the BCV's supervisory action has had a very little or no impact on the fulfilment of the AML/CFT obligations by designated entities.

269. Given the very limited or even non-existent of AML/CFT supervision in the DNFBP sector, the impact of supervision in the sector is also non-existent.

### ***Promote a clear understanding of AML/CFT requirements and ML/TF risks***

270. The BCV, in partnership with the FIU, has provided some training to financial institutions (banks and insurance companies) their AML/CFT requirements with a view to

promoting understanding of their AML/CFT obligations. Also, the BCV has prepared and disseminated a National Plan of Financial Literacy to the financial sector. This includes issues related to obligations in the scope of prevention and control of ML/TF. However, the assessment team was not provided with the records of the training courses.

271. Notice 05/2017 which provides for the conditions, mechanisms and procedures necessary for the effective fulfilment of the AML/CFT obligations and entered into force effect on 7 October 2017 is the BCV's first document to FIs in five years prior to the on-site visit, to promote understanding of their AML/CFT obligations.

272. In the DNFBP sector, due to inadequate resources and the lack of good understanding and identification of ML/TF risks by the relevant supervisors, no activities were undertaken to promote understanding of AML/CFT requirements and ML/TF risks by the reporting entities.

273. The AGMVM is responsible for the supervision of the securities market in Cabo Verde. However, AGMVM is unaware of its AML/CFT supervisory roles and has not conducted any on-site inspection or undertaken any supervisory role of the sector regarding AML/CFT compliance. The AGMVM informed the assessment team that the securities sector in Cabo Verde is quite new and prior to the establishment of the AGMVM and the BCV was responsible for AML/CFT supervision of the securities market operators<sup>14</sup>.

### *Overall Conclusions on Immediate Outcome 3*

274. The BCV does not carry out risk-based supervision due to the lack of knowledge of the level of risk in each supervised financial institution and the lack of specialized officers to adequately undertake AML/CFT supervision of operators in the Cabo Verdean financial system.

275. The supervisory powers of the BCV do not include the supervision for TF purposes.

276. Despite the awareness of the AGMVM of its roles for AML/CFT supervision, the AGMVM has not supervised the sector for AML/CFT purposes.

277. Supervisors for the financial and DNFBPs sectors are not conducting risk-based supervision.

278. The understanding of risks by financial supervisors is low, in the DNFBPs sector this understanding is almost non-existent.

279. **Cabo Verde has a Low level of effectiveness on IO 3.**

## **CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS**

### *Key Findings and Recommended Actions*

Key findings
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<sup>14</sup> Capital market operators were banks.

- Cabo Verde has legal framework for the creation of various types of legal persons in the country. There is no legislation in Cabo Verde permitting the creation of trusts. Also, Cabo Verde's legal framework does not provide for cases where fiduciaries may be set up abroad but operated by trustees of those who have ownership/control in Cabo Verde.
- Information on registration and procedures for companies are publicly available online. However, information on the establishment and types of legal persons are available at the request of the competent authorities and the public.
- Information relating to the different categories of legal persons and legal arrangements, in particular the names or signatures of all the founding members and other identity data, the share capital, the capital ratio and the entry nature of each partner, as well as payments made on behalf of each partner, are available from FIs.
- The NRA of Cabo Verde did not include any risk assessment of legal persons and NPOs to determine the types of legal persons/arrangements and types of NPOs that are particularly vulnerable to abuse for ML/TF
- There is very limited knowledge of beneficial ownership (BO) obligations among FIs and very low in the DNFBPs. In particular, the DNFBP sector lack the understanding on when to apply CDD measures which would include obtaining BO information.
- Cabo Verde has not taken any mitigation or enforcement action to resolve the identified risks.
- The fact that the Supervisor has looked at post the introduction of the AML Act whether FIs have applied the requirement to obtain BO.
- No sanction has been applied for non-compliance with the requirement to provide BO information to enable the assessment team to determine the proportionality, effectiveness and dissuasiveness of the sanctions regime.

#### *Recommended Actions*

Cabo Verde should:

- Conduct a comprehensive sectoral assessment of ML/TF risks to all types of legal persons including NPOs created in Cabo Verde in order to be able to identify legal persons likely to abuse and misuse for ML/TF purposes.
- Enact legislation on creation of trusts and the legislation should include provisions for the registration, and supervision of beneficial ownership obligations and cover trusts that can be constituted abroad and operated by trustees of those with ownership/control in Cabo Verde.
- Improve oversight of credit institutions and DNFBPs on the effectiveness of procedures for identifying beneficial owners.
- Create mechanisms that inform and guide the general public on how to create legal persons or facilitate the understanding of the specific characteristics of each type of legal person.
- Automate company registration and formation process to facilitate availability, timely access, accurate and current basic
- Build capacity of FIs/DNFBPs (institutions providing company formation or trust-related services) to ensure compliance with AML/CFT requirements.

- Ensure that proportionate and dissuasive sanctions are applied for failure by companies to keep records; to file information with the relevant registry; or to update registered information within the required period

280. The relevant Immediate Outcome considered and evaluated in this Chapter is IO5. The Recommendations relevant to the evaluation of the effectiveness of this section are R24 and R25.

### ***Immediate Outcome 5 (Legal Persons and Legal Arrangements)***

#### ***Public availability of information on the creation and types of legal persons and arrangements***

281. Cabo Verde has legal framework for the establishment of various types of legal persons. Article 104 (3) of Legislative Decree 3/99 of 29 March (Commercial Companies Code (CCC)) provides for the creation of joint-stock companies, limited liability companies, public limited companies, limited partnership or by shares and cooperative societies. Article 10 of the CCC requires all legal persons to notarise their Article s of association.

282. A company may be either a one person company or collective and, in the latter case, the possible legal forms are the company in a collective name (Article 259), limited liability company (Article 272), public limited liability company (Article 342), limited partnership (Article 459) or limited partnership (Article 471), the sole proprietor partnership (Article 336), joint stock company (Article 457).

283. The Article s of association may be concluded in writing, in a private or public document (Article 110). Registration is not performed if the establishment process does not conform to the rules.

284. Information on the creation and types of FIs are also available at the website of the BCV. The AML Act prohibits the establishment of shell banks in Cabo Verde (Article 17).

285. Cabo Verde does have IT or other mechanism to inform and guide the general public on how to create legal persons or to facilitate the understanding of the specific characteristics of each type of legal person.

286. There is no legislation in Cabo Verde permitting the creation of trusts in Cabo Verde, as well as cases where fiduciaries may be set up abroad but operated by trustees of those who have ownership/control in Cabo Verde. However, the AML Act and Notice No. 5/2017 provide for measures for identification and verification of identity of administrators, settlors and beneficiaries of trusts governed by foreign law.

#### ***Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities***

287. The NRA of Cabo Verde does not contain comprehensive assessment of the ML/TF risks associated with the various types of legal persons created and registered in Cabo Verde, in order to identify the nature of vulnerabilities and typologies on misuse of these entities for ML/TF purposes. The ML/TF vulnerabilities of legal persons and arrangements are not well understood by both the competent authorities and the private sectors.

288. The country provided a case involving the abuse and misuse of a legal person for ML purposes. In this case (the LV case discussed under IO. 7), law enforcement authorities identified that the beneficial owner of the legal person was concealed. The method used consisted in the creation of a front company and transfer of contractual position.

289. Cabo Verde has not taken adequate measures to mitigate the ML/TF vulnerabilities associated with company formation agents (lawyers; accountants; TCSP). No statistics was provided on the number of companies registered in Cabo Verde and how many of these registered companies do not carry out business activities as such entities could be exploited for ML/TF purposes.

#### *Mitigating measures to prevent the misuse of legal persons and legal arrangements*

290. Cabo Verde has not conducted a full ML/TF risk assessment of all types of legal entities. In this regard, it is difficult to determine whether the country has taken appropriate and proportionate measures to mitigate the specific vulnerabilities associated with them. The General Directorate of Registries, Notary and Identification informed the assessment team that some measures are being taken with respect to collecting comprehensive information including BOI at company formation process. The authorities stated that most of the information on beneficiaries are in the commercial register, which at the time of the on-site was being computerized, as part of the measures to reinforce the accuracy of information in public records, including material verification and automatic updating of available information.

291. Upon completion of the computerization process, legal entities will be required to report any changes to the information which will be appropriately reflected in the register.

292. The Cabo Verdean authorities had taken some steps to deter criminals from misuse of legal persons for ML/TF purposes. The Public Attorneys of the county of Praia informed the assessors judicial cases in which BO of legal persons were convicted of ML crimes and criminal association for provision of false information. The BO of three (3) legal persons were convicted in the “LV case”.

#### *Timely access to adequate, accurate and current basic and beneficial information on legal persons*

293. The Assessors noted that the fact that the law on legal persons and entities without legal personality establishes the names or signatures of all the founding members and other identity data, the share capital, the capital ratio and the entry nature of each member, as well as payments made on behalf of each partner, responds to ML preventive purposes, presenting itself as a means of production and conservation of information useful for the identification of beneficial owners.

294. Information on the creation and types of legal persons is available at the request of competent authorities and the public in a timely manner, as registration is public, and procedures are available online and provide added value for the performance of criminal investigation and prosecution authorities. In this sense, experts at the General Directorate of Registries, Notary and Identification informed the Assessors, during the on-site visit, that a

cooperation protocol between the Civil Registry and the JP was being drafted for signature, in order to make the data available on request.

295. The Assessors also noted that information on the application for companies incorporated at Casa do Cidadão is provided on time, since the registration is electronic. The same happens with information of the Civil and Real Estate Registry Office, whose data are computerized.

296. According to officials of the General Directorate of Registries, Notary and Identification, response to request for information from the Commercial and Vehicle Registry Office takes about a week because the data is not computerized.

297. With the exception of those belonging to international groups that apply the procedures in force in the jurisdictions of their parent companies, DNFBPs are not applying CDD measures, and for that matter not identifying BOs of legal persons.

298. The Assessors also noted that CDD measures were not applied to customers that existed prior to the entry into force of the AML Act, to identify and verify the identity of BOs, particularly corporate customers (legal persons).

***Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements***

299. Regarding data of FIs, the Assessors were informed that, in the licensing process (establishment of a bank acquisition of a qualified participation), the BCV maintains its own registration system of authorized institutions, which includes information on property such as property and control structure, composition of the share capital and qualifying holdings, identity of the beneficial owners. These data are based on corporate information that FIs subject to supervision are legally required to provide.

300. Regarding access to the database of bank accounts held by FIs for investigation purposes, Assessors were informed by the Public Attorneys of Praia that the FIs involved, when requested, provide account information to determine the information of the beneficial owner. They also informed that, if the investigation is aimed at ML/TF, the Public Prosecutor's Office has the authority to directly request the breach of bank secrecy, bank account statements, freezing of accounts and suspension of frozen accounts.

***Effectiveness, proportionality and dissuasiveness of sanctions***

301. In Cabo Verde, Legislative Decree 3/99 of 29 March (Commercial Companies Code), states the lack of registration determines that the acts of the company will not have effects for third parties until they have been registered (Article 253 (1)).

302. The BCV informed the Assessors that based on information it collected on the internet and also on information requested from the applicant, BCV did not approve the establishment of a bank and the acquisition of a qualifying holding.

303. The BCV imposed a fine of CVE 100,000,000 (one hundred million escudos – the equivalent of \$1,029,659) on an international bank which did not fulfil the obligations related

to the maintenance of the documentation supporting certain transactions and the identification of customers.

304. The supervisors of other sectors (DNFBPs, security market) have not applied any sanctions relating to breaches of availability, timely access, accuracy of current and basic and BOI on legal persons and legal arrangements in Cabo Verde.

*Overall Conclusions on Immediate Outcome 5*

305. Cabo Verde did not undertake a comprehensive NRA in order to highlight ML/TF indicators associated with all types of legal persons.

306. Sanctions has been applied in only one case for non-compliance with disclosure obligations and transparency regarding beneficial ownership of legal persons, this is not sufficient to assess the dissuasiveness of the sanctions regime

307. **Cabo Verde has a low level of effectiveness on IO.5.**



## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### International cooperation (Immediate Outcome 2)

- Cabo Verde has the legal instruments on international including MLA and extradition relating to ML/TF cases. However, the country has not demonstrated, including providing statistics, on effective use of the MLA process for ML/TF related cases.
- The authorities in Cabo Verde acknowledge the risk of misuse of legal persons and arrangements for ML/TF purposes. However, no formal risk assessment has been conducted for the identification, assessment and understanding of ML/TF relating to legal persons and legal arrangements in the international context. Also, the country did demonstrate capacity to provide timely access, available, accurate up-to-date basic and beneficial information on legal persons and arrangements collected by FIs and DNFBPs. As a result, cooperation in relation to foreign requests regarding BO of legal persons and arrangements cannot be fully effective.
- Cabo Verde seeks and provides other forms of international cooperation for ML/TF purposes through several agencies (FIU, LEAs, BCV) and inter-agency coordination group. However, other agencies have not leveraged on the FIU's membership on the Egmont Group to improve information exchange with foreign counterparts on ML/TF related matters.

#### **Recommended Actions**

##### Cabo Verde should:

- Develop a robust system for providing constructive and timely MLA and extradition on ML/TF that would facilitate the prioritization of responses to requests from foreign countries;
- Conduct a comprehensive sectoral risk assessment (see IO.1 and IO.5) to facilitate proper identification, assessment and understanding of ML/TF relating to legal persons and legal arrangements in the international context and also to assist FIs and DNFBPS in undertaking appropriate CDD measures relating to beneficial ownership;
- Develop database for maintaining statistics on MLA and extradition relating to ML/TF cases for both incoming and outgoing requests covering requested executed, withdrawn, abandoned and refused as well as the average time to process a request;
- Organise capacity building for all competent authorities involved in MLA and extradition as well as other forms of international cooperation relating to ML/TF in order to promote inter-agency cooperation, improve quality and timelines of responses to request from foreign countries.



## **Immediate Outcome 2 (International Cooperation)**

308. The relevant Immediate Outcome considered and evaluated in this Chapter is IO.2. The Recommendations relevant to the evaluation of the effectiveness of this section are R.36 – R.40.

### ***Providing constructive and timely MLA and extradition***

309. The AG's Office, as the central authority for international judicial cooperation in criminal matters, is the competent authority responsible for providing timely assistance for MLA and extradition requests, or forward incoming requests to the appropriate agency.

310. The authorities of Cabo Verde do not often provide MLA and extradition across a range of international cooperation requests. The authorities shared their frustration of not receiving responses to most of their international requests for information.

311. There was no comprehensive data on cooperation details on the types of cooperation regarding: Requests sent, refused request sent; Received; Refused request received; and others.

312. There is no data showing how many jurisdictions have provided MLA to Cabo Verde on ML/TF related cases. It is therefore difficult to get a good understanding of the situation in general about the level of cooperation and satisfactory responses from Cabo Verde authorities for MLA and extradition. Cabo Verde does not interact regularly with countries in near proximity. According to the authorities, Portugal is a key partner but there is no evidence of incoming MLA requests, specifically through the exchange of letters rogatory.

313. There are no comprehensive statistics on MLA and extradition, including statistics on the number of MLA and extradition requests related specifically to ML, TF, the types of predicate offences underlying the MLA requests in ML cases, asset forfeiture; etc. This impedes the ability of the Cabo Verdean authorities to effectively manage incoming (and outgoing) requests if there are some.

314. Cabo Verde authorities in general note that MLA is normally a laborious process for exchanging information. There was no evidence of dissemination of guidance or handbooks by AG on the issuance of MLA requests to relevant bodies in the country to facilitate timely processing of any request. Moreover, there was no information on the use of complementary channels by Cabo Verde authorities for obtaining and exchanging of information through other means, that could be helpful, to seeking timely legal assistance to pursue domestic ML, associated predicate offences and TF cases with transnational elements

315. Cabo Verde could use MLA channels for AML purposes, specifically in relation to cases with transnational elements and those involving foreign PEPs. Currently, there has been no case of formal judicial cooperation in matters related to TF. There is no comprehensive data on outgoing MLA requests by AG related to ML investigations, the requested countries and related predicated offences.

316. During the on-site, Cabo Verde authorities could not provide the assessors with specific, sensitive case example to illustrate the use of MLA requests for search and seizure

operations, in order to act. Likewise, it was not demonstrated how MLA requests played a significant role in investigation of cases.

***Seeking timely legal assistance to pursue domestic ML, associated predicate offences and TF cases with transnational elements***

317. Cabo Verde has a legal framework that enables competent authorities in the country to provide a broad range of MLA, including the request for notification of actions and delivery of documents, production of means of proof, collection of evidence, notification and hearing of suspects, defendants, witnesses or experts, transfer of persons, and those relating to the background suspects and convicted persons.

318. Cabo Verde has a national initiative, supported by the United States, to fight against crime and drugs. This initiative includes the sharing of law enforcement information. In 2010, the United States helped Cabo Verde to establish the Center for Maritime Security Operations (COSMAR) in Praia. This has improved cooperation among Cabo Verdean law enforcement agencies, as well as with their international counterparts regarding the interdiction of possible drug trafficking (one of the most prevalent predicate offences in Cabo Verde) vessels at sea. In 2015, Spanish authorities operating near Cabo Verdean waters seized three tons of cocaine, while Cabo Verdean authorities seized 280 kilograms cocaine shipment April 2016.<sup>15</sup>

***Seeking and providing other forms of international cooperation for AML/CFT purposes***

319. The authorities in Cabo Verde do not seem to be using a wide range of other forms of international cooperation for AML and CFT purposes. This includes the exchange of administrative, supervisory and intelligence information with international partners.

320. Concerning administrative assistance, the Tax and Customs Authority (AT) does not seem to be well positioned in order to exchange information with its counterparts. Cooperation and assistance on ML/TF related cases in their various forms do not seem to be in practice on a regular basis in Cabo Verde.

321. In terms of the exchange of information for supervisory purposes, the BCV has agreements with the Bank of Portugal, Bank of Angola and the Central Bank of Brazil covering a wide range of areas including ML/TF related cases. However, Cabo Verde did not state if BCV is able to conduct inquiries on behalf of foreign counterparts as well as conduct inspections based on notifications from foreign counterparts, and exchange information from these inspections via MoUs on ML/TF cases.

322. Cabo Verde did not indicate if other Supervisors have signed Memoranda of Understanding (MoU) with foreign supervisory authorities on matters relating to ML/TF.

323. There are no comprehensive statistics on other forms of international cooperation on ML/TF specific information, making it difficult to assess effectiveness.

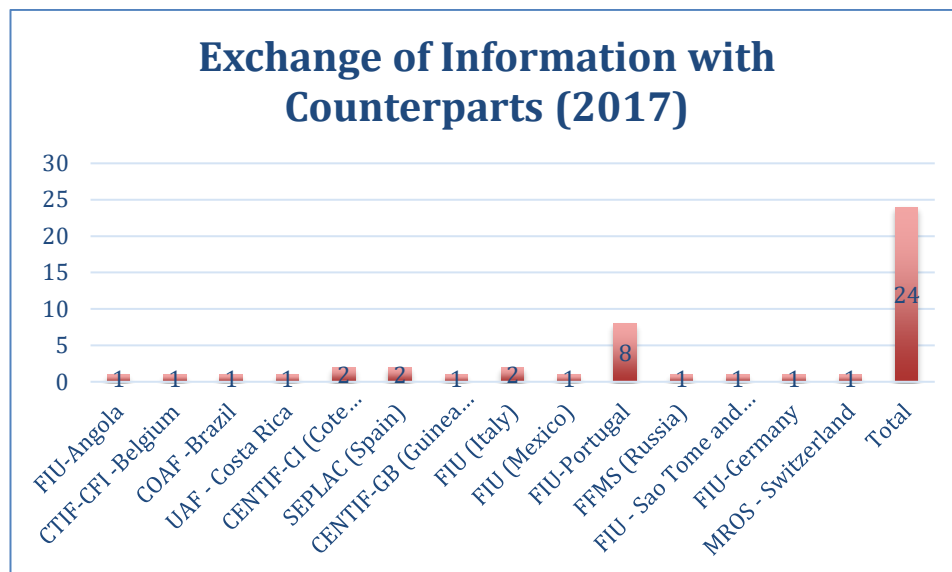
324. The FIU of Cabo Verde is a member of the Egmont Group of Financial Intelligence Units. In view of this, the FIU has access to information of over 150 FIUs through the Egmont

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<sup>15</sup> Cabo Verde: Background and U.S. Relations, by Nicolas Cook, Specialist in African Affairs, 6 February 2016.

secure website. However, it is not clear how often the FIU uses the Secure Web to share information with its counterparts. In addition, Cabo Verde did not indicate whether other authorities leverage the FIU’s membership of the Egmont Group to improve information exchange with foreign counterparts on ML/TF related cases.

325. In 2017, the Cabo Verde FIU received two spontaneous information from SEPLAC (Spain FIU); and another from Germany. According to the graph below in the same period, the FIU sent 24 requests to other FIUs mostly to Portugal, which is explained by the strong socio-economic relationship between the two countries:



(Data from January to November/2017)

326. LEAs in Cabo Verde, particularly intelligence services, understand that international cooperation is a key component of their actions vis-à-vis counter terrorism and FT. There is a coordination group which is called “Sistema de Informação da Republica” in Cabo Verde which comprises the National Police, FIU, JP, Intelligence services and others. The platform of coordination group facilitates other forms of international cooperation with respect to request for information on ML/TF from foreign authorities.

327. Prosecutors’ Offices and the National Police use other forms of international cooperation for drug trafficking investigations involving ML components. The authorities also highlighted that spontaneous information from foreign counterparts, or received upon request, is one of the major sources for the identification of ML cases.

***International exchange of basic and beneficial ownership information of legal persons and arrangements***

328. The authorities in Cabo Verde recognize the potential risk of misuse of legal persons and arrangements for ML/TF purposes. However, as noted in IO.1, the country has not through a formal process identified, assessed and understood ML/TF relating to legal persons and legal arrangements in the international context. In addition, as noted in IO.5, there are serious concerns about the timely access, availability, accuracy of current basic and beneficial information on legal persons and arrangements collected by FIs and DNFBPs. As a result,

cooperation in relation to foreign requests regarding BO of legal persons and arrangements cannot be fully effective.

***Overall Conclusions on Immediate Outcome 2***

329. Overall, authorities of Cabo Verde did not demonstrate a commitment to international cooperation on both a policy making and operational level. Authorities do not generally make use of both formal and informal channels, and some provided cases that show how a broad range of international cooperation can be used, including to combat ML, terrorism and TF. Comprehensive statistics relating to international cooperation should be further improved and specified.

330. **Cabo Verde has a Low level of effectiveness on IO. 2.**

## TECHNICAL COMPLIANCE ANNEX

This annex provides a detailed analysis of Cabo Verde's level of compliance with the 40 FATF Recommendations. It does not include a descriptive text on the risks or the country's situation, limiting itself to the analysis of the technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

If FATF requirements and national laws or regulations remain unchanged, this report refers to the analysis performed as part of the previous Mutual Assessment from 30 April 2007 to 15 May 2007. This report is available at [www.giaba.org](http://www.giaba.org).

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

The requirements of Recommendation 1 were added to the revised FATF 40 Recommendations in 2012, and as such were not assessed during the previous mutual evaluation of Cabo Verde.

#### **Country Requirements and Decisions**

##### **Risk assessment**

**Criterion 1.1** – Cabo Verde conducted the NRA to identify and assess the level of ML/TF risk each sector of the economy is exposed to. The NRA is aimed to provide useful information to financial institutions and DNFBBs by providing support for the conduct of their own risk assessments. The NRA identified the threats of ML/TF and vulnerabilities affecting the country's AML/CFT system, then analyzed and evaluated the risks and defined the priorities and measures to mitigate the identified risks. The NRA benefited from a very wide participation of public entities with responsibilities in the area of AML/CFT. The private sector also participated in the NRA. The FIU presented the draft NRA Report to the Minister of Justice during the on-site visit. However, it has not yet been submitted for government approval..

**Criterion 1.2** – Article 10(2) of the AML Act provides for enactment of legislation within one hundred and twenty days after the entry into effect of the AML Act to designate the competent authority to coordinate the national response to the risks. However, at the time of the on-site, no such law had been enacted. However, the NRA was coordinated by the FIU, and recommends that a mechanism should be established to, among other things, review and update the NRA by 2020. In this regard, Cabo Verde is yet to formally designate an authority or mechanism to co-ordinate actions to assess risks.

**Criterion 1.3** – Article 10(3) of the AML Act requires that the NRA should be updated, documented and made available to competent authorities and regulatory and supervisory bodies. The NRA is scheduled to be updated in 2020.

**Criterion 1.4** - There is no formal mechanism in place to provide information on the outcomes of the NRA to all relevant AML/CFT stakeholders. However, as the FIU is the entity responsible for disseminating relevant AML/CFT information, the findings of the NRA were communicated to AML/CFT stakeholders at the working groups that participated in the data collection. A summary of the NRA findings is not yet available to the public. A summary of the NRA findings was not available to the public.

## **Risks mitigation**

**Criterion 1.5** – Cabo Verde adopted its NRA report a few days to the on-site visit and is yet to apply a risk-based approach to allocating resources. With regard to implementation, the AML Act requires reporting entities to apply enhanced due diligence measures to distance transactions and especially those that could favour anonymity, transactions carried out with politically exposed persons, to correspondent banking transactions with financial banking institutions established in third countries and to any other transactions designated by the respective sector’s regulatory and supervisory authorities, as long as they are legally authorized to do so (Article 22). The Annex to Notice No. 5 of the BCV provides a list of risk scenarios for which FIs are required to apply enhanced due diligence measures. However, these scenarios are not based on understanding of risks but requirement by law and rules. The Cabo Verdean authorities did not provide examples of risk-based approach being applied in practice for regulated sectors.

**Criterion 1.6 – (Not Applicable)** – There are no exemptions in the application of AML/CFT mechanisms by Cabo Verde for financial institutions and DNFBPs.

**Criterion 1.7** – Article 10(4) and Article (5)(a) and (d) of the AML Law require reporting entities are to have policies, procedures and controls, which should be approved by senior management, to mitigate and manage identified ML risks and to undertake enhanced measures when they identify higher risk situations (Article 10(4) and Article (5)(a) and (d) of the AML Act).

**Criterion 1.8** – Financial institutions are permitted to apply lower risk measures when establishing business relationships or carrying out occasional transactions with or relating to the State, a municipality or a public body of any nature; an entity that provides postal services; public authority or entity subject to transparent accounting practices and subject to supervision; life insurance contracts and pension funds with annual premiums of not more than one hundred and ten thousand escudos; pension schemes and plans that do not contain redemption clauses and cannot be used to guarantee loans or similar schemes for the payment of retirement benefits of employees deducted from wages and do not permit beneficiaries to transfer entitlements (Article 15(7) and (9) of the AML Act. However, the NRA did not identify any low risk that would allow reporting entities to apply simplified CDD measures.

**Criterion 1.9** – Financial institutions and DNFBPs are required to adopt measures to comply with the AML/CFT Act, including the use of RBA (Article 10 (4) of the AML Act). In this context, there is a clear obligation for financial institutions and DNFBPs to identify, assess and understand their ML/TF risks. Only BCV conducted the sector risk assessment in 2016, applying an RBA to two major banks using the Risk Assessment and Control System (SAR). However, the DNFBPs are not supervised in relation to their AML/CFT obligations under R1.

### ***Financial institutions and DNFBPs’ requirements and decisions***

#### ***Risk Assessment***

**Criterion 1.10** – Reporting entities are obliged to identify, assess and understand their ML/TF risks and must take appropriate preventive measures to mitigate identified risks, which involves

the putting in place appropriate internal policies and procedures for risk assessment. (Article 10(4)).

**Criterion 1.10 (a)** – The obligation to assess risk including documenting their respective risk assessment (Article 10(4)(a) of the AML Act).

**Criterion 1.10 (b)** – Reporting entities are obliged to consider all relevant risk factors before determining the global risk level and the adequate risk level and the type of mitigating measures to apply (Article 10 (4) (b) of the AML Act).

**Criterion 1.10 (c)** – There is a requirement for reporting entities to keep their assessments up to date (Article 10 (4) (c) of the AML Act);

**Criterion 1.10 (d)** - Reporting entities are required to have appropriate mechanisms for communicating information on the risk assessment to the authorities and the SRA (Article 10 (4) (a)).

### ***Risks Mitigation***

**Criterion 1.11** - Reporting entities are required to have in controls measures approved by senior management, monitor implementation of the controls and take enhanced measures for higher-risks situation.

**Criterion 1.11 (a)** - Reporting entities are to have policies, procedures and controls, which should be approved by senior management, to mitigate and manage the money laundering risks identified by the reporting entities regarding persons, countries or geographic zones subject thereto in an effective manner and undertake enhanced measures when they identify higher risk situations (Article 10 (5)(a) of the AML Act).

**Criterion 1.11 (b)** – Article 10(5)(f) requires reporting entities to monitor the implementation of the policies, procedures and controls and enhance them whenever necessary.

**Criterion 1.11 (c)** - Reporting entities are required to undertake enhanced measures when they identify situations of higher risk.

**Criterion 1.12** – When situations occur that lead to the identification of lower ML risks, Law no. 120/VIII/2016, of March 24, allows for financial institutions and DNFBPs to apply simplified measures to manage and mitigate risks, except in cases of ML/TF. However, in the absence of any risk analysis demonstrating the existence of situations susceptible to the application of simplified CDD measures in the ML/TF laws and taking account of the outcomes of R26 and R28 and Criteria 1.9 to 1.11 that are not fully complied with, financial institutions and DNFBPs should apply CDD measures, irrespective of any exemption.

### ***Weighting and Conclusion***

Cabo Verde has not designated an authority or mechanism to co-ordinate actions to assess risks in line with Article 10(2) of the AML Act. The country is yet to allocate resources and implement measures based on its understanding of risks ML/TF to prevent or mitigate such risks.

**Recommendation 1 is rated Partially Compliant.**

***Recommendation 2 - National cooperation and coordination***

Cabo Verde's Mutual Evaluation Report (MER), adopted by the GIABA Plenary in November 2008, noted the existence of weak co-operation and coordination between national AML/CFT stakeholders.

**Criterion 2.1** - The NRA that was conducted and submitted for governmental approval, identified the threats and vulnerabilities affecting the country's ML/TF prevention and control system and also analysed and assessed the risks identified and defined the priorities and measures to be taken to mitigate the identified risks. Therefore, the recommendations have not yet been transposed into a policy or co-ordination mechanism responsible for national AML/CFT policies.

**Criterion 2.2** - Article 50(1) of the AML Act mandates the Government to create an inter-ministerial commission with responsibilities to define and determine the coordination of policies in terms of the prevention of and fight against money laundering within one hundred and twenty days after the AML Act enters into effect. However, the Government has not designated an entity or authority to act as coordinator of ML/TF prevention and control policies and strategies.

**Criterion 2.3** - Competent authorities are required by law to cooperate and, when necessary, coordinate among one another within the scope of this Commission, on the operational level and on the level of policy definition, for the development and application of strategies and activities, based on identified risks, aimed at preventing and combating money laundering (Article 50(2) of the AML Act). To date, Cabo Verde does not have an operationalized entity or structure to coordinate AML/CFT policies and strategies that could coordinate cooperation between competent law enforcement authorities and, consequently, the development and implementation of AML/CFT policies and activities. However, the BCV and the FIU have signed a cooperation protocol aimed at strengthening cooperation in terms of ML/TF crime prevention.

**Criterion 2.4** – The CFT Act also covers proliferation financing. However, there is no requirement for competent authorities to have similar co-operation and, where appropriate, co-ordination mechanisms to combat the financing of proliferation of WMD. There is no entity or authority designated to coordinate policies and strategies to combat the proliferation of WMD.

**Weighting and Conclusion**

Cabo Verde has neither designated an authority nor have a co-ordination or other mechanism that is responsible for national AML/CFT policies, as well as similar co-operation and, where appropriate, to combat the financing of proliferation of WMD.

**Recommendation 2 is rated Partially Compliant.**



### **Recommendation 3 - ML Offence**

At the GIABA Plenary in November 2008, when the Cabo Verde MER was approved, deficiencies were detected in the criminalization of money laundering.

**Criterion 3.1** – Cabo Verde has criminalized ML under Article 39(1) to (3) of the AML Act. The provisions adequately cover the conversion, transfer, disguise, concealment, acquisition, receipt, use or possession of property derived from crime. The attempt, instigation and complicity of money laundering is punishable, respectively in Article s 22, 26 and 27 of the Penal Code.

**Criterion 3.2** – The predicate offences for ML cover all serious offences including a wide range of predicate offences. In this regard, Article 2 (2) (a) of the AML Act defines underlying offence to mean any typified illegal act punishable with a prison sentence from which property may constitute the object of ML. Thus, any crime from which property can be obtained qualifies to be a predicate offence of ML, irrespective of nature and punishment and cover all the 21 categories of offences designated by the FATF.

**Criterion 3.3** – Cabo Verde applies an all crimes approach to include a wide range of predicate offences of ML. In this regard, Article 2(o) of the AML Act defines predicate offence (the main offence) to mean a *typified illegal act punishable with a prison sentence from which a good that may constitute the object of an infraction defined in Article 39 (ML) is derived*. Offences that generate proceeds that are liable for confiscation on conviction fall within the category of serious offences in the national laws of Cabo Verde and are punishable by a maximum penalty of more than one year or a minimum penalty of more than six months imprisonment.

**Criterion 3.4** – The ML offence extends to any type of property defined by Article 2(f) of the AML Act to mean material or immaterial, movable or immovable, tangible or intangible, acquired by any means, of legitimate or illegitimate origin, and those documents or legal instruments that attest to ownership or other rights over said assets. These also include such property held by third parties.

**Criterion 3.5** – Under Article 39 (7) of the AML Act, when proving that property is of crime, it is not necessary that the person is convicted of a predicate offence. The prosecution only needs to prove that they are proceeds of crime and the defendant knew or ought to have known the origin of the property.

**Criterion 3.6** – Article 39(4) of the AML Act extends the punishment for the crime of ML to predicate offences that occurred in another country, as long as it is also punishable by the legislation of the place in which it was practiced. The requirement that the conduct should constitute a predicate offence if it occurs domestically is missing.

**Criterion 3.7** – The ML offence applies to persons who commit the predicate offence (Article 39(6)(c) of the AML Act). Cabo Verde provided cases to support this fact.

**Criterion 3.8** – It is possible under the laws of Cabo Verde for the intent and knowledge required to prove the ML offence to be inferred from objective factual circumstances. Anyone who carries out a deed that corresponds to the description of a standard type of crime, such deed being a necessary consequence of his actions, shall be deemed to be acting with wrongful

intent. Also, when a deed that corresponds to the description of a standard type of crime is carried out as a possible consequence of the perpetrator's actions, wrongful intent shall be deemed to exist if the perpetrator's actions were consistent with the carrying out of that deed (Article 13(2) and (3) of the Penal Code).

**Criterion 3.9** – Under Article 39(1) of the AML Act, natural persons who commit the ML offence are liable to four to twelve years imprisonment. The sanctions are aggravated by half of their minimum and maximum limits where the ML offence is committed by a member of a criminal association or group, or where the proceeds are obtained from the commission of drug trafficking, trafficking in persons or prohibited weapons and explosive substances or the defendant is habitual money launderer. The sanctions are higher than those for drug trafficking which attracts two to ten years imprisonment. Thus, the sanctions for ML are proportionate and dissuasive.

**Criterion 3.10** – The AML Act provides for the criminal liability of legal persons and their sanctioning regime under Article 42. Article 43 provides for the modalities of applicable sanctions. The unlawful act imputed to legal persons can determine the various forms of accountability, which are not excluding. Thus, various forms of civil, administrative and criminal sanctions may be concurrent and applied to the perpetrator of the wrongful act. Likewise, the Penal Code establishes the penalties in Article 79 (penalty fine), 80 (dissolution) and 81 (accessory penalties), which may consist of the closure of the establishment, deprivation of the right to subsidy or benefits and deprivation of the right to participate in bids and tenders.

**Criterion 3.11** – There is no express provision creating ancillary offences to the ML offence. However, Article 39(6)(a) of the AML Act applies the same punishment for the ML to persons who attempt, participate in association with or conspire to commit, aid, abet, facilitate, counsel the commission of a ML offence. Such conducts are also criminalized in the Penal Code (Articles 21, 27 and 28).

### ***Weighting and Conclusion***

**Recommendation 3 is rated Compliant.**

### ***Recommendation 4 – Confiscation and provisional measures***

**Criterion 4.1(a)** - Article 48(1)(c) of the AML Act provides for the confiscation of property laundered (object of the violation). This may occur with or without conviction of the suspect/defendant. In Cabo Verde, laundered property is defined in Article 2(f) of the AML Act to include movable and immovable property, rights, securities, values, quantities and any other objects deposited in banks or other credit institutions belonging to the defendant charged with a ML offence or over which he or she exercises actual power.

**Criterion 4.1 (b)** – Proceeds of crime, including income and earnings, compensation, interest, funds or property of commingled with the proceeds of crime or obtained using or in exchange for said proceeds, as well as instrumentalities used in or intended for use in ML or predicate offences are liable for confiscation under Article 48(1)(a) and (c) of the AML Act.

**Criterion 4.1(c)** - With regard to FT, Article 38 of the CFT Act provides for confiscation of property that is the proceeds of, or used in, or intended or allocated for use in the financing of

terrorism, terrorist acts or terrorist organisation. This is possible following a final judgment delivered by a criminal court.

**Criterion 4.1(d)** - Article 48(c) of the AML Act covers the confiscation of property of corresponding value.

**Criterion 4.2 (a)** - The identification and tracking of illicit goods and proceeds of crime are carried out in the course of a financial and property investigation by the Asset Recovery Office (GRA), endowed with powers to seize and freeze assets relating to ML/TF (Law no.18/VIII/2012, of September 13).

**Criterion 4.2 (b)** - Law no. 27/VIII/2013, of January 21, amended and republished through Law 119/VIII/2016, of March 24, states in Article 11 that the freezing is the responsibility of the AG or the Public Prosecutor appointed by him. As for the AML Act, Article 46 (1) empowers judicial authorities to seize immovable or movable property, deeds, titles, values, sums and any others that are the proceeds of crime. Article 243 (1) of the Criminal Procedure Code, establishes provisional measures that are authorized, ordered or validated by the judicial authority: by decision of the judge or the Public Prosecutor.

**Criterion 4.2 (c)** - The Judiciary Police may, by delegation of powers to carry out investigative acts or procedures, namely regarding ML (Article 19 (w) of Law 30/VII/2008, of 21 of July), take measures to prevent or nullify actions that would impair the country's ability to freeze, seize or recover property that is subject to confiscation, when there is urgency (Article 243 (3) of the Criminal Procedure Code).

**Criterion 4.2 (d)** - Pursuant to Article 301 of the Criminal Procedure Code, competent authorities may carry out a set of investigative measures to ascertain the existence of a punishable offence, under direction and responsibility of the AGO, assisted by criminal police agencies. As regards the latter, the criminal investigation law assigns them powers to use special criminal investigation mechanisms, including controlled delivery (Article 169) and use of covert actions (Law no. 30/VII/2008).

**Criterion 4.3** - Proceeds and instrumentalities of crime that have been transferred to a third party can be confiscated to the state, unless the third party proves he or she acquired said goods through the payment of a fair price or in exchange for the provision of services of value equal to that of said property, or based on other well-founded reasons, and that the third party was not aware of the illegal origin of said goods. (Under Article 48(f) of the AML Act). There is no corresponding provision in the CFT Act regarding confiscation of property held by third parties. The Criminal Code also protects third parties in good faith as to the fate of objects of the crime (Article 98 (2)).

**Criterion 4.4** – Law no. 18/VIII/2012, of September 13, provides for the establishment of the Assets Management Office (GAB) to administer the assets or instrumentalities that have been seized, frozen, confiscated or forfeited to the State.

As a corollary of the consecration of management and alienation powers, paragraph 2 of Article 49 of Law no. 38/VII/2009, of April 20, amended and republished by Law no. 120/VIII/2016 provides that such goods may be sold, provided that there is no danger of their re-use in committing crimes, in which case the sales will, of course, not be admissible.

## **Weighting and Conclusion**

**Recommendation 4 is rated Compliant.**

### ***Recommendation 5 - Terrorist financing offence***

Cabo Verde was rated NC on the Special Recommendation II due to the fact that the financing of terrorism, terrorist acts and terrorist groups and organizations were not criminalized in accordance with Article 2 of the United Nations Convention on the Suppression of Terrorist Financing. Law no. 27/VIII/2013, dated January 21, amended and republished by Law No. 119/VIII/2016, of March 24 criminalises TF offences in line with the Article 2 of the TF Convention.

**Criterion 5.1** – Article 7(1) of the CFT Act criminalises the direct or indirect, provision, collection, holding or management of funds or goods of any kind, as well as products or rights liable to be transformed into funds, with the intention of their being used or knowing that they may be used, totally or partially, in the planning, preparation or practicing of terrorist acts or for any purpose. This offence applies to both natural and legal persons.

**Criterion 5.2** – The TF offence extends to anyone who promotes or funds a terrorist group, organization or association (Article 3(2) of the CFT Act ). and even without link to a terrorist act or acts.

**Criterion 5.2 bis** - It is an offence under Article 7(3) of the CFT Act for a national or foreign citizen within the Cabo Verdean territory to make available or collect funds with the intention or knowledge that the funds are to be used to finance travel by individuals to a third country other than his or her country of residence or citizenship with the objective of perpetrating, planning, preparing or participating in terrorist acts, or providing or receiving terrorist training. This offence attracts a prison term of eight to fifteen years.

**Criterion 5.3** – Article 2 (h) of Law 27/VIII/2013 defines "funds" to mean assets of any kind, whether tangible or intangible, movable or immovable, and whatever their mode of acquisition. Thus, there is no other normative provision that distinguishes between funds or other assets of legitimate or illegitimate sources used to commit terrorist offences.

**Criterion 5.4** – For an action to constitute a TF offence, it is not necessary for the funds to have come from third parties or to have been delivered to their intended recipient, or to have been effectively used to commit the acts for which they were intended (Article 7(2) of the CFT Act).

**Criterion 5.5** – It is possible under the laws of Cabo Verde for the intent and knowledge required to prove the TF offence to be inferred from objective factual circumstances. Article 13(2) and (3) of the Penal Code provides that anyone who carries out a deed that corresponds to the description of a standard type of crime, such deed being a necessary consequence of his actions, shall be deemed to be acting with wrongful intent. Also, when a deed that corresponds to the description of a standard type of crime is carried out as a possible consequence of the

perpetrator's actions, wrongful intent will be deemed to exist if the perpetrator's actions were consistent with the carrying out of that deed.

**Criterion 5.6** – The penalties for natural persons who commit the TF offence ranges from 8 to fifteen years imprisonment. This penalty also applies to the ancillary offences of attempt, conspiracy, aiding and abetting. The minimum or maximum penalties may be increased by one third if the offender commits the TF offence in a habitual manner, does so in exercise of a professional activity or is a repeat offender, including offences committed abroad. (Article 7(1), (4), (5), (7)(a) &(b).

Under Article 8 of the CFT Act, natural persons convicted of the TF offence may also be: prohibited from entering Cabo Verde for a period of ten years (the case foreign nationals), prohibited from leaving Cabo Verde and their passports retained for two years (Cabo Verdeans). Convicted natural persons may also be prohibited from exercising their civil and political rights for two years; driving land, sea and air motor vehicles and the retention of authorisation or licence for five to ten years; exercising the profession or activity through which the TF offence was committed and from public employment, as well as possessing or transporting a weapon from five to ten years.

Pursuant to Article 7(6) of the CFT Act, the sentence may be reduced if the offender voluntarily abandons his or her activity, eliminates or considerably reduces the danger caused or assists in a concrete manner in gathering evidence that assists in the identification or arrest of the other offender.

The structure of incrimination presented for the set of sanctions of each crime and applicable sanctions appear to be proportionate and dissuasive.

**Criterion 5.7** – Legal persons may be criminally liable for the TF offence. Under the terms of Article 36 (3)(5) of the CFT Act, the penalty structure provides for sanctions imposed on legal persons (fines and dissolution) and ancillary penalties (temporary ban on the exercise of an activity, deprivation of the right to subsidies or grants provided by public entities or services and the publicity of the conviction). In order to fulfil the sanctioning purposes, evidently taking as reference the imputation of the unlawful facts committed by the bodies and representatives of the legal person, the TF law did not fail to consider, under the terms of Article 36 (2), even to avoid unjustified impunity, the individual responsibility of their agents.

**Criterion 5.8 (a)** - The punitive structure built around the financing of terrorism recognizes the attempt in the FT. By virtue of Article 42 of the CFT Act, the Criminal Code rules are applicable. Therefore, Article 22 (1) of the Criminal Code provides that the attempt is punishable when the respective consummated crime equals to a sentence of more than three years imprisonment.

**Criterion 5.8 (b)** – Under Article 7 (5) of the CFT, it is an offence to participate as an accomplice in a TF offence.

**Criterion 5.8 (c)** - Any natural or legal person who by any means, directly or indirectly, provides, collects, holds or manages funds or goods of any kind, as well as products or rights liable to be transformed into funds, with the intention of their being used or knowing that they may be used, totally or partially, in the planning, preparation or practicing of terrorist acts

(article 7(1) of the CFT Act). In addition, article 7(5) provides that anyone who participates as an accomplice in, organizes or orders someone to carry out terrorism financing, or contributes to the practice of acts typifying terrorism financing shall be punished with a prison term of between eight and fifteen years. Intangible assistance described in this provision includes organising or directing someone to operate an account.

**Criterion 5.8 (d)** - The specific criminalization of the contribution to TF offences (or attempted offences) by a group with common objectives is provided for in Article 7 (7 (e) (d) of the CFT Act.

**Criterion 5.9** - Cabo Verde applies an all crimes approach. In this regard, TF falls within the definition of predicate offences of ML as defined in Article 1 (o) of the AML Act.

**Criterion 5.10** – There is no provision that the TF offence should apply whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located, or the terrorist act(s) occurred/will occur. However, Article 37 of the CFT applies the TF offence to acts committed outside of the national territory where the person alleged to have committed the offence(s) is in Cabo Verde and cannot be extradited.

### **Weighting and Conclusion**

Cabo Verde has met a very significant number of criteria. However, the absence of a provision that the TF offence should apply whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur in the light of the provision that the country will exercise jurisdiction over acts committed outside of national territory where the person alleged to have committed the offence(s) is in Cabo Verde and cannot be extradited, limits the country's ability to exercise effective jurisdiction over TF offences committed abroad.

**Recommendation 5 is rated Largely Compliant.**

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

Cabo Verde was rated NC on the old Special Recommendation III because the authorities of Cabo Verde did not demonstrate that the UN Security Council Resolutions 1267 and 1373, although technically applicable within the jurisdiction, were effectively implemented. Also, the provisions in the Penal Code and Penal Procedure Code did not provide for effective and immediate freezing, seizure and confiscation of goods, funds, assets and property of designated persons, terrorists, those who finance terrorism or terrorist organizations. There was no obligation on financial entities or others to monitor and report accounts or other property of designated persons.

Cabo Verde has adopted a CFT Act to address the identified deficiencies. Another very important change introduced in this new wording is the List of designated persons and entities, in accordance with Resolutions 1267 (1999); 1988 (2011), UNSC Resolution 1373 (2001) and Resolution 1718 (2006) and the legal enactment of offences provided for in the normative

provisions of Article s 8 and 17 of Law 27/VIII/2013, of January 21, through Law 119/VIII/2016, of March 24. In addition, the direct applicability of UNSCR 1267/1989 and 1988 is done based on the provisions of Article 12 (4) of Constitutional Law No. 1/VII/2010 of May 3, states that *the rules and principles of general or common as well as of conventional international law duly validly approved or ratified shall prevail, after their entry into force in the international and domestic legal orders, over all legislative and domestic regulatory acts of infra-constitutional force.*

### ***Identification and Designation***

**Criterion 6.1 (a)** – Cabo Verde has not identified a competent authority or a court as having responsibility for proposing persons or entities to the 1267/1989 and 1988 Committees for designation.

**Criterion 6.1 (b)** - Cabo Verde does not have a mechanism(s) for identifying targets for designation, based on the designation criteria set out in the United Nations Security Council resolutions (UNSCRs) 1267/1989 and 1988.

**Criterion 6.1 (c)** - There is no requirement to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether or not to make a proposal for designation under UNSCRs 1267/1989 and 1988. Such proposals for designations should not be conditional upon the existence of a criminal proceeding.

**Criterion 6.1 (d)** - There is no indication that Cabo Verde follows the procedures and (in the case of UN Sanctions Regimes) standard forms for listing, as adopted by the relevant committee (the 1267/1989 Committee or 1988 Committee).

**Criterion 6.1 (e)** - There is no requirement to provide as much relevant information as possible on the proposed name; a statement of case which contains as much detail as possible on the basis for the listing; and (in the case of proposing names to the 1267/1989 Committee), specify whether their status as a designating state may be made known.

**Criterion 6.2 (a)** - The AG is the national competent authority for designations and considering foreign applications relating to Resolution 1373 (2001) (Article 23 of the CFT Act).

**Criterion 6.2 (b)** - Cabo Verde has no mechanism(s) for identifying targets for designation, based on the designation criteria set out in UNSCR 1373. However, Article 22 enjoins competent authorities with national and international peace-keeping, security and anti-terrorism functions, the FIU, regulatory and supervisory entities, under the CFT Act, competent authorities for designation in other jurisdictions and the UN Security Council Sanctions Committees to submit designation requests to the AG. The requests should contain, at least, the following information: The request for designation should include detailed reason for the designation, information on the identification of the designated persons and entities, the restrictive measure applicable to the designated person or entity and the necessary relevant documentation in support of the request.

**Criterion 6.2 (c)** - There is no provision to make a prompt determination of whether it is satisfied, according to applicable (supra-) national principles that the request is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee

meets the criteria for designation in UNSCR 1373. Cabo Verde has not made a designation under UNSCR 1373 to enable the Assessors to ascertain whether such determination was prompt.

**Criterion 6.2 (d)** - There is no requirement to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether or not to make a designation. In addition, there is no express provision that proposals for designations should not be conditional upon the existence of a criminal proceeding. Cabo Verde has not decided on a designation to enable Assessors to determine the evidentiary standard of proof and the conditions for doing so.

**Criterion 6.2 (e)** - There is no provision covering this criterion.

**Criterion 6.3 (a)** - The AG has legal authority under Article 19(7) of the CFT Act to request for information from any public or private entity for purposes of identifying persons and entities. The CFT Act does not state that the request will be based on reasonable grounds, or a reasonable basis for suspicion or belief.

**Criterion 6.3 (b)** - There is no express provision to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered. However, Article 24 requires the AG to notify the designated persons or entities about the designation and the reasons justifying the designation after deciding on the designation and updating the List of designated persons and entities. Cabo Verde has not undertaken a designation process to enable the Assessors to ascertain whether the authorities operate *ex parte* when considering a designation.

**Criterion 6.4** - Legal provisions exist that enable Cabo Verde to implement TFS without delay. The AG is to notify the public about designations and removal from the List within the shortest possible timeframe by electronic mail, FAX, mail, personally or by telephone. Notification by telephone is to be followed by confirmation in writing (Article 19(3) and (5) of the CFT Act. Article 11 (3) of the CFT Act requires that the decision to freeze should be communicated to reporting entities without delay. Update and re-publication of the List of designated persons or entities is to occur within two business days following publication in the Official Gazette of the decision determining the designation (Article 24 of the CFT Act). Reporting entities are required to freeze funds within twenty-four hours of receipt of the notification of the AG or the Magistrate appointed by the AG (Article 19(6) of the CFT Act. In addition, all persons, including FIs and DNFBPs are obliged to follow all changes made to the Sanctions List and to freeze the funds of designated persons without delay. Changes and updates to the Lists are to take effect as soon as they are posted on the Internet. At the time of the on-site, Cabo Verde had not applied these provisions to enable the Assessors to determine whether Cabo Verde implements TFS without delay.

**Criterion 6.5 (a)** - Reporting entities are required to freeze funds of designated persons and entities within twenty four hours after receiving the notification from the AG of the Republic or the Public Ministry Magistrate designated by the AG.

**Criterion 6.5 (b)** - Article 2 of the CFT Act defines “funds” to mean assets of any type, material or immaterial, mobile or immobile, no matter how they have been acquired, and legal documents or instruments in any form, including electronic or digital, providing evidence of



ownership of or interest in such goods, including but not limited to bank loans, payment orders, shares, treasury bills, bonds, bills of exchange and letters of credit. The CFT Act also make references to economic resources of designated persons. However, there is no express provision covering funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

**Criterion 6.5 (c)** - Article 19 (8) prohibits national citizens or persons or entities in the national territory from making funds and assets available to persons or entities suspected of being involved in terrorist activities or in financing groups, associations, organizations or terrorist acts. Establishment and maintenance of legal relationships of economic nature with designated persons and entities are also prohibited (Article 16(10) of the CFT Act. The provisions do not cover persons and entities acting on behalf of, or at the direction of, designated persons or entities. Although the CFT Act provides for exemptions to ensure that the basic needs of the designated persons or entities are met, as well as communication of the exemption decision to regulatory and supervisory entities (Article s 28(1) and 29(4)(c)), there is no corresponding provision for licensing, authority or notification to reporting entities to make funds or other assets, economic resources, or financial or other related services available to designated persons in accordance with the relevant UNSCRs.

**Criterion 6.5 (d)** - The freezing decision to freeze is to be communicated to reporting entities either directly or through the respective supervisory, oversight or inspection authorities Article 11 (3) and 19(4), on the internet sites of the Government of Cabo Verde and the BCV (Article 19(1) of the CFT Act) and by electronic mail, FAX, mail, personally or by telephone (Article 19(5) of the CFT Act). The communication mechanisms provided for in these provisions allow for the rapid dissemination of information to FIs and DNFBPs.

**Criterion 6.5 (e)** - There is no requirement for financial institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions.

**Criterion 6.5 (f)** - There are no legal measures in the CFT Act which protect the rights of *bona fide* third parties acting in good faith.

**Criterion 6.6 (a)** - There are mechanisms for de-listing and de-freezing funds and other assets of persons and entities that do not meet the designation criteria. Under the terms of Article 25 of the CFT, the designated person or entity may submit a duly substantiated request to the AG for removal from the list. The content of the request must include: all identifying particulars in the list on which the applicant is designated; the reason for the designation; the restrictive measures which have been applied; the reasons why the designated person or entity requests the removal from the list and the cessation of the application of the restrictive measures (Article 26).

**Criterion 6.6 - (b)** Delisting may be processed based on proven error of identity (false positive), significant alteration of facts, emergence of new evidence, death of the designated person, liquidation of a designated entity, where the act on which the designation was made is no longer in effect, and other factors based on which the designation criteria and conditions are no longer fulfilled.

**Criterion 6.6 (c)** - Article 27(1) of the CFT Act mandates the AG to review the List of designated persons and entities to determine if there are indications that the designees no longer meet the criteria for designation.

**Criterion 6.6 (d)** - Information is not publicly available with an explanation of how the country meets the established requirements.

**Criterion 6.6 (e)** - Information is not publicly available with an explanation of how the country meets the established requirements.

**Criterion 6.6 (f)** - Information is available with the explanation of how the country meets the established requirements. Thus, and under the terms of Article 26 (d) (i), one of the publicly known procedures consists in submitting the request with content on the proven error of identification.

**Criterion 6.6 (g)** - Decisions to de-list and unfreeze taken in accordance with the procedures set forth in the CFT are published (Article 19 (3)) and communicated to IFS and DNFbps.

**Criterion 6.7** - Article 35 provides for procedures to authorize access to frozen funds or other assets that have been determined to be necessary to meet the basic needs of the individuals concerned and their dependents, including payments for food, rent or mortgages, medication or medical treatment, taxes, premiums and utility bills.

### **Weighting and Conclusion**

Cabo Verde has adopted national mechanisms that complement supranational mechanisms to implement the TFS. United Nations designations are applied directly in Cabo Verde, without the need for domestication. The country has legislation that allows it to make designations and freezes, although it has not yet made any designations or received any requests for designations.

**Recommendation 6 is rated Partially Compliant.**

### ***Recommendation 7 - Targeted financial sanctions related to proliferation***

**Criterion 7.1** - Article 12 (3) of the Constitutional Law No. 1/VII/2010 of 3 May, establishes that “Legal acts emanating from the competent bodies of supranational organizations to which Cabo Verde is a party shall have direct effect in the domestic legal order, provided that it is established in the respective constitutive conventions”.

This way, the Constitution of the Republic establishes the direct applicability of UNSC Resolutions. Thus, the legal basis for the implementation of Security Council Resolutions regarding the financing of the proliferation of WMD has been established in Law 27/VIII / 2013, of January 21, amended and republished through Law 119/VIII/2016 of March 24. Thus, under the CFT, the implementation of targeted financial sanctions related to the prevention, suppression and disruption of the proliferation of WMD and their financing directly without delay by competent national authorities responsible for the implementation and application of TFS.

**Criterion 7.2** - The Attorney-General of the Republic or by the Magistrate appointed by the AG, together with supervisory authorities, is responsible for implementing and enforcing TFS in accordance with the procedures specified in the CFT Act.

**Criterion 7.2 (a)** - Article 19(6) of the CFT Act requires reporting entities to freeze the funds of designated persons and entities within twenty four hours after receiving the notification from the AG of the Republic or the Public Ministry Magistrate designated by the AG. There is no requirement in the CFT Act that such freezing should be without prior notice to designated persons and entities. In addition, the requirement is restricted to reporting entities and does not extend to “all natural and legal persons”.

**Criterion 7.2 (b)** - See c.6.5 (b). The freezing obligation under the CFT Act does not apply to the full range of funds or other assets, as provided for under the relevant UNSCRs. Specifically, there is no express provision covering funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

**Criterion 7.2 (c)** - Cabo Verde prohibits all persons from making funds or other economic resources available to persons or entities designated under UNSCR (Article 19 (8)).

**Criterion 7.2 (d)** - The mechanisms described in criterion 6.5 (d) apply to designations that should be reported to FIs and DNFBPs.

**Criterion 7.2 (e)** - There is no requirement for financial institutions and DNFBPs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs, including attempted transactions. The obligation to report relates to cases in which reporting entities have come across or controlled funds or economic resources in the possession of or held by designated persons or entities, during a period of six months prior to the entry into force of the CFT Act.

**Criterion 7.2 (f)** - As noted in c.6.5 (f), the rights of bona fide third parties are not protected.

**Criterion 7.3** – Cabo Verde has not adopted specific measures for monitoring and ensuring compliance by FIs and DNFBPs with the provisions of CFT Act governing the obligations under Recommendation 7. However, Article 14(c) of the CFT Act enjoins regulatory and supervisory authorities to inform the AG of failure by reporting entities for comply with their obligations under the CFT Act (this includes non-compliance with obligations under Recommendation 7. Failure to comply with the provisions of the CFT relating to PF attract sanctions ranging from a term of imprisonment from one to five years or a fine of up to 500 days (Article s 15 and 16 of the CFT Act). In addition to the principal penalty, the offender is subject to ancillary penalties, provided for under Article 17.

**Criterion 7.4 (a)** - Designated persons and entities that wish to petition the Focal Point for de-listing are required to submit written requests to the AG (Article 25(2)). The contents of the request for de-listing are specified in Article 26 of the CFT Act. The AG is to refer the [request] to the “national entity responsible for the submission of international requests to the competent international body within fifteen days.....” (Article 25(2) and (7)). Article 2(c) of the CFT Act defines competent authority to mean the AG of the Republic or designated Magistrate of the Public Ministry as the competent authority for designation. The AG has power under Article 20(c) to receive and refer requests for revision. Thus, it is not clear who “the national entity

responsible for the submission of international requests” indicated in Article 25(7) of the CFT Act refers to.

**Criterion 7.4 (b)** - Proven error of identification is one of the reasons for which a designated person or entity may make a request to unfreeze funds or other assets (Article 26(d)(i) of the CFT Act). The CFT Act does not provide for procedures for verification or proving errors.

**Criterion 7.4 (c)** - There are specific provisions to authorize access to funds or other assets where competent authorities have determined that the exemption conditions set out in UNSCR 1718 and UNSCR 1737 are met and in line with the procedures laid down in said Resolutions (Article s 28(6) and 29 of the CFT Act).

**Criterion 7.4 (d)** - By virtue of Article 27 (6) that directs to apply Article 24, the decision to remove from the lists and to unfreeze are communicated to FIs and DNFBPs, through electronic mail, fax, mail, in person, or by telephone.

**Criterion 7.5 (a)** - There is no provision in the CFT Act covering this requirement. The Cabo Verdean authorities will rely on the provisions of Resolutions 1718 and 1737 on the basis of Article 12(1) of the Cabo Verdean Constitution. Cabo Verde has not implemented these provisions.

**Criterion 7.5 (b)** – Article 28(1) and (5)(a) of the CFT Act envisages the possibility permitting a designated person or entity to make contractual payments from frozen funds based on well-founded reasons and in accordance with conditions specified in international acts, including UNSCRs. However, Cabo Verde has not applied this provision.

### **Weighting and Conclusion**

Cabo Verde does not have express provision covering funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. The CFT Act does not oblige reporting entities to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements, including attempted transactions, of the relevant UNSCRs. The CFT Act does not provide for protection of the rights of *bona fide* third parties acting in good faith. The country has not adopted specific measures for monitoring and ensuring compliance by reporting entities with their obligations under Recommendation 7.

The absence of a provision in the CFT Act highlighted in relation to criterion 7.5 (a) does not affect the compliance of the CFT Act on this criterion. However, the legislation should be clear enough to permit the addition to frozen accounts pursuant to resolutions 1718 and 1737 of interest or other earnings due to designated persons, just as it does in respect to payments due under contracts or obligations entered into before the date of designation and, consequently, of the freezing.

**Recommendation 7 is rated Largely Compliant.**

### ***Recommendation 8 - Non-Profit Organizations***

Cabo Verde was rated NC because the country had not undertaken a specific review of NPOs to enable the assessors to verify whether or not there was any vulnerability that would allow misuse of NPOs in FT and ML and instituted measures to prevent and address threats. The republication of Law 38/VII/2009 brought some new features, namely the definition of a non-profit organisation and considered subjected entities and with specific duties (Definition Article 2 (s), as a subjected entity Article 4 and 7 (2)(h) and duties Article 35).

**Criterion 8.1 (a)** - There are no specific legal provisions requiring the country to identify which subset of organisations in Cabo Verde fall within the FATF’s definition of NPOs. Cabo Verde has not identified the subset of organizations covered by the FATF definition of NPOs. The Cabo Verdean authorities have not identified the characteristics and types of non-profit organizations that, by virtue of their activities, may be at risk of TF abuse.

**Criterion 8.1 (b)** - Cabo Verde has not identified the nature of the threats posed by terrorist entities to at risk NPOs and how terrorist actors abuse the NPOs. In evaluating national risks, the NRA (October 2017) points out that the findings of the *“Diagnostic Study of NGOs in Cabo Verde”* indicated some weaknesses that may constitute a stimulus to perpetrating corruption and ML crimes. It also points out that a considerable number of NGOs still resort to financing through donations from natural persons through "peddling" and / or "fundraising dinners", ways that could favour crime if there is no effective control, since a considerable number of these organizations do not have organized accounts or reporting.

**Criterion 8.1 (c)** – Cabo Verde has not reviewed the adequacy of measures, including laws and regulations that relate to the sub-set of the NPOs sector that can be abused for TF support to be able to take proportionate and effective actions to address the risks identified.

**Criterion 8.1 (d)** - The NRA points out that the most significant vulnerability identified relates to customs and border control. By air, due to some difficulty in controlling eventual money couriers and, by sea, given the country’s insular characteristics and geographical location. There were some financial operations reported to the FIU regarding transfers through formal funds remittance systems, which could potentially have terrorist financing activities as a matrix. These communications were analyzed and disseminated to the AGO. It also considers that another vulnerability factor is the international remittance of values between Cabo Verde and countries and territories considered to be at risk according to international regulations, due to the difficulty in regular identification of the end-beneficiary.

Cabo Verdean authorities did not provide any further information to demonstrate that they periodically reassess the NPO sector by reviewing new information on the sector’s potential vulnerabilities to terrorist activities to ensure effective implementation of measures. Cabo Verde does not have a risk-based approach to supervision of NPOs in relation to terrorist financing issues.

**Criterion 8.2 (a)** - Article 35 (1) (a) and (b) of the AML Act require NPOs to produce annuals report whenever there is an alteration in the object and purpose of their activities identify the members of the board of directors and the directors, and disseminate financial statements, including expenses and revenues, in the official gazette or within the framework of legal announcements.

Civil society organizations are obliged to perform their duties in order to be recognized as NPOs, namely to have their statutes approved in GA and published in the official gazette, as well as the composition of the corporate bodies elected under statutory terms (Law no. 25/VI/2003 of July 21).

**Criterion 8.2 (b)** - The Cabo Verdean authorities have organised outreach meetings for non-profit organizations and the donor community to raise awareness on the potential vulnerabilities of NPOs to abuse of terrorist financing and the measures that NPOs can take to protect themselves against such abuse .

**Criterion 8.2 (c)** - The FIU met with supervisory entities to disseminate the AML and CFT Acts following their amendment and republication. Cabo Verde did not provide information that points to working with NPOs to develop and improve best practices for dealing with TF risks and vulnerabilities. There is also no information on meetings with the supervisory authority of NPOs (NGO Platform) focused on the risk of TF abuse or monitoring of NPOs.

**Criterion 8.2 (d)** - Persons who engage in professional or business activities are obliged by tax laws to own and operate bank accounts and are punishable with fines from fifty thousand to one million escudos for non-compliance (Decree-Law no3/2014 of October 29. Receipts and payments that are not made through bank accounts are punishable by fines from thirty thousand escudos (\$30,000.00) to seven hundred and fifty thousand escudos (\$750,000.00) (Law47/VIII/2013 of December 20). The NRA makes recommendations to improve the effectiveness of border control of the physical transport of cash and international transfers of securities to prevent their misuse in TF-related activities. The recommendations have not yet been transposed into a national AML/CFT policy.

**Criterion 8.3** - The NRA makes recommendations aimed at carrying out the supervision and oversight of reporting entities in relation to TF. The recommendations have not yet been transposed into a national AML/CFT policy. Cabo Verde did not conduct a risk assessment of the characteristics and types of NPOs that may be vulnerable to TF abuse and therefore did not take steps to promote a risk-based approach to supervise or monitor NPOs that may be at risk of TF abuse.

Civil society organizations are required to comply with their duties in order to be recognized as NPOs, namely to have the statutes approved in a General Assembly and published in the official gazette....., statutes published and provide the composition of statutory bodies elected under statutory terms (Law no. 25/VI/ 2003 of July 21).

NPOs are required to register under Decree no.108/87 of 27 October. NPOs are also required to provide information on their board members and the objectives of the fund or institution and foundations (Article 35 (6) of the CFT Act). However, existing regulatory measures are not based on the identified risk of TF abuse.

**Criterion 8.4. - (a)** - The NGO Platform is the designated competent authority responsible for monitoring or supervising NPOs in relation to AML/CFT matters (Article 5 (i) of the AML Act). However, the NGOs Platform is not monitoring the NPOs for compliance of with the requirements of R.8, including risk-based measures applied to them (see c.8.3).

**Criterion 8.4. - (b)** - Article 7(6) of the AML Act, empowers the NGOs Platform to apply sanctions to NPOs for violations of AML obligations. The sanctions are to include cancellation, restriction or suspension of authorisation. However, the authorities of Cabo Verde did not provide any information on the application of appropriate or proportionate measures to sanction violations committed by persons acting on behalf of NPOs.

**Criterion 8.5. - (a)** - With regard to the collection of information and investigation of non-profit organizations, Article 35(4) of the AML ACT establishes mechanisms for cooperation and information sharing for the FIU and Judicial Authorities. NPOs are required to maintain all records on the identity of persons providing or receiving funds (Article 35 (4) of the AML Act) for a period of seven (7) years. Also, since NPOs are subject to registration under Decree no. 108/87, dated October 27, and still subject to providing information about its board members and the objectives of the fund or institution, such as foundations (Article 35 (6)) and, finally, subject to supervision (Article 5 (i) of the AML Act), the collection of information and investigations of NPOs can be done based on the consultation of such data.

The authorities of Cabo Verde provided information that NGOs are taxed. Thus, the authorities may also collect information acquired by the General Directorate of Contributions and Taxes in the exercise of their functions regarding NPOs fiscal obligations. The NRA points to a case of information sharing, where some financial operations were identified and communicated to the FIU regarding transfers through the formal remittance systems, which could potentially have terrorist financing activities as matrix. These communications were analyzed and disseminated to the AGO.

**Criterion 8.5. - (b)** - The Public Ministry (AGs Office), as the prosecutor, has the power to open inquiries and order the investigation of any crime, including terrorism and its financing, whenever there are suspicions, including suspicions of TF raised by or regarding an NPO. In doing so, the Public Ministry may be assisted by the Criminal Police Organs, specifically the Judiciary Police. In the context of TF investigations, the Public Ministry has legally established powers to request information from any public or private entity, including NPOs. The NRA points to a case of information sharing and opening of investigation by the Public Prosecutor's Office. Some financial transactions regarding transfers through the formal remittance systems which were suspected to relate terrorist financing and STRs were submitted to the FIU. The FIU analyzed the STRs and disseminated the intelligence gathered from them to the AG's Office.

**Criterion 8.5. - (c)** Judicial authorities have access to information on the administration and management of NPOs, since the relevant information is publicly stored and easily accessible. This includes access to property registry, board composition, and financial statements (AML ACT Article 35).

**Criterion 8.5. - (d)** - The authorities of Cabo Verdean provided information that they have implemented a framework at national level to ensure that information is shared among authorities (see 8.5a-c). The NRA points to a case of information sharing and opening of the investigation by the Public Prosecutor's Office, which identified some financial transactions, communicated them to the FIU, regarding transfers through formal funds remittance systems, which could potentially involve financing of terrorism activities. These communications were analysed and disseminated to the AG. In this context, the authorities mentioned that the

information is not limited only to situations where there is suspicion or reasonable grounds to suspect that an NPO is involved in FT-related activities.

**Criterion 8.6** - The law does not establish specific regulatory provisions for requests for information concerning NPOs that are suspects of TF or other forms of terrorist support. In general terms, and under Article 20 of Law no. 89 / VII / 2011, of February 14 and Article 21 (1) of Law no. 6/VIII/2011, of August 29, the AG's Office is the designated central authority for international cooperation in criminal matters.

### **Weighting and Conclusion**

The Authorities of Cabo Verde have not carried out a comprehensive review of the non-profit sector to adequately identify at risk NPOs, the nature of threats posed by terrorist entities to NPOs in the country and how terrorist actors abuse those NPOs. The authorities do not monitor the compliance of NPOs with the requirements of R.8, including the risk-based measures applied to them (see c.8.3).

**Recommendation 8 is rated Partially Compliant.**

### ***Recommendation 9 – Financial institutions secrecy laws***

In the 2007 MER, the former Recommendation 4 was rated partially compliant due to the fact that IFIs (currently designated by RACI - Restricted Authorization Credit Institution) had stricter banking secrecy obligation than the national institutions, which could inhibit the implementation of ML preventive measures.

Currently, with the Financial System Basic Law (FSBL), Law n° 61/VIII/2014, of April 23, which revoked Decree-Law no. 12/2005, of February 7 (modified by Decree-Law no. 44/2005, of June 27), RACIs are subject to the same secrecy requirements as national FIs (see Article 32 of the FSBL), as well as the same exceptions to the confidentiality listed in Article 33 of the FSBL, especially with regard to the BCV, within the scope of its functions, under the terms of the criminal and procedural law and under the terms of another legal provision that expressly permits it (see sub-paragraphs a), g) and h) of this legal provision).

The AML and CFT Acts have overridden secrecy laws to facilitate implementation of the FATF Recommendations.

**Criterion 9.1** - Article 38 (1) of the AML Act overrides confidentiality restrictions on provision of information or collaboration for those who have provided such information or collaboration or for the institution to which they are connected. In this regard, all FIs are required to promptly provide to a Judge and the Public Prosecutor, when they order or request it, all information, documents, objects or assets that may derive from criminal activity which are in their possession, to be frozen or seized and which are necessary for the investigation of the case for money laundering or terrorist financing crimes (Article 46 of BCV Notice No 05/09 / 2017).

The laws of Cabo Verde do not prohibit the sharing of information between competent authorities concerning the investigation and cases relating to ML/TF. Information can be shared



with both national and foreign counterpart authorities performing equivalent functions, as well as with other competent authorities (Article s 6(2)(i) and (k) of the AML Act & Article 33 of the CFT Act).

The laws of Cabo Verde do not prohibit the sharing of information between counterpart institutions for purposes of preventing ML. This should be based on memorandum of understanding or as long as reciprocity is practiced in AML matters (Article 33(5) of the AML Act).

## **Weighting and Conclusion**

**Recommendation 9 is rated Compliant.**

### ***Recommendation 10 - Customer Due Diligence (CDD)***

Cabo Verde was rated non compliant on the old Recommendation 5 due to absence of legal obligation for institutions to determine whether a customer is acting on behalf of another, deficiencies on identification requirements for legal persons, absence of legal obligation to obtain information about the object and nature of the business relationship, absence of legal obligation for continuous monitoring or continuous updating of CDD data, inadequate CDD requirements applied to trusts and non-requirement of financial institutions to apply CDD measures to customers whose relationship with FIs predate the 2002 AML Act, depending on the level of and risk and materiality.

With regard to preventive measures relating to TF (including CDD), Article 39 of the CFT Act states that “the money laundering prevention and repression regime outlined in the law is applicable, with the due adaptations, to the violations outlined in Article s 3 to 7 of the present law”. It is not clear as to which law is being referred to by Article 39 and the relevant areas where the due adaptations will be made. Considering the fact that *the inherent risk associated with the financing of terrorism in the banking sector is high compared to the other sectors because of the existence of correspondence and international transfers, given the cross-border nature of its transactions*<sup>16</sup> Assessors did not give the full rating to the criterion where TF is specifically mentioned.

With the promulgation of Law 38/VII/2009, of April 27 (as amended by Law No. 120/VIII/2016, of March 24) and the entry into force of the law, several due diligence and risk management measures are now required for both new and existing customers, as well as legal arrangements (previously referred to as Trusts) constituted under foreign law or similar legal arrangements.

Article 31 of the FSBL also addresses the obligation to identify the counterpart - Proceed to complete identification of its counterparts; Record these identities; and c) Keep these records in good order, so that the BCV can easily be consult these records - and FIs are prohibited from undertaking transactions in names that obscure the true identity of the counterpart or that may create confusion.

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<sup>16</sup> Paragraph ... of the NRA Report 2017.

**Criterion 10.1.** - Article 12(3) of the AML Act prohibits FIs from maintaining business relationships or carrying out transactions with individuals or legal persons that have not been duly identified. In particular, the opening, contracting or maintenance of accounts, assets or instruments numbered, encrypted, anonymous or with fictitious names is prohibited.

**Criterion 10.2** - FIs are obliged by Article 12(2) of the AML Act to identify their regular or occasional customers and verify their identities, the identity of the beneficiary, founder, administrator or other person with effective control of the trust funds whenever they establish business relationships. Specifically, FIs are to undertake these obligations when

- a) they intend to open an account or establish a business relationship with the customer;
- b) they carry out occasional transactions of 1,000,000\$ (one million escudos) or more, irrespective of whether the transaction is made through a single transaction or several apparently related transactions;
- c) they carry out national or international transfers of an amount equal to or greater than 1,000,000\$ (one million escudos) on behalf of a customer;
- d) there is suspicion that transactions, regardless of their value, may be related to ML offences, taking account of their nature, complexity, atypical character in relation to the customer's profile or activity, amounts involved, frequency, place of origin and destination, economic and financial situation of the stakeholders or means of payment used; or
- e) there are doubts about the accuracy or adequacy of customer identification data previously obtained.

**Criterion 10.3** - AML Article s 12, 13 and 14 provide for the obligation to identify and verify the identity of customers (occasional or regular), as well as their required procedures and elements.

**Criterion 10.4** - Article 12 (7) of the AML Act requires FIs to also verify that representatives of customer are legally entitled to act on their behalf.

**Criterion 10.5** - There is no requirement for FIs to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that FI are satisfied that they know the beneficial owner.

**Criterion 10.6** - Article 15(1)(c) and 15 (6)(a) and of the AML Act require FIs to understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship, respectively. Criterion 10.7(a) (**Met**) Article 15(1)(d) of the AML Act requires FIs to maintain on-going diligence on business relations and closely examine the transactions carried out during the course thereof, in order to ensure that these transactions are consistent with the knowledge the institution has of the customer, its business dealings and its risk profile, including, if necessary, its business dealings and risk profile, including, if necessary, the source the funds.

**Criterion 10.7(b)** – Article 15(1)(c) requires FIs to maintain information elements obtained during the course of the business relation up-to-date. There is no express requirement for FIs to undertake reviews of existing records, particularly for higher risk categories of customers.

**Criterion 10.8** - With regards to identification of customers that are legal persons, FIs are obliged to take appropriate measures to enable them to understand the customer's ownership and control structure (Article 15(1)(a)). There is no clear provision on the requirement to understand the nature of the customer's business.

**Criterion 10.9(a)** - Article 14(3) of the AML Act requires FIs to identify legal persons through the name, nature and legal form and presentation of the certificate of their statutes.

**Criterion 10.9(b)** - Verification of identity of legal persons is carried out by the (Article 14(4) of the AML Act) as well as the identity of managers or administrators and identities of those who holds the power to bind legal persons. Information for identification of trust funds established under foreign law or similar legal arrangement is to include the identification and verification of the administrators, names of settlors and beneficiaries (Article 14(4) of the AML Act).

**Criterion 10.9(c)** – Identification and verification of identity of legal persons include the address of their headquarters (Article 14(3) of the AML Act).

**Criterion 10.10(a)** - Article 15 (1) (a) of the AML Act requires FIs to identify and take reasonable steps to verify the identity of the beneficial owner through information on the identity of natural persons who ultimately hold a controlling interest in a legal person.

**Criterion 10.10(b)** – 15(a) does not cover situations where there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership. Article 2 of the AML Act defines beneficial owner to mean the ultimate natural person who owns or holds final control of a customer and/or natural person on whose behalf a transaction is carried, as well as persons who effectively control a legal person or legal arrangement.

**Criterion 10.10(c)** – There is no requirement for FIs to identify and take reasonable measures to verify the identity of BO through the relevant natural person who holds the position of senior managing official.

**Criterion 10.11 (a) and (b)** - FIs are required to identify customers that are trust funds incorporated according to foreign law or similar legal arrangements by obtaining and verifying the name of their administrators, settlors and beneficiaries (Article 14(5) of the AML Act). Generally, FIs are required to determine the identity of the natural person who effectively holds power over or control the customer (Article s 12(1)(5) and 15(1)(a) of the AML Act).

**Criterion 10.12** - There is no legal obligation for FIs to apply the CDD measures under this criterion to beneficiaries of life insurance policies.

**Criterion 10.13** - There is no legal obligation for FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in order to determine whether enhanced CDD measures and other requirements under this R.10 criterion are applicable.

**Criterion 10.14** - Article 12(1) of the AML Act requires FIs to identify their occasional customers and verify their identities whenever they establish any business relationship with

them. Article 12(3) of the AML Act prohibits FIs from maintaining business relationships or conducting transactions with natural or legal persons who have not been duly identified. In this regard, the requirements cover identification and verification of identity before establishing a business relationship or conducting a transaction.

**Criterion 10.15 (Non-Applicable)** - Full CDD must be completed for all costumers (natural and legal) before the establishment of business relationship. So the criterion is not applicable..

**Criterion 10.16** - Due diligence procedures are regularly applicable to both new ad existing customers as a function of the existing level of risk (article 15(4) of the AML Act). Article 15(4) does not extend the obligation to materiality and taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained..

**Criterion 10.17** - FIs are required to apply enhanced measures and due diligence measures when they identify situations of higher risk, and to customers, business relationships or transactions in higher risk categories, as well as customers that existed prior to the enactment of the AML Act, according to the level of relevance and risk, and implement due diligence obligations on these relations (Article s 10(5)(d) and 22(5)).

**Criterion 10.18** - There is no provision for FIs to comply with the requirements of this criterion.

**Criterion 10.19** - Article 15 (3) of the AML Act provides that, in the event that FIs are unable to comply with the due diligence, they should not open the account, start the business relationship or carry out the transaction, or otherwise terminate the business relationship, and consider submitting an STR to the FIU.

**Criterion 10.20 (Not Met)** - There is no provision for FIs to comply with the requirements of this criterion.

### **Weighting and Conclusion**

There are a significant number of deficiencies identified under Recommendation 10. The AML does not cover situations where there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership<sup>17</sup> and to the extent that there is doubt in this regard as to whether the person (persons) with the controlling ownership interest is the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural person (s)(if an) exercising control of the legal person or arrangement through other means, and where no natural person is identified, the identity of the relevant natural person who holds the position of senior managing official; no provision in law covering when conducting transactions for occasional customers; other requirements of Recommendation 10 are not set out in law.

**Recommendation 10 is rated Partially Compliant.**

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<sup>17</sup> Article 2 defines beneficial owner to mean the ultimate natural person who owns or holds final control of a client and/or natural person on whose behalf a transaction is carried. Also includes persons who effectively control a legal person or an entity without a legal personality.

## ***Recommendation 11 – Record Keeping***

Cabo Verde was rated Partially Compliant on the old Recommendation 10. The deficiencies related to absence of a requirement for transaction records to be sufficient to permit the reconstruction of individual transactions to provide evidence for prosecution of criminal activity, absence of a requirement for account files and business correspondence to be maintained, absence of a requirement that records should be available on a timely basis to domestic competent authorities, absence of a requirement for records to be maintained for such periods as may be required by competent authorities, and uncertainty on the part of a number of financial institutions about the requirements of the law regarding record keeping. .

Cabo Verde has amended the AML Act to address the technical deficiencies relating to record keeping.

**Criterion 11.1** - Article 25(1) of the AML Act requires reporting entities to keep records on transactions both domestic and international, for a minimum period of seven years after the transaction has been carried out or from the end of the business relationship or after the transaction date. The records can be kept in any format and includes the originals or copies of the documents.

**Criterion 11.2** - Article 25(1) and (2) of the AML Act requires FIs to keep all records obtained through CDD measures (proof of identity of customers, beneficiaries and representatives), records of transactions, deposit account request forms and related correspondence for at least seven years after the closing or end of the business relationship. FIs are permitted to keep such records, originals or copies of the records, in any format. The requirements cover the results of any analyses undertaken.

**Criterion 11.3** - Article 25(1)(3) of the AML Act obliges financial institutions to, on request, provide copies of the records to competent authorities and the FIU to facilitate money laundering investigations and intelligence. This provision applies to only ML while criterion 11.3 refers to criminal activity. Thus excluding TF and predicate offences.

**Criterion 11.4** - FIs are to make records available to competent authorities and the FIU for money laundering crime investigation and intelligence purposes (Article 25(3)). This requirement limits the basis for making records available to domestic competent authorities. It does not require FIs to make the records available swiftly and upon appropriate authority.

### **Weighting and Conclusion**

The requirement to ensure that records should be sufficient to permit reconstruction of individual transactions so as to provide evidence for prosecution is focused on money laundering investigations. The AML Act does not require FIs to make the records available swiftly and upon appropriate authority.

**Recommendation 11 is rated Largely Compliant.**

## ***Recommendation 12 - Politically Exposed Persons (PEPs)***

Cabo Verde was rated non-compliant in the 2007 MER due to the absence of an effective framework regarding the risks associated with Politically Exposed Persons (PEPs).

In this respect, AML requires enhanced diligence when customers are rated as being at greatest risk, i.e., it argues that FIs should adapt the nature and extent of verification and due diligence procedures depending on the risk associated with the type of customer (see Article 22 (3) and 23 (1) of the AML Act ).

**Criterion 12.1(a)** – FIs are obliged to have adequate and risk-based procedures to determine whether the customer, representative or beneficial owner is a PEP, whether domestic or foreign (Article 24(1)(a) of the AML Act).

**Criterion 12.1(b)** - FIs are required to obtain the authorization of senior management to establish or maintain, in the case of existing customers, business relationships with such customers or BO(Article 24(1)(b) of the AML Act).

**Criterion 12.1(c)** - FIs are to take the necessary measures to determine the source of [wealth] and funds involved in business relationships or in occasional transactions.

**Criterion 12.1(d)** - FIs are required to conduct enhanced and ongoing monitoring of their business relationship with PEPs.

Measures regarding PEPs continue to apply to customers who, having ceased to have the status of politically exposed person, continue to be at increased risk of ML because of their profile or the nature of the transactions carried out.

**Criterion 12.2(a)** - Article s 24(1)(a) applies.

**Criterion 12.2(b)** - There is no specific requirement to adopt the measures in criterion 12.1(b) to (d) in cases where there is a higher risk business relationship with domestic PEPs or persons who have been entrusted with a prominent function by an international organisation. However, Article 22(3) of the AML Act categorises business relationships with PEPs as high risk and the requirements in Article 24(1)(a) to (d) apply to all PEPs irrespective of type.

**Criterion 12.3** - Article 2(2) of the AML Act defines PEPs to include family members and close associates of both domestic and international PEPs. In this regard, all the measures enumerated in Article s 22(3) and 24 (1)(a) to (d) apply to them.

**Criterion 12.4** - There is no legal provision requiring FIs to take appropriate measures to determine whether the beneficiaries, and/or, if necessary, the beneficiary of the life insurance policy, are PEPs and other measures under this criterion.

### **Weighting and Conclusion**

Cabo Verde does not have a legal provision that requires FIs to take appropriate measures to determine whether the beneficiaries, and/or, if necessary, the beneficiary of a life insurance policy, are PEPs and other measures under this Recommendation.

**Recommendation 12 is rated Largely Compliant.**

***Recommendation 13 - Correspondent Banking***

The MER 2007 rated Cabo Verde non-compliant on the old Recommendation 7 due to the absence of an effective framework to deal with the risk posed by cross-border relationships between correspondent banks. Cabo Verde has amended the AML Act to strengthen measures regarding correspondent banking relationships. These requirements are in addition to application of CDD measures.

**Criterion 13.1(a)** - FIs are required to gather sufficient information about the requesting institution and with whom the FIs perform the correspondent relationship in order to fully understand the nature of their activity and to know from publicly available information, the reputation of the institution and the quality of its supervision, in order to verify whether the institution concerned has been the subject of an ML investigation or intervention by the supervisory authority relating (Article 16(a) and (e) of the AML Act).

**Criterion 13.1(b)** - FIs are to assess the ML controls in the institution requesting the correspondent relationship.

**Criterion 13.1(c)** - FIs are required to obtain the approval of senior management before establishing new correspondent relationships (Article 16(c) of the AML Act).

**Criterion 13.1(d)** - FIs are obliged to clearly understand the responsibilities of each institution (Article 16(g) of the AML Act).

With regard to the corresponding transfer accounts, FIs are to ensure that the customer bank has applied ongoing due diligence measures with regard to customers who have direct access to the accounts of the correspondent bank and that bank is empowered on the identification of its customers, when requested by the correspondent bank.

**Criterion 13.2 (a)** - FIs are to ensure that the respondent bank has applied continuous due diligence measures to its customers having direct access to the accounts of corresponding banks and that bank is empowered to identify its customers when requested to do so by the bank concerned (Article 16(h)).

**Criterion 13.2(b)** - Article 16(h) requires FIs to ensure that respondent banks are authorized and able to provide adequate CDD information when so requested by the correspondent bank.

**Criterion 13.3** - Financial institutions are prohibited from entering into or maintaining business relationships with shell banks. The prohibition extends to respondent institutions that allow their accounts to be used by shell banks (Article 17(2) and (3) of the AML Act).

**Weighting and Conclusion**

AML provides all criteria of the recommendation, but only to prevent and combat ML, leaving Terrorist Financing without any legal prediction in terms of preventive measures regarding the correspondent banking relationship.

**Recommendation 13 is rated Largely Compliant.**

#### ***Recommendation 14 - Money or Value Transfer Services***

MER 2007 rated Cabo Verde partially compliant with the former Special Recommendation VI due to the general weakness of supervisory mechanisms.

The entry into force in 2014 of the Basic Law of the Financial System and the Law on Activities and FIs (LAFI) has strengthened the supervisory powers of the BCV.

In addition, the AML Act establishes rules for FIs to mitigate the risk of ML through money or value transfers, which is complemented by BCV Notice on the conditions, mechanisms and procedures necessary for the effective fulfilment of the preventive requirements of ML and terrorist financing in the context of the provision of financial services subject to the supervision of the Bank of Cabo Verde.

**Criterion 14.1** - Article 9 of the AML Act provides that international transfers of domestic or foreign currency, means of foreign payment or bearer securities may only be carried out through banking or FIs authorised to carry out those transactions. In this regard, MVTS providers are licensed or registered financial institutions. Entities such as Western Union and Money Gram are represented in Cabo Verde by FIs, while the Wari funds transfer service is provided by sub-agents which are accountable to a credit institution. However, the obligation in Article 9 covers only international transfers.

**Criterion 14.2** - Article 228 of the LAFI (Unlawful Activity) prohibits natural and legal persons from engaging in MVTS without licence. Violation of this provision is punishable by imprisonment of up to five years.

**Criterion 14.3** - Article 7 of the AML Act applies to money or value transfer services (MVTS). In this regard, all the preventive measures under the AML Act apply to MVTS. The BCV is mandated by Article 5(a) of the AML Act to supervise MVTS for AML purposes.

**Criterion 14.4** - MVTS are required to maintain an up-to-date list of their agents, which they can hand over to the competent authorities and, when making use of agents, should ensure that they are included in their AML programs and control the compliance of these programs by the same agents (Article 18 of the AML Act).

**Criterion 14.5** - Article 18 of the AML Act applies. The conclusions under 14.4 also apply.

#### **Weighting and Conclusion**

The obligation in Article 9 of the AML Act does not cover domestic transfers. Also, the compliance program of agents of MVTS provided for in Article 18 only contemplates a



mechanism to prevent and combat ML and leaves out the criterion for preventing and combating the financing of terrorism.

**Recommendation 14 is rated Largely Compliant.**

### ***Recommendation 15 - New Technologies***

The 2007 MER rated the former Recommendation 8 as non-compliant as there was no requirement for FIs to adopt policies/measures to prevent the unlawful use of new technologies for ML or terrorist financing, as well as inadequate framework to for circumstances in which institutions are allowed to rely on verification of identity provided by a foreign financial institution.

The deficiencies described above have been address with the current AML which clearly stipulates the institutions' requirements regarding customer due diligence, rules for the control and maintenance of new technologies (see AML Article s 12, 15, 19 and 22).

**Criterion 15.1** - The provision applies through Article 19 of the AML Act which deals with new technologies and requires reporting entities to identify and assess the risks of ML that may result from the development of new products and distribution mechanisms, as well as new or developing technologies related to new products or pre-existing products.

**Criterion 15.2(a)** - Article 19 (2) and (3) of the AML Act requires reporting entities to assess the risk prior to the launch of new products or commercial practices or the use of new or developing technologies.

**Criterion 15.2(b)** - Reporting entities are required to take appropriate measures to manage and mitigate ML risks.

### **Weighting and Conclusion**

There are no legal provisions on this Recommendation in respect of TF.

**Recommendation 15 is rated Partially Compliant.**

### ***Recommendation 16 - Wire Transfers***

The 2007 MER rated Cabo Verde non compliant with Special Recommendation VII of the former Recommendations due to absence of measures on wire transfers apart from obtaining and verifying the identity of the originator. Banks were not required to accompany domestic or cross-border wire transfers with originator information. There were no regulations guiding FIs on how to handle received wire transfers that do not contain the complete information of the originator.

**Criterion 16.1** - Article 27(3) of the AML Act, applying Article 27(2) of the AML Act, require FIs to ensure that all cross-border wire transfers of one million escudos (\$1,000,000) (equivalent of USD 10,305.38/EUR 9,068.650) or more are accompanied by the required

accurate originator and beneficiary information specified in Article 27(2) regarding domestic wire transfers. The originator and beneficiary information specified in Article 27(2) comply with those enumerated in this criterion. However, the threshold set is far higher than the threshold set by the FATF, USD 1000/ EUR 1000.

**Criterion 16.2** - There is no requirement for this criterion.

**Criterion 16.3** - There is no provision evidencing that Cabo Verde is applying a *de minimis* threshold for wire transfers of USD/EUR 1000 or more. The threshold for wire transfers is far higher than that set by the FATF (see c. 16.1).

**Criterion 16.4** - There is no provision that FIs should apply the requirements of 16.3, and to dispense with verifying originator and beneficiary information for accuracy. However, Article 27(9)(a) of the AML Act requires any receiving FI to verify the information of its customer where there is a suspicion of ML. The TF aspect is not covered.

**Criterion 16.5** - Article 27(2) of the AML Act requires FIs to ensure that all domestic wire transfers are accompanied by the required originator and beneficiary information.

**Criterion 16.6 (Not Applicable)** – In accordance with Article 27(2) of the AML Act, all domestic wire transfers are to be accompanied by originator and beneficiary information.

**Criterion 16.7** - Article 27 (11) of the AML Act requires FIs that initiate wire transfers to maintain all originator and the beneficiary information for a minimum period of seven years (as required by Article 25 of the AML Act).

**Criterion 16.8** - Article 27(4) of the AML Act requires FIs to refrain from executing wire transfers if the FIs are unable to comply with the obligation to accompany the transfers with the originator and beneficiary information.

**Criterion 16.9** - Intermediary FIs are required by Article 27 (6) of the AML Act requires FIs to retain originator and beneficiary information throughout the entire transfer.

**Criterion 16.10** - Where there are technical limitations which prevent originator or beneficiary information from being transmitted with the related domestic wire transfer, the intermediary FI is required to keep record of all information received from the originating FI or other intermediary FI (Article 27 (7) of the AML Act). The AML Act does not specify the period for which FIs are to keep such records.

**Criterion 16.11** - Article 27 (9) (b) of the AML obligates intermediary FIs to take reasonable steps to identify cross-border wire transfers without originator and beneficiary information. There is no requirement for the measures to be consistent with straight-through processing.

**Criterion 16.12** - There is no requirement for this provision. Article 27 (6) (c) of the AML Act, in relation to intermediary FIs, refers to “who executes, refuses or suspends a wire transfer lacking the required originator or beneficiary information” as opposed to “when” to take these actions . The provision does not comply with the requirement of part (b) of the criterion. It requires beneficiary FIs to take action when necessary, instead of specifying the appropriate follow-up-action the FIs should take.

**Criterion 16.13** – Beneficiary FIs are required to take reasonable measures towards identifying cross-border electronic transfers that do not include originator and beneficiary information (article 27(9)(b)). There is no provision regarding when this action should be taken.

**Criterion 16.14** – Article 27 (9) of the AML Act requires beneficiary FIs of cross-border wire transfers to verify the identity of the beneficiary, if this has not been previously verified, and maintain the information for seven years. There is no threshold set for this requirement.

**Criterion 16.15** - There is no requirement for this provision. Article 27 (9) (c) of the AML Act, in relation to beneficiary FIs, refers to “who executes, refuses or suspends a wire transfer lacking the required originator or beneficiary information” as opposed to “when” to take these actions. The provision does not comply with the requirement of part (b) of the criterion. It requires beneficiary FIs to take action when necessary, instead of specifying the appropriate follow-up-action the FIs should take.

**Criterion 16.16** - Article 9 of the AML Act provides that international transfers in national or foreign currency, means of external payment or bearer bonds, may only be carried out by way of banking or FIs authorized to proceed with such transactions. Article 24 of Notice No. 5/2017 which specifically deals with MVTS providers require the providers to comply with CDD requirements for occasional transactions in general specified in Article 23 of the Notice. From the combined provisions of Article s 9 and 27 of the AML Act, as well as Article 24 of Notice No. 5/2017, it may be concluded that the requirements of Recommendation 16 apply to MVTS providers in terms of funds transfer and not value transfer and in relation to ML. In addition, the conclusions made in criterion 16.1-16.15 apply to MVTS providers.

**Criterion 16.17** – There is no legal provision for the requirements of this criterion.

**Criterion 16.18** – MVTS providers are mainly bank financial institutions licenced by the laws of Cabo Verde to provide financial services. Pursuant to Article 19(6) of the CFT Act, FIs are required to take freezing action within twenty four hours after receiving notification of designations from the AG or the Magistrate of the Public Ministry designated by the AG. Article 2 of the CFT Act defines “funds” and also make references to economic resources of designated persons. National citizens or persons or entities in the national territory from making funds and assets available to designated persons or entities, including FIs, are prohibited from making funds available and making funds available to designated persons. These measures apply to actions taken under UNSCs 1267 and 1373 and successor resolutions. However, there is no express provision covering the freezing of funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities. In this regard, the ability of FIs to freeze such assets may be impeded.

### **Weighting and Conclusion**

Considering that the AML and CFT Acts do not provide for some of the requirements of Recommendation 16, namely criteria 16.2, 16.3, 16.4, 16.11, 16.12, 16.13, 16.14, 16.15, 16.16, 16.17, 16.18, the latter being of extra relevance in the combat against terrorism. In addition, the legal threshold of CVE 1,000,000 (one million escudos) provided for in Article 27 of the AML Act is far higher than the threshold set by in criterion 16.1 of this Recommendation.

## **Recommendation 16 is rated Partially Compliant**

### ***Recommendation 17 – Reliance on Third Parties***

Cabo Verde was rated non compliant with the old Recommendation 9 because the country lacked effective framework to address the risk posed by third party introduced business arrangements. Cabo Verde amended the AML Act to address this deficiency.

**Criterion 17.1** - Article 20 (1) of the AML Act permits FIs to use “third parties of intermediaries” to carry out the identification and verification of identity of the customer. The ultimate responsibility of the for the CDD measures remain with the reporting entity that relied on the third party (Article 20(2) of the AML Act). Article 20(1) does not comply with the requirement of c. 17.1 to rely on third party FIs and DNFBPs.

**Criterion 17.1 (a)** – There is no provision regarding this criterion.

**Criterion 17.1(b)** - FIs are required to ensure that third parties they rely on for CDD can immediately provide photocopies of CDD documents on customers and BO when requested (Article 20(1)).

**Criterion 17.1(c)** – FIs are to ensure that parties they rely on to conduct CDD on their behalf are subject to regulation and supervision (Article 20(1)(d) of the AML Act). There is no requirement that the party should have measures in place for compliance with CDD and record keeping requirement. Article 20(1)(d) rather requires that the third party should take steps to fulfil CDD and record keeping obligations.

**Criterion 17.2 (Partly Met)** – In determining in which country the third party that meets the criteria can be based, Article 20 (4) of the AML Act requires FIs to always take account of available information on the level of risk associated with such countries. FIs are to ensure that the third parties or intermediaries are established in Cabo Verde or in another state whose legislation imposes CDD obligations equivalent to those required by the AML Act and are subject to adequate supervision (Article 20(b) complies with the profile of third parties envisaged by Recommendation 17.

**Criterion 17.3 (Not Met)** – There is no provision for this requirement.

### **Weighting and Conclusion**

There is no requirement for FIs to immediately obtain the relevant CDD information, and for the third party to have measures in place for compliance with CDD and record keeping requirements. In addition, there is no provision in the AML Act dealing with a situation where FIs rely on a third party in the same financial group.

**Recommendation 17 is rated Partially Compliant.**

### ***Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries***

Cabo Verde was rated as non-compliant on the former Recommendations 15 and 22. With regard to Recommendation 15, the deficiencies related to weaknesses in the requirements for institutions to maintain internal policies, procedures and controls to manage ML/FT risks; absence of clear requirement for institutions to establish AML/CFT compliance function including the designation of a compliance officer at managerial level; absence of requirement for institutions to have an independent audit function; and absence of requirement for the screening of employees. For Recommendation 22, arrangements were not applicable to foreign branches and subsidiaries of financial institutions of Cabo Verde.

Cabo Verde has addressed the deficiencies through Article 28 of the AML Act which provides not only for the creation of an internal anti-laundering body, but also the ongoing training of officials and employees, ensuring high standards of staff recruitment, as well as designation of a Director responsible for compliance. It makes clear that the Audit should be an independent entity. In addition, the creation of compliance is also mandatory.

**Criterion 18.1** – Article 28 of the AML Act requires reporting entities to approve written internal AML policies, procedures, programs, systems and controls that include adequate regulatory observance and mechanisms and other requirements specified in criterion 18.1. Article 35 of Notice No. 5/2017 requires Fis to observe the internal control procedures specified in Article 28 of the AML Act in an adequate and proportionate manner to the size, nature and complexity of its organizational structure and the activity pursued by it, the nature and magnitude of the risks assumed or to be assumed and the degree of centralization and delegation of authority established in the institution. Article 36(2) of Notice No. 5/2017 requires Fis to define and implement internal control systems that integrate policies, means and procedures to ensure compliance with legal and regulatory standards for the prevention of money and terrorist financing and to prevent their involvement, and ensure the sufficiency and adequacy of the human, financial, materials and techniques related to the prevention of ML and terrorist financing, in an appropriate manner proportionate to the size, nature and complexity of its organizational structure and the activity pursued by it, the nature and magnitude of the risks assumed. The specific programmes in the AML Act and Notice N<sup>o</sup>. 5/2017 include the following:

**Criterion 18.1a** – Article 38 of Notice no 5/2017 requires Fis to establish and maintain autonomous, permanent and effective compliance management function to ensure compliance with the regulatory framework to which they are subject, including legal and regulatory obligations for the prevention of ML and TF. It also provides for the appointment of a person at senior management level to be responsible for the compliance function to prevent ML. This person is to participate in defining the AML/CFT system, have unrestricted access to all internal information relevant to the compliance function, especially those on CDD and records of transactions; monitor internal control system and evaluate the adequacy and timeliness of the policies, means and procedures and integrate same.

**Criterion 18.2 b.** – Article 28 1(b) of the AML Act requires reporting entities to develop appropriate procedures in hiring and recruiting their employees. Article 38(3)(d) of Notice n<sup>o</sup> 5/2017 requires Fis to ensure that the framework for selection of employees related to the compliance function is based on high ethical standards and demanding technical requirements.

**Criterion 18.1.c** – Article 29(1) of the AML Act requires reporting entities to ensure ongoing and adequate training of their employees and directors in order to ensure that they remain informed about the various aspects of the regulatory framework in the area of the prevention of and fight against ML, as well as the new developments, techniques, methods and activity trends linked thereto. Fis are to ensure that the appropriate programmes will enable participants to recognise transactions that may be related to specific types of crimes and acts in accordance with the AML Act and its respective regulatory norms and should maintain copies of documents or records related to the training for a period of five years (Article s 18(3) and (2) of the AML Act). Article 41 of Notice N° 5/2017, in reference to the obligation to train in Article 29 of the AML Act, requires Fis to define and implement a training policy appropriate to the functions concretely carried out by the relevant reporting entities.

**Criterion 18.1.d** – Article 28 of the AML Act requires reporting entities to implement an independent internal monitoring mechanism to verify compliance with internal policies, procedures, systems and controls and ensure that such measures are effective and coherent with the provisions of the Law. Article 38(1)(b) of Notice No. 5/2017 requires Fis to establish and maintain an independent, permanent and effective compliance management to, among other things, continuously monitor the internal control system, assess the adequacy and timeliness of the policies, means and procedures that integrate it.

**Criterion 18.2** – There is no legal obligation for this requirement.

**Criterion 18.3** – Article 30(1)(a) &(b) of the AML Act requires Fis to, in respect of their branches or subsidiaries in which they hold a majority stake, established in third countries, apply measures equivalent to those in the AML Act regarding requirements of identification, diligence, record keeping and training; communicate the internal policies and procedures defined in accordance with confidentiality rules that are applicable in the scope of activities of their branches and subsidiaries. Where the legislation of the third country does not permit the application of these measures, reporting entities are required to communicate this to their regulatory authorities and take additional measures to prevent the ML risk (Article 30(2) of the AML Act).

Article 30(1)(a) is limited in scope as the provision focuses on CDD, recording keeping and training requirements. Also, the additional measures are to aim at preventing the risk of ML mitigating the risk of ML. risks are to be mitigated.

### **Weighting and Conclusion**

The AML does not provide for a requirement regarding the application of a ML/TF program, adequate to the ML/TF risk and to the commercial activity dimension, especially at the group level. There is no legal requirement regarding information sharing policies and procedures to comply with customer due diligence and ML/TF risk management. Also, there is no legal provision regarding measures to prevent and combat TF.

**Recommendation 18 is rated Partially Compliant.**

### ***Recommendation 19 – Higher-Risk Countries***

Cabo Verde was rated as non-compliant on the former Recommendation 21 because there was no legal obligation to pay special attention to the treatment of countries that insufficiently apply the FATF Recommendations, as well as to examining the background of transactions with foreign countries (monitoring is limited to predicate offence being suspected). Countermeasures to be used in the case of countries that insufficiently apply the FATF Recommendations did not exist or were under study.

Currently, these deficiencies have been addressed pursuant to Article 22 (6) of the AML Act (Enhanced Due Diligence).

**Criterion 19.1** – Article 22 (6) of the AML Act requires Fis to apply enhanced due diligence (EDD) measures to business relationships and transactions with natural and legal persons, including Fis, from countries with a higher risk of ML, designated by the FATF. The EDD measures are to be proportionate to the risks posed by these customers.

**Criterion 19.2** – There is no express provision imposing an obligation on Fis to apply countermeasures proportional to the risks independently of any request made by the FATF to that effect. Article 22(3) of the AML Act provides that enhanced diligence measures are always applicable to distance transactions, especially those involving banking financial institutions established in third countries and to any other transactions designated by the regulatory and supervisory authorities of the respective sector, as long as they are legally authorised to. Fis are required to consider the possibility of filing STRs when unable to verify the identity of the customers or BO considered to be higher risk. In addition, Fis are to end business relationships where Fis are unable to satisfactorily verify the identity of the customer or beneficial owner, (Article 22(3) of the AML Act). In this regard, Cabo Verde would be able to limit business relationships or financial transactions with natural and legal persons from high risk countries. However, the country has not identified specific countries as higher risk countries.

**Criterion 19.3** – Although there is no legal provision stating the requirement of this criterion, it can be deduced that it is being fulfilled through BCV Notices to Fis.

### **Weighting and Conclusion**

AML does not provide for some aspects of criterion 19.2 regarding a country's obligation to apply countermeasures proportionate to the risks whenever the FATF so requests and regardless of any request by the FATF, nor are there corresponding legal provisions to prevent and combat the financing of terrorism.

**Recommendation 19 is rated Partially Compliant.**

### ***Recommendation 20 – Reporting of Suspicious Transactions***

Cabo Verde was rated NC on the former Recommendation 13 because of the poor implementation of this requirement and the fact that the list of major crimes that could be subject to a suspicious transaction reporting were not criminalised.

The main deficiencies related to the effectiveness, in relation to the scope of the TF violation, may affect the reporting obligation. The MER recommended that Cabo Verde should include

terrorist financing as one of the offences that should trigger STR when the reporting institutions suspect or have reasonable grounds to suspect that the funds are linked or will be used for terrorism, terrorist acts or by terrorist organizations. Cabo Verde was also recommended to require reporting entities to communicate any suspicious arising from attempted transactions.

Article 34 (obligation to communicate) seems to fill this gap. Article 2 (2) (v) of the AML Act defines “suspicious transaction” as an exceptionally complex transaction with no apparent legitimate purpose, inconsistent with the customer’s usual business or that the FI considers to be related to criminal activity or constitute the proceeds of criminal activity.

**Criterion 20.1.** – Article 34 (1) of the AML Act requires reporting entities to immediately communicate to the FIU by FAX or electronic mail when they become aware, suspect or have sufficient reason to suspect that a transaction likely to constitute a ML offence has occurred, is in progress or has been attempted, or whenever they become aware of facts that may constitute evidence of committing these crimes. ML is criminalized under AML Article 3 which covers the laundering of proceeds of the predicate offences (main offence). Article 1 (o) of the AML Act defines the main offence as any typically illegal act punishable by imprisonment from which [property] is derived that could constitute an offence as defined in Article 39 of the AML Act and which generates criminal income. Cabo Verde promulgated Legislative Decree No. 4/2015 to amend the Penal Code to criminalise trafficking in persons and piracy. There is no corresponding legal requirement to submit reports on transactions and attempted transactions related to the financing of terrorism.

**Criterion 20.2.** – AML Article 34 (1) requires all Fis to communicate all suspicious transactions, including attempted transactions. The law does not establish limits for communicating suspicious transactions. In this regard, reporting entities are required to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction. The deficiencies relating to 20.1 apply to this requirement.

### **Weighting and Conclusion**

The FIU acts as the central agency for receiving suspicious transaction communications from reporting entities. However, as indicated in criterion 29.1, reporting entities are not legally required to report suspicious transactions related to the financing of terrorism and the FIU to receive information on predicate offences related thereto.

**Recommendation 20 is rated Partially Compliant.**

### ***Recommendation 21 – Tipping-off and Confidentiality***

In 2007 MER, Cabo Verde was rated as non-compliant on the former Recommendation 14 because the prohibition on tipping-off did not apply to the reporting of suspicious transactions. The automatic suspension by the reporting institutions of all reported transactions constituted alerting the customer.

This deficiency has been addressed by Article s 33 (Obligation of Confidentiality) and 38 (Exclusion of Liability) of the AML Act which impose secrecy obligations on employees with respect to disclosures to customer that transactions are suspicious of ML.



**Criterion 21.1** – Article 38(2) of the AML Act protects directors, administrators and employees from criminal or civil liability for breach of confidentiality rules imposed by contract or by legislative, regulatory or administrative provision when they report suspicious transactions to the FIU in good faith. This protection is available to these officials even if they did not know the specific underlying criminal activity, and even if the suspected criminal activity did not occur.

**Criterion 21.2** – Article 33(1) of the AML Act prohibits members of the respective governing bodies, or those who exercise management, managerial or leadership duties, their employees, authorised representatives and other persons who provide them with permanent, temporary or occasional service, who provide the information transmitted or requested by the FIU or the competent judicial authorities concerning ML suspicious transactions or investigation processes from disclosing such facts to the customer or to a third party. These persons are also prohibited from disclosing that a criminal investigation is under way, an STR or related information has been transmitted to the FIU. Similarly, the provision of information in good faith, in the fulfilment of the obligations outlined in the CFT Act, by public or private natural or legal persons, does not constitute a violation of any obligation of secrecy, nor does it result in liability for those providing said information (Article 33(3)).

## **Weighting and Conclusion**

**Recommendation 21 is rated Compliant.**

### ***Recommendation 22 – Designated Non-Financial Businesses and Professions (DNFBPs)***

#### **Customer Due Diligence**

Cabo Verde was rated non-compliant on the former R.12 Recommendation because not all DNFBPs were subject to the AML requirements. The AML Act had been implemented since its promulgation in December 2002. The authorities had not passed (or even drafted) any regulations or guidance in this regard and the relevant institutions were not aware of their obligations under the AML Act.

The deficiencies identified in the preventive regime for Fis applied almost entirely to DNFBPs (in particular the limited scope of CDD measures, monitoring and the obligation to report suspicious transactions).

All deficiencies were remedied with the entry into force of the AML Act. However, the current Recommendation 22 contains new requirements which have not been assessed under the 2004 Methodology.

**Criterion 22.1** – Article 7(6) of the AML Act lists the DNFBPs that are subject to AML requirements, and being reporting entities under the terms of Article 7, they are subject to all the CDD requirements provided for in the AML Act.

**Criterion 22.1(a)** – Casinos (including online gambling) and concessionaires are required to comply with CDD requirements when they engage in financial transaction equal to or above three hundred thousand escudos (300,000\$), equivalent of three thousand one hundred and eighty six US dollars (\$3,186.00). The CDD is to occur at the entrance of the game room or when the customers acquire or cash in gaming chips or gamble using conventional symbols equal to or above the stated amount (Article 13 (2) of the AML Act). There is no requirement for casinos to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino.

Betting and lotto operators are required to comply with CDD measures when paying a winner an amount of or equivalent to six hundred thousand escudos (600,000\$00)(equivalent to six thousand three hundred and seventy two US dollars (\$6,372.00)) (Article 13(5) and (10) of the AML Act relating to the specific duty of identification and verification of identity).

**Criterion 22.1(b)** – Real estate agents are required to comply with CDD measures whenever they engage in transactions for their customers. The agents are to collect clear identification of those involved in the transaction, the total amount of the transaction, the respective securities, proof of means of payment and identification of the property. The requirement applies in respect of both purchasers and vendors of the property (Article 13(6) of the AML Act).

**Criterion 22.1I** – Dealers in precious metals or precious stones are to comply with CDD measures whenever they engage in cash transactions with a customer involving an amount of or more than eight hundred thousand escudos (800,000\$) (equivalent of \$8,496.00). The requirement applies to dealers in works of art or antiquities. The requirement should apply to Dealers in precious metals, precious stones, works of art and antiquities, and not or.

**Criterion 22.1(d)** – Lawyers, solicitors, notaries, registrars, accountants, auditors and tax consultants are required to comply with CDD measures when they prepare for, or carry out, transactions for their customers in concerning the activities specified under this criterion, as well as the sale and purchase of the rights over the practitioners of professional sporting activities (Article s 13(8) and 7(6)(i) of the AML Act).

**Criterion 22.1I** – Trust and company services providers are required to comply with CDD measures when they prepare for or carry out transactions for their customer concerning the activities specified in this criterion.

**Criterion 22.2** – DNFBPs are, in respect of their respective activities, required to comply with record-keeping requirements (Article s 7 (1), 8 I and 25 of the AML Act). In addition, there is a specific requirement for casinos to keep to always keep records of identity (Article 13 (4) of the AML Act). The conclusions on Recommendation 11 apply to this criterion.

**Criterion 22.3** – DNFBPs are subject to the PEPs requirements in line with Recommendation 12 as set out under Article 24 of the AML Act. However, Cabo Verde does not have legal provision requiring DNFBPs to take appropriate measures to determine whether the beneficiaries, and/or, if necessary, the beneficiary of a life insurance policy, are PEPs and other measures under Recommendation 12.

**Criterion 22.4** – DNFBPs are to comply with the requirements on new technologies set out in Article 19 of the AML Act. In this regard, the TF deficiencies identified in relation to Fis under Recommendation 15 apply to DNFBPs.

**Criterion 22.5** – Article 20 of the AML Act applies.

### **Weighting and Conclusion**

The AML Act provides a significant number of the requirements of this Recommendation. However, since there is a link between Recommendation 10 (CDD) and Recommendation 22 (CDD) and R10 has been rated as partially compliant, the conclusions on Recommendation 10 apply to Recommendation 22.

**Recommendation 22 is rated Partially Compliant.**

### ***Recommendation 23. DNFBP: Other Measures***

In 2007 MER, Cabo Verde was rated as non-compliant with the former Recommendation 16 due to the absence of a legal obligation for DNFBPs to report suspicious transactions. The current Recommendation 23 contains new requirements that were not assessed under the 2004 Methodology.

**Criterion 23.1a** – Article 34(1) of the AML Act requires all DNFBPs to report suspicious transactions, including attempted transactions, on ML by fax or electronic mail to the FIU. Article 7(6)(i) of the AML Act designates lawyers, notaries, solicitors, registrars, other independent legal professions, auditors, accountants and tax consultants as DNFBPs when they intervene or assist, as professionals in the activities specified in criterion 22.1.

**Criterion 23.1b** – Article 34(1) of the AML Act applies to dealers in precious metals and stones. Article 7(6)(d) of the AML Act designates dealers in precious metals or stones as DNFBPs. However, article 34(1) the AML Act does not provide a threshold for dealers in precious metals and stones to report suspicious transactions.

**Criterion 23.1c** – Article 34(1) of the CFT Act applies to trust and company service providers (TCSPs). Article 7(j) of the AML Act designates TCSPs as DNFBPs in relation to the activities described in criterion 22.1I.

**Criterion 23.2** – The provisions of Article 28 (on internal controls) and Article 30 (on affiliates and branches) of the AML Act discussed under Recommendation 18 above apply to DNFBPs. However, the AML Act does not indicate the situations in which DNFBPs are to comply with these provisions.

**Criterion 23.3** – There is no provision in the AML which imposes an obligation on DNFBPs to apply measures under Recommendation 19 on countries with a higher risk.

**Criterion 23.4** – The tipping off requirements set out in Article s 33 and 38 of the AML also apply to DNFBPs.

## **Weighting and Conclusion**

The AML provides for all the criteria of this recommendation except criterion 23.3.

**Recommendation 23 is rated Largely Compliant.**

### ***Recommendation 24 – Transparency and Beneficial Ownership of Legal Persons***

In the 2007 MER, Cabo Verde was rated partially compliant with the former Recommendation 33 due to the inability of the authorities to provide statistics, which raised doubts as to the effectiveness of the system.

Cabo Verde has a number of provisions with regard to the above-mentioned mechanism, among which the Commercial Code in force, which responds to this Recommendation, is highlighted. This code defines all types of companies: joint-stock companies, limited liability companies, public limited companies, limited partnerships and cooperative companies, affiliated companies.

In Cabo Verde, all types of companies are obliged to register commercially (notarial deed) or private document notarized (notarial deed) according to several types of corporations (companies) enshrined in the Code in question. According to data from National Institute of Statistics (INE), in 2015 Cabo Verde had 9,403 active companies registered.

**Criterion 24.1 – Criterion 24.1 – (Met)** – Cabo Verde has mechanisms that identify and describe the different types, forms and basic features and other requirements specified under this criterion. These are discussed in section 5.1.1, paragraphs 488 and 489 of the First MER of Cabo Verde.

**Criterion 24.2** – Related to the ML/TF risk assessment obligation, Cabo Verde recently conducted NRA (October 2017), which clearly states that the report of the National Institute of Statistics (2014) points to a business universe of 9,185 active companies, employing approximately 52,524 people and generating a turnover in the order of 246.753.310.000 \$ 00 CVE. However, the country did not undertake a sectoral risk assessment for all types of legal persons set up in the country.

### ***Minimal Information***

**Criterion 24.3** – See paragraph 490 of the 2007 MER.

**Criterion 24.4** – Legislative Decree No. 42.644 of November 14, 1959 requires companies to keep a register of the incorporation of companies and subsequent amendments to the Article s of association; the appointment, reappointment, exoneration of managers, administrators, representatives and liquidators; the establishment, extension, transformation, merger, incorporation, dissolution or liquidation of companies, as well as the reduction, reinforcement and reintegration of the share capital. The register should also contain records of any alteration of the respective covenants or bylaws; the transfer of ownership or the usufruct of shares of the companies or the division of these quotas and the transfer of part of the share capital in the

companies; the depreciation of quotas and the exclusion of remunerative partners from limited companies (Article s 1-3 and 5).

The set of information on the different types of companies on the structure of corporate control is always preserved in the Article s of association. Under the CCC, companies in collective names establish the voting rights of each partner (Article 267), the right to profit sharing (Article 124), the form of called-up share capital (Article 113 (f, g, h)), the right to vote or the right of appointment to the company's management and supervisory bodies (Article 123).

The aforementioned information is kept at the Commercial Registry Office in Cabo Verde, which must provide this information upon request, observing what is filed in the said registers.

**Criterion 24.5** – Information provided during registration of the incorporation of the companies are to be updated (Article 13 (1) of the Commercial Registration Code).

In addition to the registration mechanism for company information and the subsequent updating procedure to ensure accuracy of basic information, the Commercial Registry Code also provides for civil and criminal liability of the offender who has not registered and updated their information. The Commercial Registration Code (Article 110 (3)) also allows the Registrar of the Commercial Registry Service to refuse registration if it is found that the company's agreement does not have all the information required by law.

### ***Information on Beneficial Owners***

**Criterion 24.6 (a, b, c)** – With a view to a better collection of information on beneficial owners, Cabo Verde legal system provides normative instruments that allow to obtain such information.

Article 113 of the CCC lists a set of elements that must be included in the contract, namely, the names or signatures of all the founding members and other identification data, share capital, the capital ratio and the nature of each partner's contribution, as well as the payments made on behalf of each partner. The production and conservation of such information are deemed useful for the identification of the BO (criterion 24.6(a)).

Article 2 of the AML Act defines beneficial owner to mean the natural person who has the ultimate control over a customer and/or natural person on whose behalf a transaction is carried out.

Information on BO can be obtained from Fis and DNFBPs subject to AML/CFT obligations discussed under Recommendations 10 and 22. Article 12 (2) (a-c) of the AML Act requires reporting entities (Fis and DNFBPs) to identify and verify the identity of the BO of a prospective customer who is a legal person.

Reporting entities are also required to determine the status of Bos in relation to legal persons and obtain information regarding customers that are legal persons, which allows to understand the structure of ownership and control of the customer (Article 15 (6) (b) of the AML Act).

The identification of legal persons also includes, under the terms of Article 14 (3) (a, b, c), the collection of information regarding: name, nature and legal form, place of seat; identity of managers or administrators; identification of who holds the power to compel them.

Thus, verification of legal persons identification is done through the presentation of the certificate of their bylaws, which also allows the identification of their Bos (Article 14 (4)).

Finally, it is noted that the AML Act provides a mechanism that reporting entities from using information that does not allow identification and verification of identity of beneficial owners of legal persons when the reporting entities intend to establish business relationships with the legal persons (Article 12 (3)).

**Criterion 24.7** – Reporting entities are to keep BO information obtained in the course of the business relationship up-to-date in accordance with Article 15 (1) I (6) I of the AML Act and further pursuant to Article 30 (1) (a) (2) (3) (4) of Notice No. 5/2017. This is also required under Article 13 of the CCC.

**Criterion 24.8 (a, b, c)** – Cabo Verde has no specific requirements to ensure that legal persons cooperate with the competent authorities in determining their beneficial owners. However, financial institutions are required provide competent authorities with information on the Bos, when requested or ordered to do so, pursuant to Article s 25 (3) and 31 of the AML Act and Article s 44 (4) and 46 (1) of Notice n. 5/2017.

**Criterion 24.9** – It should be noted that the fact that the business entrepreneur is always required to keep the books of his/her bookkeeping, correspondence of any kind he/she receives and the supporting accounting documents, and to keep them for ten (10) years, does not absolve the company, the authorities involved and the competent authorities from the responsibility to keep records even after the company has been dissolved or terminated.

Under Article 303(5) of the Insolvency Code (Law no. 116/2016, dated 22 March), the administrator of insolvency is required to retain and consequently deliver all the documentation related to the process in his/her possession, as well as the accounting elements of duty to the court for filing purposes.

### ***Other Requirements***

**Criterion 24.10** – In accordance with Article 31 (1) and (2) of the AML Act and Article 46 (1) (2) of Notice No. 5/2017, reporting entities are obliged to cooperate and provide information to law enforcement authorities, particularly judicial authorities (Judge and Public Prosecutor's Office) and FIU, with the exception of criminal police agencies (Judicial Police and National Police). There is no legal provision referring to criminal police agencies.

**Criterion 24.11 (a, b, c, d, e)** – Under the CCC, particularly regarding public limited companies, Article 365 (1) accepts the issuance of bearer shares. Similarly, Article 66 of Decree-Legislative no. 1/2012, dated January 27 (Securities Market Code – SMC) allows the issuance of bearer securities. However, Article 336 of the CCC establishes the conversion of bearer shares into registered shares, thus ensuring that they cannot be misused for ML/TF purposes. (criterion 24.11(b) – Article 63 (3) of the SMC expressly provides for the method of conversion of the bearer shares and guarantees in registered shares.

**Criterion 24.11.c** – Fis that are public limited companies based in Cabo Verde are prohibited from issuing bearer securities (Article 4 (2) of the SMC)

**Criterion 24.12 (a, b, c)** – Joint stock companies can have nominee shares under the conditions discussed in paragraphs 493 and 494 of the 2007 MER (c. 33.2 and c.33.3). There is no specific provision regarding nominee directors. However, Article 31 (1) (a) (b) (c) of Law No. 61/VIII/2014 requires Fis to identify their counterparts in financial activities, and obtain the full identification of counterparts, register them and keep these records in good order, so that they can be easily consulted by the BCV. The CCC allows for nominee shares holders (Article 410). The nominee must identify himself/herself to be able to attend a general meeting, and the attendance list must include: the name and address of each of the shareholders present or represented and their nominees (Article 413 (2) (a); number, category and nominal value of shares, if any, belonging to each shareholder present or represented (Article 413) (2) (b). The attendance list must be signed by the shareholders present and the nominee shareholders, and it will be later filed and given to any shareholder upon request (Article 413 (3) (4)).

**Criterion 24.13** – The acts or changes of companies to the initial acts that have not been communicated to the Commercial Registry are not in relation to third parties (Article 253 of the Commercial Companies Code).

Article 31 (2) of Law No. 61/VIII/2014 prohibits Fis from recording transactions in which the true identity of the counterpart is concealed or which may create confusion in the identification of the counterpart.

The Registrar of Commercial Registration is mandated to refuse registration if he/she finds that the company's contract does not have all the elements required by law (Article 110 (3) of the CCC).

The AML Act provides a mechanism that does not permit the use of information that does not allow reporting entities to identify BO of legal persons when the reporting entities intend to establish a business relationship with the BO (Article 12 (3)).

The legal regime established in Articles 9 and 14 of the Commercial Registry Code, respectively establish sanctions for the licensing of companies and for registration of companies. Specifically, in relation to the lack of registration, sanctions may be the application of a fine and, as the case may be, criminal liability.

**Criterion 24.14** – The conclusions of Recommendations 37 and 40 are applicable here. Competent authorities are required to ensure cooperation with their international counterparts on ML matters in a rapid, effective and constructive manner, and with effective information exchange mechanism being ensured. Exchange of information can be spontaneous or based on request and applies to ML and predicate offences (Article 53 of the AML Act). Thus, foreign competent authorities can obtain basic and BOI on legal persons. In this regard, Cabo Verde can use the investigative powers of its competent authorities, particularly the judicial authorities and criminal police bodies, including the FIU and supervisory authorities, to obtain BO information on behalf of their foreign counterparts.

**Criterion 24.15** – Competent authorities, particularly the judicial authorities and criminal police bodies, including the FIU, are mandated to use their powers to cooperate at international level. However, there is no legal norm that provides for the explicit materialization of mechanisms to monitor the quality of assistance received from other countries in regard to BOI.

## ***Weighting and Conclusion***

Cabo Verde has mechanisms in place that describe the types of legal persons that can be created in the country, and the process for their creation and availability under the CCC. The laws of Cabo Verde do not prohibit the issuance of bearer shares and the appointment of nominee directors. The country has measures in place to ensure that BO information can be obtained in respect of bearer shares and nominee directors. Reporting entities are required to obtain BOI as part of their CDD measures. However, Cabo Verde has not assessed the ML/TF risks associated with all types of legal persons created in the country. There is no legal provision for the explicit materialization of mechanisms to monitor the quality of assistance received from other countries with regard to BOI.

**R24 is rated Largely Compliant.**

### ***Recommendation 25 – Transparency and beneficial owners of entities without legal personality***

Cabo Verde was rated NA on the former Recommendation 34 because express trusts and other similar legal arrangements, such as “fiducie”, “treuehand” or “fideicomisso” were not provided for or recognized in the internal legal system of the country. The FATF standards regarding trusts has changed significantly. Trusts cannot be created under the laws of Cabo Verde. However, there appears to be no legal provision preventing a trust or trustees under the laws of another country from operating in Cabo Verde.

**Criterion 25.1 (a)** – Cabo Verde does not provide for trusts in its domestic legislation.

However, Article 19 (7)(b) of Notice No. 5/2017 of 7 September establishes the requirement to obtain, in the case of trustees or trust administrators, information on the beneficiaries of trusts under foreign law to enable the identification and verification of their identity at the time of payment or when they (beneficiaries) intend to exercise acquired rights.

Similarly, Article 19 (7) I (ii) provides that in the case of trusts under foreign law, identification and verification of the identity of the beneficial owner must be made in a way to enable knowing the settlor, guarantor and trustees.

Also, Article 9 of Notice no. 5/2017 and Article 12 (1) of the AML Act provides that, in the case of trusts, rules for the verification and identification of the identity of the beneficial owner, the founder, the trust trustee of trust funds or any other person who has effective control of the trust fund.

Considering the provisions of Article 13 (9) of the AML Act, the trust fund service provider is required to identify its customers when it has to carry out the activities described in Article 7 (6) (j) (iv), namely: acting as trustee of an explicit trust fund or taking necessary steps to have a third party act in the aforementioned manner.

Thus, the determination of the quality of the BO, founder, trustees or any other person who has effective control of the trust fund is also done through the legal requirement of identification



and verification of identity to which reporting institutions are subject to, in regard to both existing and future transactions (Article 12 (8) of the AML Act).

Finally, under the terms of Article 14 (5), the identification requirement includes trust funds established under foreign law or similar legal instruments, and it is also mandatory to collect elements of identification and verification of the identity of the effective trustees, protectors and beneficial owners.

**Criterion 25.1 (b)** – Pursuant to Article 13 (9) of the AML Act, DNFBPs rendering services to trust funds as an administrator of an explicit trust fund or take the necessary steps for a third party to act in such a manner are required to identify their customers, as stated in Article 7 (6) (j) (iv) of the AML Act. Therefore, under the terms of Article 25 of the AML Act, DNFBPs are required to comply with the record keeping obligation.

**Criterion 25.1 I** – An administrator of an express trust fund who takes the necessary steps to have a third party act in the aforementioned manner, is required to identify the customers and keep the physical or electronic copies or original documents for a period of 7 years, even after the termination of his/her services. Article 44 of Notice no. 5/2017, of September 7, also requires the preservation of information in a place easily located and immediately accessible.

**Criterion 25.2** – Cabo Verde does not have a specific legislation on trust funds. However, some laws in its legal order are applicable, namely the AML ACT and Notice No. 5/2017. Thus, Article 15 (6) I of the AML ACT requires the reporting entities to keep information obtained during the procedures of identification of customers, their representatives and BO up to date.

Likewise, and to comply with the provisions of Article 15 (6) I of the AML L, Notice No. 5/2017 states in Article 30 (1) (2) the carrying out of periodic steps and procedures to ensure the updating, accuracy and completeness of the information, and the periodicity must take account of the degree of risk associated with each customer.

**Criterion 25.3** – Fis and DNFBPs are prohibited from entering into business relationships or performing occasional transactions above one million escudos (equivalent to \$10,540/ 9,004.18 EUR) with any natural or legal person who has not been duly identified (Article 12 (3) of the AML Act). The trustee of trust funds provided for in Article 12 (1)(b) of the AML Act must make its status known to Fis and DNFBPs.

**Criterion 25.4** – pursuant to Article 7 (6) (j) (iv) of the AML Act envisages that lawyers are permitted to act as trustees of an explicit trust fund or to take the necessary steps to have a third party act in such manner. Therefore, under the terms of Article 7 (1) nothing prevents them from providing information concerning trust funds or beneficiaries. The same applies to information on the trustee or trustees of trust funds the beneficiaries of trusts of foreign law operating in Cabo Verde (Article 19 (7) (b) of Notice no. 5/2017).

**Criterion 25.5** – according to Article s 25 (3) and 31 (1) of the AMLL, law enforcement authorities have the power to request information about BO as well as information held by a trustee of a foreign trust operating in Cabo Verde. Likewise, and pursuant to Article s 44 (4) and 46 (1) of Notice No. 5/2017, they are also empowered to, at any time and in any

circumstance, obtain information on the beneficial owner and on those held by a trustee of a foreign trust operating in Cabo Verde.

**Criterion 25.6 (a)** – the legal framework on cooperation established in the FIU legislation and AMLL, provides for different levels of cooperation of the FIU with judicial authorities, the AG’s Office, the Judiciary Police, the supervisory authorities of the banking and financial system and reporting entities, with a view to prevent and repress ML/TF crimes. Thus, pursuant to Article 44 (4) of Notice no. 5/2017 and Article s 31 and 25 (3) of the AMLL, law enforcement authorities in Cabo Verde have access to current and up-to-date information on trust funds and BO of entities without legal personality, at all times and under any circumstance.

In order to allow access of competent foreign authorities to the information held by the law enforcement authorities in Cabo Verde, Law no. 6/VIII/2011, of August 29, established different forms of cooperation and, in this case, competent foreign authorities may request access to information directly from the competent authorities and entities of Cabo Verde (Article 150 (5)), which must be communicated by them (Article 141 (1)).

**Criterion 25.6 (b)** – the domestic sharing of information is provided for in Article 31 of the AML ACT as well as in Article 46 of Notice No. 572017 and in the FIU legislation (Article 5 (3)), in which the FIU cooperates and liaises with judiciary authorities, the AG’s Office and the Judiciary Police, as well as with the supervisory authorities of the banking and financial system and all reporting entities that must comply with the communication requirement provided for in the law that establishes measures to prevent and suppress the crime of laundering money, rights and values or any other legal provision.

**Criterion 25.6 I** – Article s 44 (4) and 46 (1) of Notice No 5/2017 and Article s 25 (3) and 31 of the AML Act show that competent national authorities have powers to, at any time and under any circumstances, have information on the beneficial owners. Therefore, in the framework of international cooperation and through the application of Law no. 6 / VIII / 2011, of August 29, foreign competent authorities may have access to information on beneficial owners.

**Criterion 25.7** – Cabo Verde’s legal system has proportional and dissuasive sanctions for non-compliance with obligations, which are carried out through criminal, civil, administrative and disciplinary accountability. For this, see Article s 31 (3) and 60, 63 and 64 of the AML Act and, also, Article 356 (3) of the Criminal Code, which establishes the sentence of imprisonment of up to 2 years or a fine of 60 to 200 days, for incompliance.

**Criterion 25.8** – Article 51 of Notice No 5/2017 states that any violation of its rules, including those requiring information be made available at any time and under any circumstance to competent authorities, constitutes an offense for which punishment is provided for in Article s 60, 62, 63 and 64 of the AMLL. Criminal accountability, namely through qualified disobedience, is provided for in Article 356 (3) of the Criminal Code, which establishes the penalty of imprisonment up to 2 years or a fine of 60 to 200 days.

## **Weighting and Conclusion**

Although trusts are alien to the legal system of Cabo Verde, the country has measures in place, though with minor gaps, to ensure that they are abused for criminal purposes.

## **R25 is rated Largely Compliant.**

### ***Recommendation 26 – Regulation and supervision of Fis***

Cabo Verde was rated Not Compliant under the 2007 Mutual Evaluation procedure, essentially because there was no clear supervision strategy, as well as a perspective of the risks inherent in the lines of business developed by the various Fis. The fact that the legal framework, with regard to the supervision of International Financial Institutions (IFIs), does not present the same level of robustness as those of other Fis was also pointed out as a justification for the rating achieved.

Following the adoption of the first MER, Cabo Verde the following instruments aimed at strengthening and giving robustness to the legal, regulatory and supervisory framework of Cabo Verde's financial system:

- Law No. 61/VIII/2014, of April 23 – Also known as the Financial System Basis Law (FSBL), defines the Guiding Principles and the normative framework of reference for the financial system;
- Law no. 62/VIII/2014, of April 23 – Regulates the Activities of Fis (LAFI);
- Legislative Decree 1/2012, of January 27, 2012, which approves the new Securities Market Code (Cod. MVM);
- Legislative Decree 3/2010, of 17 of May, regarding the insurance sector;
- The following regulatory instruments issued by BCV (BCV) were published as a result of the publication of these regulations:
- Technical Instruction no. 149/2009, of November 4, which aims to prevent the financial system from being used to commit ML crime through Fis. <sup>19</sup>
- Technical Instruction No. 167/2012 of November 12, which contains instructions for insurance companies and mediators within the scope of AML.<sup>20</sup>
- Notice 02/2014, of October 17, regarding the exercise of BCV supervision and revoking notices no. 7/98, of December 28, and 5/2007, of November 19;
- Notice no. 3/2014, of October 17, which stipulates the rules regarding behavioural supervision; and
- Notice no. 4/2014 of October 17, regarding suitability and professional qualification requirements of members of administrative and supervisory bodies of Fis
- At the time of publication of the eighth follow-up report, some of the key measures identified in 2007 were still to be implemented, namely:
- The preparation of a National Risk Assessment (NRA);
- The approval and publication of the ML/TF draft bill;

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<sup>19</sup> BCV Technical Instruction No. 149/2009 revoked BCV Technical Instructions 108/2003 and 117/2005, in force at the time of the first 2007 Mutual Evaluation.

<sup>20</sup> BCV Technical Instruction No. 167/2012 revoked Technical Instruction No. 109/2003, in force at the time of the first mutual evaluation.

- The approval of a new BCV technical instruction for Fis;

In 2016, Cabo Verde approved and published Law no. 120/VIII/2016, of March 24, which introduced changes to Law 38/VII/2009, of April 27, aiming at adapting the current system to international requirements on ML/TF crimes in the financial system and BCV has put for public consultation a draft Notice on the conditions, mechanisms and procedures necessary to fulfil ML/TF preventive obligations in the scope of the provision of financial services subject to BCV supervision, with a view to adapting it to the changes recommended, above all, by Law no. 120/VIII/2014, of March 24.

Cabo Verde approved and published Law no. 119/VIII/2016, of March 24, which amended Law 27/VIII/2013, of January 21, seeking to introduce recommendations for improvement, which resulted from the 2007 MER and subsequent follow-up reports.

Cabo Verde also published BCV Notice 1/2016, dated February 3, regarding risk-based supervision inherent in the business line of insurance companies and in 2017 BCV Notice No. 5/2017 of September 7, on the conditions, mechanisms and procedures necessary to effectively fulfil the ML/TF preventive obligations in the scope of the provision of financial services subject to the BCV supervision.

This latter notice specifies and densifies, in the financial sector, a set of rules and procedures whose effectiveness can only subsequently be measured. The Instrument addresses the general obligations set forth in the AML, seeking to densify those that, in the face of preventive obligations, assume greater importance towards the risk inherent in the financial sector. The rules relating to politically exposed persons and to the beneficial owner are relevant.

Notice No. 5/2017 is a well-constructed normative instrument, based not only on the AML but also on the international principles emanating from the FATF and other international cooperation entities competent in preventing and combating ML. The implementation of this standard will be demanding and will not produce effects in time for this evaluation.

It should be noted that the new Recommendation 26, in accordance with the “2013 Methodology”, reinforces and focuses its scope on the principle of supervision and control through the use of a risk-based approach.

Criterion 26.1 – (Partly Met) – BCV (BCV) is the Institution that has responsibility for supervising the Financial System in relation to ML/TF (Article 5 of Law 38/VII/2009, of April 27, amended by Law no. 120/VII /2016, of March 24).

The AGMVM is a unit within the BCV. As an internal unit of the BCV, the regulatory and supervisory powers of the AGMVM are assigned to the BCV Governor’s Office.

The BCV regulates banks, parabanks, insurance companies and IFIs – renamed Credit Institutions with Restricted Authorization (ICARs), with the approval of the FSBL, (Article s 38 to 45) – while the AGMVM regulates capital market and stock exchange intermediaries. The supervision of AML measures of entities authorized by the BCV is carried out by the BCV.

Even though Law No. 27/VIII/2013, of January 21, amended by Law 119/VIII/2016, of March 24, provides for CFT measures (Article s 11 et seq.), it does not contain any provision identical to that of Article 5 of Law no. 38/VII/2009, of April 27, as amended by Law no. 120/VIII/2016,

of March 24, regarding Fis. In addition, LAFI has only a brief reference to CFT measures – Article 70 (b).

**Criterion 26.2** – In Cabo Verde, LAFI, in Article 20 (1) and (2), stipulates that all Fis as defined in Article 20 (2) of the FSBL cannot start their business until they are registered with the BCV. If the object of Fis includes the exercise of activities of intermediation of financial instruments, the registration with the BCV is communicated and made available to the AGMVM.

FSBL Article 22 further stipulates that the status of FI is acquired through: a) Authorization for the exercise of financial activities granted by the BCV; b) Definitive registration with the BCV; and c) Definitive registration in the registry of the competent commercial registry, in the case of a FI with headquarters or established in the Republic of Cabo Verde.

The list of Fis covered is set out in Article 3 of the FSBL as follows:

- Fis are:

- a) Credit institutions, which include: i. Banks; ii. Investment companies; iii. Leasing companies; iv. Factoring companies; v. Financial companies for credit purchases; vi. Companies issuing or managing credit cards; (vii) Mutual guarantee societies; (viii) Regional development societies; ix) Others that are qualified as such by law;
- b) Electronic money institutions;
- c) Insurance and pension fund management companies;
- d) Pension funds and collective investment undertakings provided that they have a collective personality;
- e) Investment fund management companies and securities depository companies assigned to investment funds, in accordance with Decree-Law no. 15/2005 of 14 February;
- f) Financial management companies;
- g) Venture capital companies;
- h) Exchange offices;
- i) Others that are qualified as such by law.

- Auxiliary institutions of the financial system are: a) Financial intermediaries; b) Certified auditors and accountants and external auditors; c) Private credit information centres; d) The credit rating agency; e) Self-regulatory organizations; f) Others that are qualified as such by the law.

The so-called Non-core Financial Institutions under the supervision of the BCV are subject to the same regime as the Core Institutions.

BCV Organic Regulation, following BCV Organic Law, explains the authorization and registration procedures contained in its attributions.

LAFI Article 228 provides for criminal sanctions for the illegal exercise of financial activity.

Following the introduction into the Cabo Verde legal and financial system of the measures taken to address deficiencies identified in 2007, Law 38/VII/2009 (AML), amended and republished by Law No. 120/VIII/2016, of 24 March in Article 17 (1), contains measures to prohibit shell banks' transactions in Cabo Verde. Paragraphs 2 and 3 of the same Article contain measures aimed at prohibiting the establishment of business relationship between Fis and shell banks.

**Criterion 26.3** – Cabo Verde has instituted rules aimed at establishing appropriate “properness and suitability” mechanisms to prevent criminals or their associates (co-beneficiaries or others) from having or being the BO of a majority ownership or from performing management tasks in a FI.

FSBL Article 12 e) assigns the status of entity subject to BCV regulation and supervision to legal entities with qualifying holdings. LAFI Article 45 (1) stipulates that a natural or legal person who, directly or indirectly, intends to hold a qualifying holding in a FI, must first inform the BCV of its project, a qualifying holding being a participation that exceeds, directly or indirectly, 5% of the share capital or voting rights of the institution. LAFI Article 47 (1) stipulates that the BCV may oppose the project if it does not consider that the proposed acquirer has satisfied conditions that ensure sound and prudent management of the FI or if the information provided by the proposed acquirer is incomplete. The LAFI provides, among other elements that may lead to such opposition in the BCV assessment, the suitability of the proposed acquirer, especially taking into account the provisions of Article 28 of that diploma, if it is a natural person, the suitability and professional qualification of the members of the administrative body of the FI to be designated as a result of the proposed acquisition, in accordance with the provisions of Articles 28 and 29; and whether there are sufficient grounds to suspect that, in connection with the proposed acquisition, an operation likely to shape ML practice has taken place, is under way or has been attempted, within the meaning of the relevant legislation, or that the proposed acquisition may increase its risk of occurrence.

AML further states at sub-paragraph (a) of Article 6 (3), that the supervisory and regulatory body shall ensure that Fis take the necessary measures to prevent perpetrators of offences and their partners from acquiring or being the BO of shares in Fis or holding management positions in them.

LAFI Article 4 (2) further stipulates that, unless otherwise provided by law, Fis take the form of public limited companies, and shares representing their capital must be nominative.

Regarding TF, LAFI Article 28 (2) (b) stipulates that “(...) for the purposes set forth in the preceding paragraph, it is not considered necessary whoever:

- a) (...);
- b) Has been convicted of committing a crime which corresponds to a prison sentence of one year or more without the option for a fine; (...) “

Law no. 27/VIII/2013, of January 21, as amended by Law 119/VIII/2016, of March 24, stipulates in its Article 7 that whoever commits TF crime will be punished with a prison sentence of eight (8) to fifteen (15) years.

By combining these two legal provisions, those who have been convicted of TF will not pass the suitability tests implemented by LAFI and their regulatory diplomas aimed at preventing

criminals or their associates (co-beneficiaries or others) from having or being the BO of a majority ownership or perform management tasks in a FI.

**Criterion 26.4** – Supervision of institutions governed by the Fundamental Principles – The prudential regulation and supervision exercised by the BCV and the AGMVM on Fis (Core Principles Institutions) is based on the fundamental principles of Basel and IOSCO relevant in terms of ML/TF. BCV is urged by current legislation, in particular by LAFI Article s 47 and 95, to verify group relations and ensure effective supervision. Pursuant to LAFI Article 100, the BCV sets out, by means of a notice, situations in which Fis are subject to consolidated basis supervision and adjusted consolidated basis supervision.

It should be noted that since the AGMVM is an internal unit of the BCV, since it depends on its Governor, it was already considered in the 2007 MER that the supervisory powers exercised by this unit are, in fact, assigned to the BCV. The AGMVM has been a member of IOSCO since March 2016.

In view of the rules that define the FI concept of the FSBL as well as of the LAFI, it is noted that the other Fis are under BCV regulation and supervision (on site and off site), also in ML/TF issues. Consider, for example, AML Article s 9, 18, and 27 and LAFI Article 228, regarding money transfer services or securities.

**Criterion 26.5** – The FSBL and LAFI consider the risk, both in prudential and behavioural supervision, in line with the recommendations of the Basel Committee and the Committee of European Banking Supervisors, which are contained in Pillar 2 of the Basel Capital Agreement, as an essential factor in the decision on the frequency and intensity of face-to-face and distance supervision. The BCV has been implementing a new approach to risk-based supervision in the Cabo Verdean banking system.

The BCV highlighted in page 40 of the 2015 financial stability report that:

*“In the framework of the institutional cooperation with the Central Bank of Brazil, started in 2012, the BCV has developed a Risk and Control Assessment System (RAS). Its implementation allows the adjustment of supervisory practices to the new requirements and a better evaluation of each institution’s risk profile through a separate risk analysis and associated management and control processes, aiming to ensure the correct identification of risks and controls. The conceptual framework for the risk and control system is based on the recommendations of the Basel Committee and the Committee of European Banking Supervisors (CEBS) on risk assessment systems.”*

The NRA objectively defines the risks and controls to be evaluated, based on quantitative and qualitative information, incorporating the various procedures that ensure the quality and consistency of the results. The determination of the risk profile of each institution presupposes the assessment of the risks that emerge from the activities developed (called intrinsic risks) and the analysis of the institution’s internal management mechanisms, which includes aspects related to organization and management and control processes implemented to mitigate the risks incurred. The assessment of the risks intrinsic to the activity developed by the institution is made separately from the assessment of the controls instituted to mitigate these risks, since these do not influence the probability of occurrence of events that affect the financial condition

of the institution, but rather reduce the negative impacts that may arise from it. Thus, at the end of the process, what is known as “net risk” is determined:

The net risk will always correspond to the residual risk after considering the mitigation effect of the controls (level of net risk actually incurred by institutions). The risk assessment under this system covers ten different categories of financial nature (credit risk, market risk, interest rate risk and exchange rate risk) and non-financial risk (strategy risk, reputation risk, operational risk, information technology risk, legal risk and ML risk). The analysis of the quality and soundness of the arrangements for internal corporate governance includes categories of control, such as organization and management as well as specific risk controls. The adoption of a system of risk and control evaluation has as main focus to assist in the identification of institutions that present financial, operational or regulatory compliance weaknesses and that, therefore, require special attention by the Supervision and/or signal a degree of greater than normal concern. The RAS should also contribute to facilitate the comparison of outcomes across functional and inter-institutional areas, assist in the planning of supervisory activities (definition of the supervisory cycle), and thus promote the effective allocation of resources, through increased focus on institutions and areas of greater risks. The Application of the RAS was planned for 2016 for the two largest banks in the system – Banco Comercial do Atlântico, S.A. (BCA) and Caixa Económica de Cabo Verde (CECV) S.A. Its implementation at BCA was in progress during the preparation of this report.

The ML risk will be one of the factors to consider. There were no references to TF risk in the documents analysed.

In the BCV Strategic Plan for the years 2016-2019, the development and enhancement of the financial system regulatory and supervisory capacity, taking account of the risk-based supervision paradigm, is part of the guidelines issued by the BCV Board of Directors.

However, it is a process that is in the implementation phase.

**Criterion 26.6** – There is no obligation in the legislation and regulations in force for the BCV to carry out periodic reviews of any risk analysis carried out on Fis or a group. The process of applying the Risk Assessment and Control System (RAS) will be dynamic and will have a predefined cycle, self-powered with events and situations involving the management and/or Fis’ transactions, with immediate impact on the category of reputation risk. It is a process that is being implemented.

### **Weighting and Conclusion:**

The AML legal framework does not provide for the requirements of criteria 26.5 and 26.6 of Recommendation 26. There are deficiencies in the application of risk-based supervision covering all financial sectors. RAS implementation in banking system supervision will partly address these deficiencies but does not cover entities under the auspices of the AGMVM or the insurance sector.

### **Recommendation 26 is rated as Partially Compliant**



## ***Recommendation 27 – Powers of Supervisors***

Cabo Verde was rated Partially Compliant on the former Recommendation 29 because the BCV only issued instructions and recommendations for breach of AML rules but did not have sanctioning powers and no sanctions were applied.

With the new AML Act, the BCV has been endowed with the necessary powers under Article 5 to apply measures and sanctions to Fis for failure to comply with their obligations regarding AML.

**Criterion 27.1** – The BCV is endowed under Article 6 of the AML Act with the necessary and adequate powers to supervise or monitor and ensure compliance by Fis with their AML obligations.

Although the BCV is equipped with the mechanisms and powers to carry out effective supervision in ML prevention and control, it does not have the same mechanisms and powers in terms of TF, given the imperfect remission technique used in Article 39 of the CFT Act.

Nevertheless, the BCV issued Notice 5/2017, currently in force and mandatory for financial institutions, which sets out, in its Article 5, supervisory and monitoring powers to ensure compliance by the Fis with their obligations under TF, despite a possible gap in the enabling law.

These powers are also embodied in the BCV Organic Law and its Organic Regulation.

**Criterion 27.2** – Article 6 (1) of the AML Act mandates the regulatory and supervisory authorities (among which the BCV, pursuant to AML Article 5 (a)) to regulate, monitor, supervise, inspect and ensure compliance with the provisions of the AML Act. The BCV does not have the same mechanisms and powers in terms of TF, given the imperfect remission technique used in Article 39 of the CFT. However, the BCV issued Notice 5/2017, currently in force and mandatory for financial institutions. Article 5 of the Notice sets out the supervisory and monitoring powers to ensure compliance by the Fis with their obligations under TF, despite a possible gap in the enabling law.

**Criterion 27.3** – Pursuant to Article 6 (2) I and Article 10 (5) I of the AML Act, Fis are obliged to grant direct access to information and documentation to supervisors. Article s 33 of the CFT and 46 of BCV Notice 5/2017 contain the same obligation.

**Criterion 27.4** – Article 6 (2) (f) of the AML Act empowers regulatory and supervisory authorities to impose sanctions and measures on Fis and DNFBPs, including the power to cancel, restrict or suspend authorisation. The CFT only establishes the principal and ancillary criminal penalties for the crimes provided in the said law. Article 39 of the CFT Act, in view of the imperfect remitting technique used, presents a gap in this regard.

### **Weighting and Conclusion:**

The absence of clarity regarding the referenced law in Article 39 of the CFT Act creates a gap in the powers of supervisors to supervise reporting entities and apply sanctions for non-compliance with preventive measures on CFT.

## **Recommendation 27 is rated Partially Compliant**

### ***Recommendation 28 – Regulation and supervision of designated non-financial businesses and professions (DNFBPs)***

Cabo Verde was rated non-compliant on the former Recommendation 24 since the regulatory and supervisory authority of all DNFBPs – the Ministry of Finance – despite designated as such, had not taken any action, nor delegated such tasks to any division or technician, at the time of the mutual evaluation. The new requirements contained in the FATF Recommendations and Methodology enhance the “risk-based approach” principle with regard to regulation and supervision of DNFBPs.

**Criterion 28.1** – Casinos are entities subject to AML obligations, pursuant to Article 7 of the AML Act. The AML Act also applies to betting agencies, whenever they make payments to winners of betting prizes or lotteries equal to or greater than CVE 300,000\$00 (€ 2.720,72) (Article 7 (6)(b) & (10) of the AML Act) . Article 13(5) of the AML Act requires betting and lottery agencies to comply with CDD measures when they make payment to winners of prizes of or more than (600,000\$00)(equivalent to six thousand three hundred and seventy two US dollars (\$6,372.00)). The discrepancy in the figures may impact effective supervision of betting and lottery agencies for AML compliance.

Persons responsible for the management, operation and marketing of lotteries and other games of chance relating to premium payment transactions are also subject to AML requirements (AML Article 7 (6) I).

The General Inspectorate of Games (IGJ) has the regulating and supervising role over these entities, assuming the competences assigned to it by Article 6(1), (2), (3)(a) and (4) of the AML Act).

**Criterion 28.1 (a)** -, Law no. 77/VI/2005 of April 20 – Game Law (GL) – with the changes introduced by Law no. 62/VII/2010 of May 31 (Gaming Law) determines the conditions for licensing casinos and provides for related matters. The Gaming Law stipulates the areas of the Cabo Verdean territory where the practice of the games, namely casinos, is permitted. The exploitation is done by means of an administrative concession contract, to establish the casino within Cabo Verde, or a special license (for example, operation of games on ships or registered aircraft in Cabo Verde, the exploitation of bingo outside the gaming zones and acceptance of betting or games through data communication means or transmission of information or computer media, with payments through those means or through the banking system) assigned in accordance with the conditions set out in Article s 9 and 13 of the GL) and other applicable regulations (Article 6 of the GL).

**Criterion 28.1 (b)** – Under Article 11 of the GL, a concession for the operation of games of chance may only be awarded to a tenderer considered to be suitable for obtaining the concession. The following criteria, among others, are applied in assessing the suitability of applicants for license to operate casinos:

75) The experience; b) internal reputation or, where appropriate, external reputation; c) the nature and reputation of companies belonging to the same group as the tenderer, in particular those which are the dominant shareholders; d) the character and reputation of entities closely associated with the tenderer, in particular those which are the dominant shareholders. The requirement of suitability also extends to the shareholders of tenderers holding a value equal to or higher than 5% of its share capital, its managers and the main employees with relevant tasks in the casinos.”

Article 38 of the GL prohibits whoever has been convicted of an intentional crime with a prison sentence of more than six months, or of a crime previewed in the GL or violated the prohibition of granting cash loans for the practice of gambling, from being part of the corporate bodies of concessionaires, casino management teams, or from performing the tasks of those responsible for the concessionaire’s gambling halls.

There are measures relating to the holding and acquisition of significant shareholdings or control in casinos (GL Article 11 (2)). However, these measures only apply to a minimum of 60% of the shares that the concessionaires need to have represented by nominative or bearer shares on a registration basis, which may imply that the concessionaires may not know the shareholders of the remaining capital.

**Criterion 28.1 I** The General Inspectorate of Games (IGJ) is the regulatory and supervisory body for games of chance. The IGJ is a central inspection and surveillance service for gaming activity, directly dependent on the Minister of Tourism, Industry and Energy, or the member of the Government responsible for tourism.

The scope of IGJ action covers the concessionaires of the exploitation of games of chance, the holders of special licenses for the operation of games of chance, with the necessary adaptations being applied to everything that is said for the surveillance and supervision of the concessionaires and any entity that develops the exploitation of similar modalities of games of chance such as raffles, tombola’s, draws, advertising contests, knowledge contests and hobbies.

As a regulatory and supervisory body, the IGJ is responsible for guaranteeing that the games are conducted in a healthy and fair competition environment. Casinos are supervised by the IGJ, taking account of the functions that the GL and other applicable laws confer on the IGJ.

Regarding AML/CFT, the IGJ, pursuant to Article 5 (b) of the AML Act is a regulatory and supervisory body for natural or legal persons that exploit casinos, games of chance, lotteries, mutual bets and promoters of games of chance. It has the powers described above, as well as those assigned to it by Article 6 (1) of the AML.

#### **Other DNFBPs other than casinos**

**Criterion 28.2** – Article 5 (b) – (g) of the AML Act stipulates those entities which are responsible for regulating and supervising compliance with AML requirements with respect to DNFBPs, namely:

- a) The General Inspectorate of Games, in relation to casinos and other games of chance;
- b) The Bar Association, in relation to lawyers and solicitors;

- c) The General Directorate of Registries, Notaries and Identification, in relation to notaries and registrars;
- d) The National Directorate of State Revenue, in relation to the Customs Directorate;
- e) The General Inspectorate of Buildings and Real Estate, in relation to the entities that carry out the activities of real estate development, real estate brokerage, real estate purchase and sale, as well as construction companies that sell real estate directly;
- f) The Order of Professional Auditors and Certified Accountants, in relation to auditors, accountants and tax consultants;
- g) The General Inspectorate of Economic Activities, in relation to traders of high value goods, namely vehicles, works of art, antiques and jewellery;
- h) The NGO Platform, in relation to non-profit organizations (NPOs); and
- i) The Financial Intelligence Unit, in relation to entities that are not subject to the supervision of another authority.

Law no. 27/VII/2013, of January 21, with the amendments introduced by Law 119/VIII/2016 of March 24, which establishes preventive and repressive measures against terrorism and its financing (CFTL), establishes in Article 2 (f) that the regulatory and supervisory entities for TF are the National Civil Aviation Agency, the Customs Directorate, LEAs, entities with specific powers or powers delegated to them for granting prior authorisation for foreign trade operations, and those determined by law.

There is no norm similar to that of Article 5 of the AML Act in the CFT Act. No explicit references are made in the organic laws of each of the entities mentioned above in relation to the prevention and combat of ML/TF. There are only open clauses that aim to prescribe other functions and functions that may be provided by law, in particular in terms of TF supervision.

**Criterion 28.3** – In view of the list contained in AML Article 5, as well as of Article 6 of the same Law, it is noted that all DNFBPs are subject, under the terms of Article 4 to 6 of the AML Act, to AML/CFT obligations and under the regulation and supervision of a regulatory or supervisory body or competent self-regulatory body (SRB), under the terms of the same Law.

**Criterion 28.4** – In the gaming sector, the IGJ has specific powers to carry out its regulatory and supervisory activities, including in the ML/TF area, partially monitored by the IGCI. In 2013, the structure of the new Ministry of Infrastructure and Maritime Economy (MIEM) was established through Decree-Law no. 16/2013. With this Decree-Law, the central inspection services was endowed with a new mandate in the area of real estate and named as the Construction and Real Estate Inspectorate (IGCI).

The General Inspectorate of Economic Activities (IGAE), is a central service of the Ministry of Commerce, Industry and Energy, in charge of ensuring compliance with laws, regulations, instructions, orders and other regulations that govern economic activities. The IGAE is a criminal police authority and body in the field of anti-economic and public health offences.

The Directorate-General for Registries, Notaries and Identification, in relation to notaries and registrars, makes use of the disciplinary powers provided for in the applicable legislation, since they are civil servants and comply with their rules.

The remaining entities obey their respective statutes, since, for the exercise of the activity, they need to be inscribed in the respective associations, which are SRBs.

Except for the measures provided for concessionaires in the gaming sector (see criterion 28.1), for some of the DNFBPs there are analysis of suitability for access to the activity and their permanence. For example, the activity of real estate brokerage – Decree-Law no. 57/2010, of 6 December in its Article 6: - “(...) it is presumed that the persons to which one of the following situations apply are not commercially suitable: a) Legal prohibition of the exercise of trade; and b) Inhibition of the exercise of commerce, declared in bankruptcy or insolvency process, as long as the inhibition is not withdrawn and the rehabilitation decreed, an absence of commercial suitability shall be presumed whenever any of the following situations occurs, among others: a) Declaration of bankruptcy or insolvency; b) having been convicted, by a final court and the decision cannot be appealed against, of an intentional crime against property, under penalty of effective detention; and c) having been convicted, by a final decision, of crimes of embezzlement, corruption, falsification of documents, disobedience, when committed in the context of the exercise of real estate mediation, under penalty of effective imprisonment.”

Regulatory and supervisory authorities of DNFBPs are competent to investigate, instruct and enforce the sanctions provided for in Article 72 to 76 of the AML Act. They also have the necessary competence to apply additional sanctions, such as those contained in Article 77 of the AML Act. Lawyers are subject only to their statute, applying the sanctioning/disciplinary regime provided therein.

**Criterion 28.5** – Supervision of DNFBPs is not performed according to the degree of ML/TF risk.

#### **Weighting and Conclusion:**

Absence of risk-based supervision of DNFBP, as well as the absence of legal references to TF supervision, have strong implication in the final rating of this Recommendation.

**Recommendation 28 is rated Partially Compliant.**

#### ***Recommendation 29 – Financial intelligence units***

Cabo Verde was rated non-compliant on the former Recommendation 26 because the JP did not fulfil all FIU tasks as required by Recommendation 26. In addition, no significant analyses were performed prior to the beginning of routine police investigation for all STRs. STRs were treated similarly like any criminal charge and the only preparatory work was the cross-checking of names in the databases available to the Police. The PJ did not have timely access to additional information from the reporting institutions or access to confidential information from external sources. The PJ was not authorized to exchange information with foreign FIUs, it did not define reporting guidelines for reporting institutions; did not authorize the establishment of reporting

procedures and did not report on typologies, ML trends or other analytical information to facilitate the private sector's task of detecting suspicious transactions. The PJ did not have the operational independence necessary to determine the STRs that should be sent to the Public Prosecutor's Office and when not to process a case, and the number of STRs received so far was insignificant, which negatively affected the FIU's effectiveness in Cabo Verde.

Since the last Cabo Verde mutual evaluation, the FATF standards have been significantly enhanced in this area.

Cabo Verde approved Decree-Law 9/2012, of March 20 (the FIU Law) to address the aforementioned deficiencies. The AML/CFT provisions relating to the FIU complement the provisions of this Decree.

**Criterion 29.1.** Article 3(1) of the FIU Law specifies the functions of the FIU to include the receipt, analyses and dissemination of information related to suspected ML/TF. The FIU is empowered to apply the instructions and decisions defined in the AML Act (Article 3 (2) (b) of the FIU Law). Article 2 (x) of the AML Act defines the FIU as a financial information service serving acting as the national center for reception, solicitation and disclosure of information related to ML activities.

Article 4 (1) of the FIU Law requires the FIU to send all information on suspicious transactions related to ML/TF and economic crime to the AG. Article 4 (2) provides that the FIU should, with the authorization of the State Prosecutor, communicate the cases enumerated in Article 4 (1) to the JP when the complexities of these cases require specialized intervention in criminal investigation. The FIU may do so directly if it is unable to obtain the authorization of Attorney-General in a timely manner and inform the AG as soon as possible. The provisions contained in the three regulations do not cover information on predicate offences related thereto. Article 16 (2) of the FIU Law requires the FIU to submit its final analytical report (intelligence report) with the proposal to the AG or the magistrate designated by the AG for assessment. In other words, upon analysis, the FIU communicates the intelligence report to the AG for assessment.

**Criterion 29.2.a** – Article 2 (x) of the AML Act defines the FIU as a financial information service that functions as the national center for receiving, requesting, analysing and disseminating intelligence related to any ML activities.<sup>21</sup> Article 3(1) of the FIU Law empowers the FIU to receive STRs filed by reporting entities on ML/TF. The FIU receives STRs from all Fis and DNFbps.

**Criterion 29.2.b** – Article 11 requires the Customs Directorate to communicate to the FIU information on cross-border declaration of currency and BNIs if they are aware, suspect or have reason to suspect that ML has occurred, is occurring or has been attempted in relation to the physical circulation of national currency, currency or BNIs. The Customs also required to communicate the resulting information and make other information on the declarations available to the FIU (Article (11) (2) (b) of the AML Act)<sup>22</sup>.

Reporting entities are required to send to the FIU, reports on deposit transactions in banking institutions, shares and investments acquisition, payment of insurance and pensions and

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<sup>21</sup> 2 (x) does not mention TF.

<sup>22</sup> See also Article 32 (1).

express cash dispatch (wire transfer) involving an amount equal to or more than one million escudos (1,000,000\$00) (equivalent to \$10,540/ 9,004.18 EUR) (Article 34 (2) of the AML Act).

**Criterion 29.3(a)** – Article 5 (1) of the FIU Law empowers the FIU to request for information from any public or private entity for the performance of its duties. The exercise of this power is subject to the legal limits for personal data. The FIU is also empowered by Article 3(3) of the FIU Law to request for necessary information from any public or private entity, within the limits established by law, to comply with the competences of the FIU. On receipt of STRs from reporting entities, the FIU writes to Fis and DNFBPs that are likely to have information on the suspected launderer to request for information that will facilitate the analysis. Thus, the FIU showed evidence that it requests for additional information from reporting entities in the context of its analysis, to which the FIU has received responses.

**Criterion 29.3(b)** – Article 54 (1) of the AML Act empowers the FIU to have access to financial, administrative, judicial and police information in a timely manner for the full performance of its ML prevention duties. Such information shall be subject to the obligation of confidentiality. There is no similar provision in the CFT Act. However, Article 3(2) of the FIU Law empowers the FIU to exercise the instructional and decision-making powers provided for in the AML Act. The powers of the FIU extend to CFT. In this regard, the FIU is able to have access to similar information for CFT purposes.

**Criterion 29.4(a)** – The FIU conducts operational analysis, which takes account of the information collected in the databases, in accordance with the specific needs of the analyses. (Articles 14 to 16 of the FIU Law and AML Article 54 (2)). Article 15 of the FIU Law mandates the FIU to adopt written procedures for analyses of STRs. The FIU has an internal manual for analysing STRs. The Research and Analysis Department of the FIU analyses the STRs following the decision and guidance of the Director of the FIU. The decision and guidance of the Director should occur within forty eight hours of receipt of the STR, while the analysis is to be done within a maximum period of eight days, without prejudice to suspending the execution of the transaction. After the analysis, the analysts prepare intelligence reports to the FIU Director who prepares the analytical report that is later submitted to the AGO.

Article 18 of the FIU Law enjoins the FIU to use all the resources of information and communication technologies to receive, register, save, analyse or report data reports or any information. However, FIU analysis are done manually. This deprives the FIU of the ability to cross-reference information and create links between targets. The FIU is developing a computer system to facilitate its work.

**Criterion 29.4(b)** – The FIU does not carry out strategic analysis.

**Criterion 29.5.** – Article 3 (2) I of the FIU Law requires the FIU to assist, when requested by the judicial authorities, criminal police agencies, as well as all entities with competence to prevent or repress ML/TF crimes through the provision of data and technical expertise.

Article 4 (1) of the FIU Law requires the FIU to send to the AG, all STRs on ML/TF and economic crimes. The FIU is required to provide similar information to the JP in cases of special complexity that appear to involve specialized intervention in the research. This must be done with authorization of the AG and when there is an urgency and it is not possible to obtain

this authorization, the FIU can forward the report directly to the JP and inform the AG as soon as possible. See also Article 16 (2) of the FIU Law. The FIU disseminates the results of the analysis to the State Prosecutor, as well as the JP, spontaneously.

The FIU is empowered to provide its international counterparts with information regarding the commission of ML/TF offences under bilateral agreements or another instrument of international law Article s 3 (2) I and 4 (1) of the FIU Law. Information is shared on request (Article 3 (2) I) and Article 4 (1) is spontaneous. Article 5 (4) is about bilateral cooperation with other FIUs. The FIU shares information primarily through physical mail. If necessary, it also uses other forms of communication, such as mail and telephone.

There is no requirement for the FIU to disseminate the results of its analysis to relevant competent authorities, other than the AG and the JP, whether spontaneously or upon request.

**Criterion 29.6 (a)** – Article 14 (2) of the FIU Law subjects all FIU staff to confidentiality in relation to information obtained in the performance of their duties. At the FIU premises, there is a procedure for staff safety, information and third-party access to the service.

**Criterion 29.6 (b)** – Under the security plan, the FIU ensures that its employees have the required levels of security procedures and an understanding of their responsibilities in the treatment and disclosure of sensitive and confidential information.

**Criterion 29.6I** – The security plan guarantees limited access to the facilities and information, including information technology systems held by the FIU.

**Criterion 29.7 (a)** – According to Article 2 (1) of the FIU Law: the FIU is part of the Public Prosecution and has its own budget; it has key tasks separate from those of the “principal authority”; and has administrative and technical independence. The Director of the FIU is appointed by the Council of Ministers, preferably from among the AG’s Office or Judicial Magistrates, upon prior application for authorization by the Minister of Justice in consultation with the AG, to the respective Board of Governors. The tenure of office for the Director is three years and renewable for another three years (Article 6 of the FIU Law).

Assessors are of the view that technically, the FIU is not operationally independent and does not perform its functions freely, without the influence of the AG. For instance, with regard to dissemination of intelligence reports, Article 16 (2) of the FIU Law requires the FIU to send its final analytical report with the proposal for its assessment to the AG or the Magistrate appointed by the AG for appraisal. In effect, the Director of the FIU does not take final the decision regarding whether there is a suspicion, and to disseminate information to other authorities.

**Criterion 29.7(b)** – Domestically, the FIU is empowered by Article 5(3) of the FIU Law to cooperate and liaise with judicial authorities, the AG’s Office and the JP, as well as supervisors of Fis and DNFBPs. This provision does not specify the scope of cooperation. However, Article 54(3) of the AML Act permits the FIU to engage independently with regulatory and supervisory authorities of reporting entities to issue alerts and disseminate up-to-date information on ML trends and practices for the purposes of preventing ML. The FIU also has the power to provide and request for information relating to ML/TF within the framework of bilateral agreements or another instrument of international law (Article 5(4) of the FIU Law). The Coordinating Council of the FIU is empowered to approve or ratify the cooperation



agreements concluded between the FIU and its foreign counterparts (Article 10(g) of the FIU Law). Pursuant to this, the FIU has signed MOUs with some of its international counterparts to share information on ML/TF.

**Criterion 29.7(b)** – FIU is placed in the Ministry of Justice and Labour, and its core functions are distinct from that of the Ministry.

**Criterion 29.7I** – According to the legislation, the FIU has the independence to influence the human resources of the FIU without interference. Therefore, it has operational independence.

**Criterion 29.7(d)(Met)** – The Director of the FIU has the power to appoint the heads of Departments (senior technicians) of the FIU who are to hold office for a period of one year. (On the operational independence of the FIU, see 29.7(a).

**Criterion 29.8.** – (Met) The FIU has been a member of the Egmont Group since February 1, 2017.

### **Weighting and Conclusion**

The FIU is the national center for receiving, requesting and disseminating information on ML/TF activities. However, the FIU does not carry out strategic analysis and its operational autonomy is doubtful. In addition, there is no requirement for the FIU to disseminate the results of its analysis to relevant competent authorities, other than the AG and the JP, whether spontaneously or upon request.

**Recommendation 29 is rated Largely Compliant.**

### ***Recommendation 30 – Responsibility of law enforcement and investigative authorities***

Cabo Verde was rated partially compliant with the former Recommendation 27 because the country had not yet designated an authority that had the responsibility to investigate the crime of TF, owing to the absence, at the time of the evaluation, of a law criminalizing TF.

**Criterion 30.1-** Under the terms of the criminal procedural law and the criminal investigation law, the AG's Office holds the criminal action, having legitimacy to promote criminal proceedings, observing the legal precepts. It has the power to open investigations and order the investigation of any crime, including ML/TF. However, in this activity of seeking evidence to ascertain the material truth of the facts, the AG's Office is assisted by the criminal police agencies, namely the JP and the National Police, both with generic powers to investigate criminal offences, in accordance with Article s 58, 69 and 70 of the Code of Criminal Procedure (CCP) and 2, 3, 4 and 5 of the Law on Criminal Investigation (Law no. 30/VII/2008, of July 21). Under this latter law, the JP is responsible, par excellence, for investigations of the most serious offence, including ML/TF and predicate offences. The National Police, regardless of the deference of the powers exercised by the JP, may, within the scope of its specific competences, investigate some ML predicate offences. It should be noted that both police have territorial competences.

The establishment of a specialized section for the investigation of economic and financial crimes within the AG's Office, the designated Economic and Financial Crimes Section,

demonstrates the interest of the Cabo Verdean authorities in the creation of a specialized and competent body to deal with ML and predicate offences.

**Criterion 30.2** – According to the CCP and the Criminal Investigation Law, the Public Prosecutor’s Office, despite being responsible for the criminal action and, as such, the one responsible for the criminal investigation, may delegate to the JP and the National Police the investigation of ML/TF offences, as well as other offences of all kinds, but always under its direction and supervision. It therefore has powers not only to investigate the predicate offences but also has the power to investigate ML/TF. (Information on how parallel financial investigation is pursued).

**Criterion 30.3** – Along with the provisions of the Cabo Verdean Criminal Code concerning the confiscation of proceeds and instrumentalities of crime, the provisions of Law 38/VII/2009 of April 20, on AML, determine the freezing, seizure and confiscation of property and rights of illicit origin. Likewise, some precepts enshrined in the CFT Act, which provides for the freezing of property related to terrorism.

Cabo Verde created, under the jurisdiction of the JP, through Law n.18/2012, of September 13, the Asset Recovery Office (GRA) and the Office of Asset Management (GAB).

The Asset Recovery Office integrates the elements of the JP, the General Directorate of Contributions and Taxes, the General Directorate of Registries and Notaries and the Directorate General of Customs. One of the duties of the GRA is to identify, trace and seize crime-related products and to ensure cooperation with Asset Recovery Offices established by other States and to collect, analyse and process statistical data on the seizure and disposal of goods or products related to crimes. As a result, the GRA is responsible for financial and asset investigation where it is requested by the investigating authority in the course of a criminal investigation, while the GAB is responsible for administering recovered and seized property as well as property confiscated to the State.

**Criterion 30.4** – In the context of a criminal investigation, when requested to do so by the investigating authority, the GRA may conduct financial and property investigations with a view to identifying, tracing and seizing the proceeds of crime and collecting, analysing and processing of statistical data concerning the seizure and destination of goods or products related to crimes. These attributions result from the law that created the GRA and GAB, Law n.18/2012, of September 13.

**Criterion 30.5** – Cabo Verde does not have an anti-corruption authority.

**Weighting and conclusion:**

**Recommendation 30 is rated as Compliant.**

***Recommendation 31 – Powers of law enforcement and investigative authorities***

Cabo Verde rated PC on the former Recommendation 28 due to the absence of clear indications of the use of these powers to compel, during investigations into ML crime, the production and

searches for documents and information essential for the proof in the process relating to TF. In addition, Cabo Verde had not criminalized TF.

**Criterion 31.1(a)** – The Cabo Verde AML Act enshrines the obligation of collaboration and information on the reporting entities, and stipulates that these entities must provide the Cabo Verdean judicial authorities, upon request or order, with the information, documents and any other objects or property that may be derived from criminal activity in their possession, that must be frozen or seized and that are necessary for the investigation of the ML case, removing the obligation of secrecy – see Article 31, paragraph 1 of Law no. 38/VII/2009, April 20, republished. The provisions of this law shall also apply *mutatis mutandis* to the offences set out in AML Article s 2 to 6.

**Criterion 31.1 (b)** – The Cabo Verde Code of Criminal Procedure enables searches and inspections, as well as the seizure of all objects related to the commitment of a crime or the collection of information about this crime. Such searches and inspections, as well as seizures, must be authorized or ordered by the judicial authorities, which may delegate their execution to criminal police agencies. In the case of *flagrante delicto*, criminal police agencies may search and seize without the authorization of the judicial authorities and may do so without the authorization or order of the same authorities when terrorist crimes, criminal organizations or those punishable with imprisonment whose maximum limit is more than 8 years, committed with violence or threat of violence, or of suspects in imminent flight. In this case where there is no authorization, a communication to the competent judicial authority is then required.

Pursuant to Article 7 of Law no. 30/VII/2008, of July 21 (Criminal Investigation Law), criminal police agencies may, within the scope of their specific competence or of a general delegation of the judicial authority, order the execution of inspections, searches and seizures, observing the limits of these powers.

**Criterion 31.1I & (d)** – The matter of witness evidence is enshrined in the Code of Criminal Procedure in Article s 179 et seq. Under these provisions, witness evidence may be used in the context of investigations and inquiries into the commitment of any offences, including ML/TF, as well as in the trial phase of such offences. It should be noted that the power to obtain witness statements is vested in the competent authorities.

**Criterion 31.2(a)** – Chapter III of the Criminal Investigation Law provides for these investigative techniques or special mechanisms for criminal investigation. For the purposes of this law, covert actions, controlled deliveries, joint operations and images and sounds recordings are special investigative mechanisms. Thus, under Article 12 of the Criminal Investigation Law, recourse to such special investigative mechanisms is only admissible for the prevention and repression of the list of crimes referred to in that provision.

**Criterion 31.2(b)** – Chapter V of Title III of the CCP Procedure establishes special mechanisms for obtaining evidence, namely the interception and recording of telephone and telematic communications. Article 255 states that the interception and recording of telephone conversations or communications, by electronic mail or other similar forms, must be authorized or imposed by order of the court. This provision sets the limits on the use of these means and provides for the possibility of their use in the investigation of all crimes as long as they have the abstract penal framework that does not exceed the maximum prison term of three years. It follows, however, that this provision is also applicable to ML/TF.

**Criterion 31.2I** – It is not clear whether the competent authorities have access to the computer systems, although it is possible that, in the context of the obligation of cooperation, the competent authorities can obtain the information contained in the computer systems.

**Criterion 31.2I** – See c. 31.2(a)

**Criterion 31.3 (a)** – There is no express provision covering this criterion. However, the authorities may exercise their powers under Article 45 of the AML Act to identify whether natural or legal persons hold or control account. Article 45 deals with freezing as a precautionary procedural measure of property, including accounts, that aims to guarantee, among others, the preservation of evidence or eventual confiscation.

**Criterion 31.3(b)** – There are mechanisms in place to comply with the requirements of this criterion (see paragraph 132 of First MER regarding *ex parte* application for provisional measures).

**Criterion 31.4** – Article 3 (1) I of the FIU Law determines that one of the FIU functions of the FIU is to: “Support, when requested, judicial authorities and criminal police agencies, as well as all entities with competence to prevent or prosecute ML/TF offence , in particular through the provision of data and the provision of services of technical-expert support”. Likewise, under the same Law, the AG’s Office, as a research authority, may request additional information from the FIU in the context of the reports disseminated to the FIU, in accordance with the provisions of Article 16 (3). Finally, it is the responsibility of the supervisory and regulatory authorities to cooperate and share information with other competent authorities regarding investigations and proceedings relating to ML and associated predicate offences (AML Article 6 (2) (i)). The FIU is also a supervisory and regulatory authority under the terms of Article 5 of the FIU Law.

### **Weighting and conclusion**

**Recommendation 31 is rated as Compliant.**

### ***Recommendation 32 – Cash Couriers***

Cabo Verde was rated non compliant on the former Special Recommendation IX because the obligation to declare the cross-border movement of cash and negotiable instruments was not applicable to outgoing movements. There was no implementation by customs and lack of adequate powers to enforce the obligation. Furthermore, there was no clarity about powers to seize and retain currency or bearer instruments in violation of the declaration obligation. Finally, Cabo Verde did not have data on the amount of currency and BNIs and identification. Cabo Verde revised the AML Act to address these gaps.

**Criterion 32.1** – Article 11 of the AML Act provides the legal basis for the control and detection of physical cross-border movements of cash and BNIs in Cabo Verde. The Cabo Verdean authorities have opted for a written declaration system for all those who transport amounts equal to or above the established limit. Article 2(q) of the AML Act defines cross-border transportation to include physical transportation by individuals, through cargo, by post

or BNI by a natural or legal person. The definition of BNIs in Article 2(p) of the AML Act covers BNI as defined in the Glossary to the Methodology.

**Criterion 32.2** – Cabo Verde has a written declaration system to detect cross-border movement of currency and bearer negotiable instruments. Article 11 (1) of the AML Act requires persons, whether nationals or foreigners, entering or leaving Cabo Verde’s territory, to declare, in writing at points of entry and departure, currencies or BNIs or electronic money, by any means, whenever the amount transported is equal to or greater than 1,000,000\$00 (one million escudos) or equivalent in foreign currency (equivalent to \$10,540/ 9,004.18 EUR). There is no express requirement for persons making physical cross-border transportation of currency and BNIs to submit a truthful declaration, as well as the designated competent authority to receive the declarations. However, Article 11(2), (3), (5) and (6) of the AML Act require the Directorate of Customs to take certain actions in furtherance of the declarations, including false declaration. It is necessary for travellers to be aware of whom to submit declaration to, the need to make truthful declarations and the implications for false declaration.

**Criterion 32.3** – Cabo Verde has adopted a written declaration system.

**Criterion 32.4** – The Customs Directorate is obliged to require information from travellers on the origin and destination of BNIs in accordance with Article 11 (2) (d) of the AML Act. This requirement also applies in the case of non-declaration or false declaration.

**Criterion 32.5** – The carrier or holder of currencies and BNIs who makes false declarations about them or fails to declare the BNIs or currency commits a crime of misrepresentation in accordance with criminal law (Article 11(6) of the AML Act. Article 342(1) of the Penal Code of Cabo Verde punishes false declarations with a term of imprisonment from 6 months to 3 years or with a fine of 80 to 200 days. The Assessors consider these sanctions proportionate and dissuasive.

**Criterion 32.6** – Article 11(2)(a) of the AML Act requires the Customs Directorate to inform the FIU, whenever it becomes aware, suspects or has reasonable grounds to believe that a physical cross-border movement of foreign currency or BNI likely to be associated with the commission of a money laundering offence has taken place, is in progress or has been attempted. The Customs Directorate is also required to forward information on the declarations that are made to the FIU.

**Criterion 32.7** – In addition to sharing information on declaration of currency and BNI with the FIU, the Customs Directorate is required to issue notification on amounts seized to the BCV. Beyond these, there is no specific coordination in place related to the implementation of Recommendation 32.

**Criterion 32.8** – Article 11(2)I of the AML Act empowers Customs authorities to seize or retain the total amount of undeclared currency and BNI whenever there is a suspicion of ML or where there is false declaration, for a period of not less than six months. There is no requirement to stop or restrain currency or BNI where there is suspicion of TF or predicate offences.

**Criterion 32.9** – There is no specific requirement for international cooperation related to cross-border declaration of currency and BNI. However, Cabo Verde can share information related

to Recommendation 32 in line with Article 53 of the AML Act and Article 10 of the CFT Act which empower competent national authorities to ensure international cooperation with their foreign counterparts regarding ML/TF.

**Criterion 32.10** – There is no requirement regarding this criterion.

**Criterion 32.11** – There are no specific sanctions for persons who are carrying out a physical cross-border transportation of currency and BNIs that are related to ML/TF. Article s 48 et seq. of the AML Act provides for the freezing, seizure and confiscation of property and rights of illicit origin. Article 11I of the CFT Act also provides for the possibility of freezing property related to ML. In addition, seizure of currency and BNIs can be effected in accordance with Article 243(1) of the Criminal Procedure Code of Cabo Verde which establishes a system for seizures of proceeds and instrumentalities of crime.

### **Weighting and conclusion**

Cabo Verde lacks a formal mechanism that allows for greater coordination and cooperation among Customs, immigration and other related authorities at the domestic level. Furthermore, there is no requirement to stop or restrain currency or BNI where there is suspicion of TF or predicate offences. The formal mechanisms for cooperation between Customs authorities and their international counterparts is inadequate. Cabo Verde does not have specific sanctions for persons who are carrying out a physical cross-border transportation of currency and BNIs that are related to ML/TF.

**Recommendation 32 is rated as Partially Compliant.**

### ***Recommendation 33 – Statistics***

Cabo Verde was rated non compliant with the former Recommendation 32 because maintenance of statistics was weak across all government agencies involved in AML. In addition, the authorities had not collected sufficient information related to judicial prosecutions, convictions and specific penalties applied, and the amount of funds and property frozen, seized or confiscated. Available statistics were not used strategically to identify, for example, if there is a reasonable distribution of STRs across all banking institutions or if some institutions might be over/underreporting.

**Criterion 33** – There are requirements in the AML and CFT Acts to maintain statistics on AML/CFT matters. The FIU is responsible for collecting, maintaining and publishing statistics received and transmitted in line with Article 3(1)(2)(a) and Article 11(d) of the FIU Law.

**Criterion 33.1 (a)** – Article 55(1) of the AML Act requires the FIU to maintain up-to-date statistics on the number of STRs reported and the follow-up and result of the STRs.

**Criterion 33.1 (b)** – Article 55(2) of the AML Act requires judicial authorities to forward statistics regarding ML investigations, prosecutions and convictions to the FIU.

**Criterion 33.1 I** – The FIU is mandated to maintain statistics on property frozen, seized and confiscated (Article 55(2) of the AML Act).

**Criterion 33.1 (d)** - Judicial authorities are required to create a system for maintaining statistics on mutual legal assistance regarding the seizure, freezing and confiscation of assets, extradition and other cooperation requests made or received (Article 55(3) of the AML Act).

### **Weighting and Conclusion**

**Recommendation 33 is rated Compliant.**

### ***Recommendation 34 – Guidelines and information feedback***

Cabo Verde was rated non compliant because guidelines had not been issued to financial institutions with respect to the manner in which STRs should be filed, and there was no feedback given to the few banks that had reported.

**Criterion 34.1** – Regulatory and supervisory authorities are required to establish good practice guidelines and provide information to Fis and DNFBPs on ML matters (Article 6(2)(a), g) and (q) of the AML Act. Similarly, Article 14(2) of the CFT Act enjoins regulatory and supervisory authorities to issue instructions and communicate them to private entities under their supervision or coordination whenever the complexity of the procedures to be observed as a result of the applicable international act so requires. In September 2017, the BCV issued a Notice on the conditions, mechanisms and procedures necessary to effectively fulfil ML/TF preventive obligations in the framework of the provision of financial services subject to supervision. The Notice entered into force and effect on 7 October 2017. The Notice, which is aimed at Fis, provides among things for the identification of high risk customers, red flag indicators for suspicious transactions, CDD measures etc.

In order to obtain a real and current knowledge of the risks and associated management and control processes, the BCV has been developing, in partnership with the Central Bank of Brazil, a Risk Assessment and Control System (RAS) for financial institutions. THE BCV has in collaboration with the FIU organized awareness raising programmes for Fis to deepen their understanding of their AML/CFT obligations.

Supervisors of DNFBPs have not established guidelines for entities under their supervision. DNFBPs are not being supervised for AML/CFT purposes and there's no feedback in assisting them to comply with AML/CFT measures. There have been no training sessions promoted by DNFBPs supervisors, to increase the level of knowledge and understanding of AML/CFT.

The FIU is required to provide opportune feedback information to reporting entities on the follow-up and results of the ML-related STRs submitted to the FIU (Article 54(3) of the AML Act). There is no requirement for other competent authorities to provide feedback to reporting entities.

### **Weighting and Conclusion**

Supervisors of DNFBPs have not established guidelines nor provided training for DNFBPs. There is no requirement for supervisors to provide feedback to reporting entities.

**Recommendation 34 is rated Largely Compliant.**

### ***Recommendation 35 – Sanctions***

Cabo Verde was rated Partially Compliant on the former Recommendation 17 because, although natural and legal persons were subject to a wide range of criminal and administrative sanctions, no sanctions were imposed for non-compliance with national AML/CFT requirements. In addition, administrative sanctions did not apply to breach of the obligation to create an AML compliance unit and to refuse transactions when identification is not possible. Finally, the BCV could only instruct and recommend (not impose) sanctions for AML violations.

Cabo Verde has amended its AML Act to provide for sanctions for violation of specific AML requirements. The CFT Act provides for sanctions for violation of TFS. Both laws provide for criminal and administrative sanctions against natural and legal persons, including Fis and DNFBPs, as well as their directors and management for violation of AML/CFT requirements.

A fine is determined in days, at least twenty days and a maximum of five hundred days, in accordance with the criteria set out in Article 83. Every day fine corresponds to a sum of a hundred and twenty thousand shields, which the court decides on the basis of economic and financial situation of the offender (Article 67 of the Penal Code). Under Article 40 of the CFT Act, the value of each day of a fine is set at 5,000 (five thousand) escudos and at 20,000 (twenty thousand) escudos in the case of natural persons or legal persons or similar entities, respectively.

**Criterion 35.1** – In respect of the requirements of Recommendation 6, Article 15 of the CFT Act provides for criminal sanctions (3 to 5 years imprisonment for natural persons and a fine of up to 500 days or equivalent for legal persons or similar entities) for making funds or other economic assets available to, as well as establishment or maintenance of business relationship with designated persons and entities. A violation occasioned by negligence is punishable by a term of imprisonment of up to one year or a fine of up to 500 days.

With respect to sanctions for non compliance with the requirements of Recommendation 8, AML Article 74 of the AML Act provides that the non-compliance with the obligations contained in paragraphs 2 to 4 of Article 35 by NPOs shall be punished with a fine of CVE 100,000\$00 ( € 906,91) to CVE 2,000,000\$00 (€ 18.138,12). With regard to foundations and associations, under the terms of paragraph 6 of Article 35, all the obligations contained in the AML are applicable to them, and, consequently, their respective sanctions.

Article 72 the AML Act provides pecuniary sanctions for requirements (500,000 – 5,000,000 escudos – 5.1757 USD – 51,752.02 USD) 20 specific different types of sanctions to be applied for failure by reporting entities to comply with AML obligations. These include the prohibition of tipping-off (recommendation 21), which was one of the relevant deficiencies identified in the 2007 MER (see Article s 33 and 72, paragraph 1 (i)).

The framework of sanctions applicable to Fis and DNFBPs varies according to the following:

- a) Especially serious administrative offences, with fines from CVE 750.000\$00 (€ 6.801,80) to CVE 6.000.000\$00 (€ 54.414,37) if it is a legal person or from CVE



- 400.000\$00 (€ 3.627,62) to CVE 3.000.000\$00 (€ 27.207,18) if the offender is a natural person;
- b) Serious administrative offences, with fines from CVE 500.000\$00 (€ 4.354,53) to CVE 5.000.000\$00 (€ 45.345,30) if it is a legal person or from CVE 250.000\$00 (€ 2.267,27) to CVE 2.500.000\$00 (€ 22.672,65) if the offender is a natural person;
  - c) Minor offences with fines from CVE 100.000\$00 (€ 906,91) to CVE 2.000.000\$00 (€ 18.138,12) if it is a legal person or from CVE 50.000\$00 (€ 453,45) to CVE 1.000.000\$00 (€ 9.069,06) if the offender is a natural person;

Article 75 of the AML Act provides for circumstances to be taken account of in determining the applicable sanctions. This includes the amount involved in the transaction or benefit obtained from the violation, the degree of representation enjoyed by the person and the offender's economic capacity, in case of a fine.

Chapter I of Title VI (Article s 188 et seq.) of the Bar Association Statute – BAS (Law no. 91/VI/2006, of January 9) establishes the disciplinary action regime to which lawyers are subject in the exercise of their activity. Lawyers and solicitors are subject to the sanctioning regime provided for in the AML Act when they act as set forth in sub-paragraphs i) to vi) of paragraph i) and sub-paragraphs i) to v) of paragraph j) of Article 7 (2) of the Law. The applicable sanctioning framework, although not particularly extensive, is dissuasive and proportionate when compared with the sanctions provided for other natural persons considered by the AML as reporting entities, namely in the non-banking financial sector and in the other DNFBPs.

The sanctions provided for in the CFT constitute a range of proportional and dissuasive measures applicable to natural persons (i.e. directors or managers of legal persons).

In terms of TF, the only difficulty lies in the unclear application of Article 39 of the CFT to the regime of money laundering prevention and repression provided for in the law (without specific indication of the legislation to which it refers), which gives rise to interpretation.

The question is whether the preventive provisions of the AML (Article s 7 to 38 of the AML Act) are applicable by referring to Article 3 of the CFT to preventive duties in terms of TF and if, consequently, the regime provided for in Article 72 et seq. is applicable to offences of preventive duties in regard to TF. The country considers the regime applicable to both ML and TF. However, as no TF sanctions have been applied, it is not possible to infer on the impact of this situation.

**Criterion 35.2** – Article 64 (1) of the AML stipulates the liability of financial entities for violation of AML requirements, provided that their directors, employees and representatives have acted in the exercise of their duties, either on behalf of or in the interest of the institution. AML Article 64 (2) also stipulates that the disciplinary liability of the directors, employees or collaborators of financial entities shall not be derogated from by the provisions of paragraph 1.

Considering the essential objective of the criterion under analysis, i.e. that the sanctions provided for in the Law are applicable to both Fis and DNFBPs, as well as to members of the

corporate bodies, persons who exercise administrative, leadership or management positions or act on their behalf, Article 64 of the AML complies with the requirements of this criterion.

### **Weighting and Conclusion**

In view of the doubts of interpretation on the application of the AML preventive and sanctioning regime to TF, via a reference to CFT Article 39, as well as the remaining doubts about the sanctioning regime applicable to NPOs, the country's situation with respect to this Recommendation needs minor corrections or improvements, which guarantee an adequate and proportional application of the existing sanctioning regime.

### **Recommendation 35 is rated Largely Compliant**

#### ***Recommendation 36 – International instruments***

Cabo Verde was rated Partially Compliant on the former Recommendation 35 because the country had not fully implemented the provisions of the Vienna, Palermo and TF Conventions. Recommendation 36 has introduced the ratification and full implementation of the United Nations Convention against Corruption (the Merida Convention).

**Criterion 36.1** – On the ratification of the Vienna, Palermo and TF Conventions see paragraphs 525 and 527 of the First MER, Cabo Verde ratified the Merida Convention through Resolution 31/VII/2007 of March 22.

**Criterion 36.2** – Cabo Verde has implemented the Vienna, Palermo and TF Conventions through domestic legislation, including Article 12 of the 2010 Constitution which provides the basis for automatic incorporation of the rules deriving from international treaties, conventions and agreements into national legislation on valid approval or ratification by the country. However, there are shortcomings in the implementation of these international instruments as discussed in this MER.

### **Weighting and Conclusion**

Cabo Verde is a party to the four conventions, but there are shortcomings in implementation.

### **Recommendation 36 is rated Largely compliant.**

#### ***Recommendation 37 - Mutual Legal Assistance***

Cabo Verde was rated Partially Compliant and non compliant on the former Recommendation 36 and Special Recommendation V. The main deficiencies were that, beyond bilateral and multilateral agreements negotiated by Cabo Verde and the provisions of the CPC, Cabo Verde had not established a comprehensive framework to regulate mutual legal assistance with foreign authorities in their respective fields of competence that facilitates international cooperation in a comprehensive and timely manner, and the country could not ensure effective international effective cooperation when FT is under investigation by a foreign authority, since this offence has not been criminalized in Cabo Verde.

**Criterion 37.1** - Cabo Verde's MLA framework provides for a wide range of measures the country may seek and aid in relation to ML, associated predicate offences and TF investigations, prosecutions and related matters. Article 53 of the AML Act enjoins competent national authorities to ensure international cooperation with their foreign counterparts in matters of money laundering prevention and repression. A similar provision is made in Article 10 of the CFT Act. Under Article 141 of the Extradition Law (Law no. 6/VIII/2011, of August 29), Cabo Verde can aid in relation to (a) the notification of actions and delivery of documents; (b) the production of means of proof; (c) Realization of means of obtaining evidence; (d) The notification and hearing of suspects, defendants, witnesses or experts; (e) The transit of people; (f) information on Cabo Verdean or other and those relating to the background suspects, defendants and convicts.

In accordance with Article 12 of the 2010 Constitution, Cabo Verde can also provide and seek MLA based on the MLA provisions contained in the Vienna, Palermo and Merida Conventions, as well as bilateral and multilateral agreements signed by Cabo Verde.

**Criterion 37.2** - Pursuant to Article 21 (1) of Law no. 6/VIII/2011, of August 29, and Article 20(i) da Law n.º 89/VII/2011, de 14 February, which approves the general principles of international judicial cooperation in criminal matters (International Cooperation Law - ICL), designates the AG's Office as the Central Authority.

With regard to the issue of prioritization and execution of requests for mutual legal assistance, Article 16 of the ICL establishes the criteria to resolve prioritizing requests - the request to be executed immediately and in timely manner are those requests by a State that best ensures the interests of the administration of justice and social reintegration of the suspect, the accused or the convicted person. However, this criterion established by the domestic law of Cabo Verde yields to the rule of prevalence of international jurisdiction.

However, there is no provision in the Cabo Verde legislation that establishes procedures for the implementation and maintenance of a process for monitoring progress in the execution of mutual legal assistance requests regarding forms of international judicial cooperation in criminal matters.

**Criterion 37.3** - The provision of international judicial cooperation in criminal matters may be refused in the cases provided for in the following normative provisions of Law 6/VIII/2011 (Article s 6 (1) (a, b, c, d, e, f, g), 7 (1) (a, b), 8 (1) (2), 10 (2) and 11. Thus, in accordance with Article 6 MLA will be refused where the process does not comply with the requirements of international human rights instruments, where the act in question is punishable by death or other punishment which may result in irreparable injury to the integrity of the person; the person may be subjected to torture, inhuman, degrading or cruel treatment.

Under Article 7 (a) (b) of the ICL, judicial cooperation is refused where the case concerns a political offence, or an offence related to political offence according to the concepts of Caboverdean law; or when it is in respect of military crime, which is also not provided for in the common Cabo Verde criminal law.

**Criterion 37.4 (a)** - Cabo Verde will not refuse a request for MLA on the sole ground that it involves fiscal matters (Article 53 (5) of the AML Act and Article 10(5) of the CFT Act).

**Criterion 37.4 (b)** - Pursuant to Article 12 of the ICL, the protection of secrecy does not constitute grounds for prohibiting the provision of assistance. Likewise, confidentiality and secrecy are not grounds for refusing MLA in ML/TF matters (Article s 33 (5) and 53 (6) of the AML Act and Article 10(6) of the CFT Act).

**Criterion 37.5** –Article 147 of the ICL requires the State to maintain confidentiality of the request for assistance.

**Criterion 37.6** – There is no provision that dual criminality is not a condition for MLA requests that do not involve coercive actions.

**Criterion 37.7 - (Not Applicable)** – Under the regulatory conditions set forth in Article 125 of Law no. 6/VIII/2011, of August 29, the offence motivating the request for legal assistance must be punishable in both the requesting and the receiving states. There is no requirement regarding category or terminology.

**Criterion 37.8 (a)** – At the internal level, competent law enforcement authorities have criminal investigation powers and techniques.

Thus, and under Article 7 (1) (b) (c) (d) of Law 30/VII/2008 of July 21, criminal police agencies may order the following: searches, seizures, arrests, provided that they are carrying out criminal investigation and within the established legal limitations.

As regards the powers of the national authorities responsible for the use of investigative techniques when it comes to collecting evidence held by financial institutions, Article 31 (1) of the AML Act requires financial institutions and DNFBPs to provide the court or AG with information, documents, objects or properties that are to be frozen or seized related to ML and predicate offences. Likewise, where terrorism and terrorist financing are concerned, by virtue of the AML regime, with due adaptations, provided for in Law 38/VII/2009 of 27 April, to the offences set forth in Article s 2 to 6 of Law 27 / VIII / 2013 of January 21.

Regarding the collection of witness testimony in criminal proceedings, Law no. 81/VI/2005, of September 12, establishes measures for their protection, which are also extended to relatives and other persons close to them. Thus, witness testimony on facts that are the subject of the evidence is provided in criminal investigations of ML, terrorism and its financing and proliferation, as well as in investigation of any other crimes.

With regard to investigative techniques, Cabo Verde's domestic law subdivides them into special criminal investigation mechanisms (covert actions, controlled deliveries) and criminal investigation mechanisms (joint national and foreign investigative teams, recordings of images and sounds and interception and recording of telephone conversations or communications by means of electronic mail, examinations, searches, searches at home, searches in offices, office or workplace of professionals, seizures in an office or in a law firm, in a doctor's office, workplace and space of professionals related to secrecy, seizures in a banking establishment, seizures of correspondence).

Under the criminal investigation law (Law no. 30/VII/2008, of July 21) and, pursuant to Article 12, competent authorities have powers to make use of the special mechanisms of criminal

investigation in the field of prevention and repression of money laundering, terrorist organization and terrorism.

Although there is nothing in this law regarding the use of special criminal investigation mechanisms in crimes of terrorist financing and proliferation, competent law enforcement authorities in Cabo Verde may make use of the United Nations Convention against Transnational Organized Crime, which entered into force in Cabo Verde on 15 July 2004, which provides for a set of special investigative techniques for transnational organized crime, including covert actions, controlled deliveries, interception of communications and monitoring of bank accounts.

Within this framework, the special investigative techniques that law enforcement authorities in Cabo Verde use to investigate cases can be used to respond to requests for mutual legal assistance through Law 6/VIII/2011, of 29 (Articles 157, 158, 159, 160, 161), on the basis of which objects, documents and values seized may be made available to the requesting State; investigating whether the goods or proceeds of crime are in Cabo Verde; adoption of measures aimed at preventing transactions, transmission or disposition of property, objects and instrumentalities of crime; the criminal identification and accountability of crime agents; controlled or supervised deliveries; covert actions; telecommunications interception.

**Criterion 37. 8 (b)** - competent law enforcement authorities in Cabo Verde may, under the ICL, exercise powers that allow execution of particular acts of mutual legal assistance, (Article 47 of the AML Act), notification for appearance (152 of ICL) temporary transfer of detainees or prisoners for the purpose of investigation (157), information on the applicable law (162), information contained in the criminal record (163), information on rulings.

### ***Weighting and Conclusion***

While the use of special investigative mechanisms in terrorist financing and proliferation financing crimes is not included in any normative precept of the approved legislative instruments, competent law enforcement authorities in Cabo Verde may use the Palermo Convention to respond to requests for MLA related to the investigation of TF crimes.

**Recommendation 37 is rated Compliant.**

### ***Recommendation 38 - Mutual Legal Assistance: Freezing and Confiscation***

**Criterion 38.1 (a, b, c, d, e)** – according to Article 20 (i) of Law no. 89/VII/2011, of February 14, and Article 21 (1) of Law no. 6/VIII/2011, the Office of the AG is the central authority on legal and judicial cooperation.

In this context, and under the terms of Article 53 (1) (2) of the AML Act and Article 10 of the CFT Act, competent law enforcement authorities in Cabo Verde must ensure cooperation in ML/TF prevention and repression and must respond to the request for mutual legal assistance of a foreign country in a fast, constructive and effective manner, as regards the freezing and confiscation of property and rights of illicit origin (Article 45), seizure of property (Article 46) and confiscation (Article 48). Also, and pursuant to the ICL, law enforcement authorities have

the power to conduct investigations aimed at locating proceeds, objects and instruments of crime allegedly on their territory (Article 158 (1)).

**Criterion 38.2** – The provisions of Article 48 (2) of the AML Act allows the Court, at the request of the AG's Office, to issue a declaration of forfeiture of funds or property related to ML, or any other predicate offence, in favour of the State, provided that the perpetrator cannot be condemned, having died or being unknown. There is no provision regarding situations where the perpetrator is unavailable by reason of flight or absence.

**Criterion 38.3** – Pursuant to Article 52 (2) of the AML Act, the authorities may enter into agreements or memoranda of understanding on the subject. In this context, Article 49(1) of the AML Act provides that the management, disposal of frozen, seized or confiscated assets is done by the GRA (Asset Recovery Office) and the GAB (Asset Management Office), both created by Law No. 18 / VIII / 2012, of 13 September.

**Criterion 38.4** – Article 49 (4) of the AML Act provides the possibility of apportioning, in equal parts, assets, values or products seized, as well as the proceeds from their sale.

### **Weighting and Conclusion**

There is no provision regarding situations where the perpetrator is unavailable by reason of flight or absence.

**Recommendation 38 is rated Largely Compliant.**

### ***Recommendation 39 – Extradition***

**Criterion 39.1 (a)** – ML/TF is are extraditable offences, considering that the instances where extradition requests can be refused under Article s 6 (1) (a, b, c, (a) (b) (c) of ICL, are not related to ML/FT. In addition, Cabo Verde will extradite a fugitive in the case of crime, which even if tried, is punishable by the Cabo Verdean law and by the law of the requesting State with a penalty or deprivation of liberty of a maximum duration of not less than one year (Article 31(2) of the ICL).

**Criterion 39.1 (b)** - According to Law No. 6/VIII/2011, one of the forms of cooperation is extradition, considered as one of the modalities of international cooperation, through which Cabo Verde concedes to surrender a person to comply with a prison sentence as measure of security (31) (1) or for the purpose of criminal prosecution (Article 31) (1).

As a proceeding, the acts to be carried out and the corresponding procedure indicate the need for the request for extradition to be accompanied by documents containing precise indications of the place, date, nature and circumstances of the criminal act and the identity of the fugitive, and shall be accompanied by copy of the legal texts on the crime, jurisdiction, sentencing (Article 23), (Article 44) and (Article 45 (1)), and after favourable opinion from the AGR on the regularity of the request (Article 48 (1)), the member of the Government who oversees Justice should analyse the admissibility of the request (Article 48 (2)). If affirmative, the request is forwarded to the AG (Article 50 (1)) for submission to the Supreme Court of Justice (Article s 49 and 50).

Once the Supreme Court of Justice (Article 60 (1)) rules favourably and the transfer is authorised by the services of the Ministry of Justice (Article 27), the decision shall be communicated by mail, electronic means, telegraphic or by any other means to the Requesting State (Article 29 (2)). Within 20 days of the communication (Article 60 (2)) and Article 61 (1), the requesting State shall remove the fugitive from the Cabo Verde territory, otherwise the fugitive will be freed after another 20 days over the previous term (Article 61 (2)).

Consideration of the procedures for prioritizing the execution of requests for mutual legal assistance, particularly in situations where there are many requests for extradition on the same person, is provided for in Article 37 of the ICL, which lays down the criteria governing the choice of one application over the other.

**Criterion 39.1 (c)** – The situations provided for in Articles 6, 7, 8 and 32 of Law 6/VIII/2011, of August 29, are justified and, to the strictest extent, necessary for not providing legal assistance for extradition. When accepted, mutual legal assistance for extradition is quick (AML ACT Article 53(2)(4)).

**Criterion 39.2 (a)** – Although admissible, in Article 38 (2)(3), (Cabo Verde established an effective consecration of the subjective constitutional limit of the application of the extradition system, pursuant to Constitutional Law No. 1/VII/2010.

Cabo Verde accepts to surrender national citizens at the request of other States, for the purpose of being subject to criminal procedure or sentences, provided that the grounds for the request are related to the practice of a terrorist crime or organized international crime, if the following conditions are forcibly met: a declaration of reciprocity identical to that of the State of Cabo Verde; guarantee of a fair and equitable process; extradite the person to be extradited has acquired or regained Caboverdean nationality after the commissioning of the offense specified in the criminal law as a crime that gave rise to the request for extradition.

**Criterion 39.2 (b)** - Article 38 (4) of Constitutional Law No. 1/VII/2010 regulates cases in which extradition may be refused. In this context, the fugitive is submitted to Caboverdean jurisdiction to be criminally responsible for crimes committed abroad. Accountability to the Caboverdean courts for crimes committed is to take place as soon as possible, compatible with the guarantees of defence (Article 4 (1)) of the Code of Criminal Procedure. This is the reason why the acts carried out in the process transmitted will be validated, as if they had been practiced by the authorities of and in Cabo Verde, provided that similar guarantees of defence were provided for in the Caboverdean legal order (Article 38 (4) of the Law Constitutional.

**Criterion 39.3** – Cabo Verde extradites fugitives based on the dual criminality rule. In line with Article 31(2) of the ICL, as discussed under c.39.1 above, extradition will be possible regardless of whether the requesting country and Cabo Verde place the offence within the same category of offence or denominate it by the same terminology.

**Criterion 39.4** – With regard to the simplification of extradition mechanisms, the legislative provision in Article 46 (1)(2) of the ICL states that the process is by nature fast, comprising only two phases: administrative and judicial, the first being of the Government (Ministry of Justice) and the latter is a matter for the Supreme Court of Justice. As a proceeding, the acts to

be performed and the respective procedure are set forth in Article s 44 to 61 of the ICL, of August 29.

Thus, and before the request for extradition, there may be the need to proceed with the provisional arrest of the person to be extradited. In this context, the transmission of the request for provisional arrest may be done directly to the competent law enforcement authorities in Cabo Verde using the following forms of communication: postal mail, electronic mail or telegraphic or by any other means (Article 38 (1) (2) (3) (4)).

The case of extradition for criminal prosecution is enshrined in Article 44 (2)(a)(b) and is materialized in the extradition of persons based solely on arrest warrants. In addition, based on Article 39, the arrest and subsequent extradition of persons on the Interpol wanted list may occur.

## **Weighting and Conclusion**

**Recommendation 39 is rated Compliant.**

### ***Recommendation 40 - Other forms of international cooperation***

#### General Principles

**Criterion 40.1** – Competent law enforcement authorities are required to ensure broad international cooperation on the prevention and repression of ML, associated predicate offences and TF. In this context, competent national authorities must exchange information spontaneously, in a constructive and effective manner with their foreign counterparts. As a full-fledged member of the Egmont Group (February 2017), law enforcement authorities may use the Egmont Secure Web cooperation mechanism to cooperate with their foreign counterparts.

**Criterion 40.2 (a)** – under the agreements or other instruments of international law, the FIU has legal instruments to provide and request similar information from international entities regarding the crimes of money laundering and terrorist financing. Within this framework, CV has entered into agreements (MOUs) with counterparts to operationalize the bilateral exchange of information, thus strengthening its capacity for international cooperation in preventing and combating ML/TF. The Asset Recovery Office has used the cooperation protocols signed by the Judiciary Police for the exchange of information on asset locations. Customs also share customs information with the countries of the Portuguese-speaking community.

The Directorate General for Taxes and Contributions has shared information with its counterparts in Portugal, the Kingdom of Spain, Guinea-Bissau and Senegal. The General Directorate of Registries, Notaries and Identification receives requests from the foreign authorities, particularly from Embassies, for information on criminal records. They still receive, through a letter from the Judiciary Police, requests for information from foreign police authorities. Cabo Verde participates in the Project to Support the Consolidation of the Rule of Law (PACED), which is financed by the European Union and the Instituto Camões IP, whose objective is to improve the capacity of the PALOP and East-Timor to effectively prevent and fight corruption, money laundering and organized crime, especially drug trafficking.



**Criterion 40.2 (b)** - In the framework of informal cooperation, law enforcement authorities exchange information in a spontaneous, constructive, and effective manner with their foreign counterparts, with no restrictions on the mediums they can use to make cooperation more constructive and effective.

**Criterion 40.2 (c)** - As a full-fledged member of Egmont Group (February 2017), competent law enforcement authorities may use the Egmont Secure Web cooperation mechanism to cooperate with their foreign counterparts. Cabo Verde Customs may informally exchange information through the Customs Information Network of the Customs Anti-Fraud Network (CENCOM).

**Criterion 40.2 (d)** - the informality that law enforcement authorities use in cooperation processes facilitates the transmission and execution of requests. In this context, and despite being able to prevail in a much more constructive and timely manner in the timely execution of the requests, dispensing with procedural formalism, the law does not describe how they should be carried out.

**Criterion 40.2 (e)** - competent law enforcement authorities respect the express duty of data protection and confidentiality on the information transmitted or received, observing in that respect the general legal regime for the protection of personal data (Law No 42 / VIII / 2013 of 17 September).

**Criterion 40.3** – Under agreements, bilateral protocols or multilateral agreements signed, Cabo Verde receives Technical Assistance from the US Treasury, OTA and AFRICOM (US Africa Command) under the existing cooperation agreement between the Cabo Verde and US Governments, which consists in strengthening the mechanism to combat ML/TF and establish a platform of collaboration between the US Treasury and those involved in this fight. The FIU has also signed memoranda of understanding with international counterparts.

**Criterion 40.4** – The competent national authorities exchange information with their foreign counterparts, but no data is provided as to timely communications between the requesting law enforcement authorities and the requested competent authorities on the use and utility of information exchanged.

**Criterion 40.5 (a, b, c, d)** – Law enforcement authorities exchange information spontaneously, promptly, constructively and effectively with their foreign counterparts. Against this backdrop, there is no evidence to suggest that informal cooperation is usually denied for the reasons stated in the criteria.

**Criterion 40.6** – Competent law enforcement authorities recognize the prohibition on the use of information obtained in the framework of informal cooperation. They indicated that Article 5 (1) of the FIU Law imposes the requirement to protect the information exchanged and provided, thus respecting personal data. And that they still observe, in this regard, the provisions of the general legal regime for the protection of personal data (Law no. 42 / VIII / 2013, of 17 September).

**Criterion 40.7** – Competent law enforcement authorities recognize the need to protect the information exchanged and provided and the personal data and are bound to ensure the confidentiality of information known to them in the exercise of their duties. There is no data

provided to prove that they have had cases in which they denied or were denied information on grounds of inability to effectively protect those data.

**Criterion 40.8** – Law enforcement authorities may exchange and provide information through WACAP, West Africa Network of Central Authorities and Prosecutors. The FIU may use the Egmont Secure Web cooperation mechanism to cooperate with its foreign counterparts. Cabo Verde Customs may informally exchange information through the Customs Information Network of the Customs Anti-Fraud Network (CENCOM).

#### *Exchange of information between FIUs*

**Criterion 40.9** – As a member of the Egmont Group, the FIU may use the Egmont Secure Web cooperation mechanism to cooperate and share information with its counterparts.

The description of the FIU's competence in providing cooperation to any counterpart or other competent foreign authorities is in the AML Act and the FIU Law. Within this framework, Article 52 (1) provides that the FIU may share information on money laundering and predicate crimes, thus failing to cover information on TF.

In accordance with Article 4 (1) and Article 5 (4) of the FIU Act, information sharing can only be done in relation to ML/TF offences , thus not covering information on predicate offences to ML.

**Criterion 40.10** – The FIU has the power to share information with any counterpart in a spontaneous manner or upon request (Article 52 (1) of the AML Act and Article 5 (4) of Decree-Law no. 9/2012. In general, provides feedback to counterpart FIUs on the use of information received. The deficiencies identified in criterion 40.9 regarding the capacity of the FIU to receive information on ML predicate offences, when using Decree-Law No. 9/201 as legal basis to cooperate, and also those identified in criterion 40.9 regarding the FIU's capacity in TF cases, when using the AML Act as a legal basis for cooperating, influence the ability to provide feedback on information regarding ML predicate offences or on TF.

Therefore, it is not clear whether the feedback also covers the information on predicate offences, thus excluding obvious situations of reporting operations where there is suspicion of laundering and terrorist financing offences.

**Criterion 40.11(a)** – With regard to the powers to exchange of information accessible to or obtained by the FIU, Article 53 (1) of the AML Act and Article 5 (4) of the FIU Act allow the FIU to provide ML/TF information to its international counterparts under bilateral agreements or other cooperation instrument of international law, and the sharing of information may be spontaneous or upon request (Article 52 (1) of the AMLL). The deficiencies identified in criterion 40.9 regarding the capacity of the FIU to receive information on ML predicate offences, when using Decree-Law No. 9/201 as a legal basis for cooperation, and also those identified in criterion 40.9 regarding the capacity of the FIU in TF cases, when using the AML Act as a legal basis to cooperate, influence the ability to provide feedback on ML predicate offences or on TF.

**Criterion 40.11(b)** - the FIU has the power to share the information obtained domestically or internationally. Thus, the FIU can then share information obtained from law enforcement

through WACAP. It can also share the information obtained from the Cabo Verde Customs through the information platform of the Communication of the Customs Anti-Fraud Network (CENCOM). FIU can also use the Egmont Secure Web cooperation mechanism to cooperate with its foreign counterparts.

### *Exchange of information between financial supervisors*

**Criterion 40.12** – Pursuant to Article s 6 (2) (i) (k) and 51 of the AML Act and Article 60 (1) of the Base Law of the Financial System (Law no. 61/VIII/2014, of April 23), supervisory authorities of the financial system are empowered to cooperate without delay with counterpart or similar institutions of other countries with the aim of strengthening the security and stability of their national financial systems. To this end, they may also enter into bilateral or multilateral cooperation agreements with the said institutions (Article 60 (2) (b)) in order to exchange the information necessary for the exercise of their supervisory functions.

**Criterion 40.13** – The financial sector supervisory authorities have the power to, under Article s 6 (2) (i) (k) and 51 of the AML Act and Article 60 (1) (2) of Law 61/VIII/2014, cooperate and share information with their counterparts without delay on a reciprocal basis (Article 60 (5)) and provided that the information benefit from guarantees of secrecy and have the purpose of performing their supervisory functions that are related to financial institutions (Article 60 (8)).

**Criterion 40.14 (a)** – under Article s 6 (2) (k) of the AML Act and 15 (1) (f) of Law 61/VIII/2014, in pursuit of regulation and supervision objectives, supervisory authorities of the financial system are authorized to disseminate and exchange information on the legal and regulatory texts governing the financial system and statistical data on fundamental aspects of the application of prudential rules and requirements in Cabo Verde.

**Criterion 40.14 (b)** – the issue of exchange of information is provided in Article 15 (1) (c), in which the scope of supervision of the financial system includes the full and fully autonomous performance of the functions of prudential and behavioural supervision under the terms of this law, other complementary legislation and regulations. Within this framework, supervisory authorities of the financial system may exchange information necessary for the exercise of their supervisory functions (Article 60 (2) (c)).

**Criterion 40.14 (c)** - there is no indication that the financial sector supervisory authorities do not have the power to exchange the information indicated in this criterion. In this way, and under the terms of Article 5 (4) of BCV Notice no. 5/2017, the Banco de Cabo Verde as supervisory authority of the financial system is competent to perform the acts necessary to ensure the effectiveness of the principles applicable to the financial system and, if applicable, enter into agreements to request information it deems necessary.

**Criterion 40.15** – Article 60 (3) of Law 61/VIII/2014 provides that financial system national supervisory authorities may cooperate with counterpart or similar institutions of other countries and the scope of the agreement may include “subordinate participation of representatives of similar institutions of a foreign country in acts of the competence of the national supervisory authorities of the financial system, when there is suspicion of violation of the law of that country”.

Criterion 40.16 - (Met) – The decision-making power of financial sector supervisory authorities to disseminate the information exchanged is legally assigned to them and is provided for in Article 60 (5) (6) of Law 61/VIII/2014. In addition, under Article 60 (7), the information received may only be used for the agreed purposes, and dissemination for other purposes must be subject to consent from or agreement with the institutions from which they received the information.

#### *Exchange of information between law enforcement authorities*

**Criterion 40.17** – This requirement is framed in Article s 66(2)(i)(k) and 53 of AML Act and Article 60 of Law 61/VIII/2014. In this regard, law enforcement authorities have the powers to cooperate and exchange domestic information to which they have access with foreign counterparts for information purposes as well as for investigations related to ML/TF, ML predicate offences, including identification and tracking of proceeds and instruments of crime.

**Criterion 40.18** – Law enforcement authorities in Cabo Verde, in particular the financial sector supervisory authorities, may use their powers to domestically use recommendations from international organizations to strengthen the security and stability of the international financial system (Article 59 (1) of Law 61/VIII/2014. In this framework, existing regimes or practices governing the agreements between Interpol, Europol or Eurojust and individual countries govern the restrictions on use imposed by the law enforcement authority.

In cases where investigative techniques are available in accordance with national law, law enforcement authorities have the power to use special criminal investigation mechanisms for the prevention and combating of money laundering, terrorist organizations and terrorism to obtain information on behalf of foreign counterparts (section 12 of the criminal investigation law).

Law enforcement authorities are not able to use special criminal investigation mechanisms to obtain information on behalf of foreign counterparts in terrorist financing and proliferation financing offences in accordance with domestic law, except in response to a request for mutual legal assistance.

Thus, obtaining information on behalf of foreign counterparts in terrorist financing and proliferation financing offences should be done using the special investigative techniques provided for in the Palermo Convention.

**Criterion 40.19** – Law enforcement authorities in Cabo Verde are authorized to set up joint international teams to conduct cooperative investigations. In this framework, and under Article 20 of Law no. 30/VII/2008 and Article 142 of Law No. 6/VIII/2011, joint criminal investigation teams may be established through bilateral or multilateral agreements.

#### *Exchange of information between non-counterparts*

**Criterion 40.20** – The exchange of information between non-counterpart entities is permitted, under Article 142 (1) (b) (5) (6) of Law no. 6/VIII/2011, of August 29. The competent authorities may, therefore, exchange information indirectly with the authorities of countries which have not participated in the establishment of the joint investigation team (Article 142 (5)) by applying the above relevant principles to ensure that the competent authority indirectly

provides the information available in Cabo Verde, for the purposes of their investigations (Article 142 (6)).

### **Weighting and Conclusion**

It is unclear whether feedback also covers information on ML predicate offences. Furthermore, law enforcement authorities are not able to use special criminal investigation mechanisms to obtain information on behalf of foreign counterparts in terrorist financing and proliferation offences in accordance with domestic law, except in response to a request for mutual legal assistance. The FIU is unable to receive information on ML predicate offences and TF, when using the FIU and AML Acts Law as legal bases to cooperate. There is the need for Cabo Verde to harmonize the legal framework the FIU uses to cooperate and prevent gaps should be considered relevant

**Recommendation 40 is rated Largely Compliant.**

## Summary of Technical Compliance - Key Deficiencies

Compliance with the FATF Recommendations		
Recommendation	Rating	Factor (s) underlying the rating
1. Assessing Risks and applying a Risk-Based Approach	Partially Compliant	<ul style="list-style-type: none"> <li>• Cabo Verde did not update the AML/CFT National Strategy nor did it adopt the Integrated National Plan for the Fight against Drugs (PNILDC);</li> <li>• The same can be said of the Strategic Internal Security Plan (PESI).</li> <li>• Although the mechanism is described in the Law, the national risk assessment did not find any sector of activity likely to benefit from exemptions or simplified due diligence mechanisms.</li> <li>• BCV Notice No. 4/2017, of September 7, establishes concrete measures that implement Article 10(4) of Law no. 120/VIII/2016, of March 24, leaving insurance entities and DNFBPs outside the scope of application of said Notice</li> <li>• Although for financial institutions there are measures foreseen in the legislation and regulations of the BCV that aim to comply with the requirements of the FATF methodology in relation to this criterion, this is not the case for insurance entities and DNFBPs.</li> </ul>
2. National cooperation and coordination	Partially Compliant	<ul style="list-style-type: none"> <li>• There is no designated entity or authority to coordinate policies and strategies to combat the proliferation of WMD.</li> <li>• There is no designated entity or authority to coordinate AML/CFT policies and strategies.</li> <li>• NRA recommendations have not yet been transposed into a policy or coordination mechanism responsible for national AML/CFT policies.</li> <li>• There is no operational or coordinated structure or structure for policies and strategies for AML/CFT that could coordinate cooperation between law enforcement authorities and the consequent development and implementation of AML/CFT policies and activities</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
3. Money laundering offence	Compliant	The Recommendation is fully met
4. Loss of assets and provisional measures	Compliant	The Recommendation is fully met
5. Terrorist financing offence	Largely Compliant	<ul style="list-style-type: none"> <li>• There is no provision that the TF offense should be applied whether the person suspected of having committed the offense is in the same country or in a country other than that in which the terrorist organization or organizations are located, or in which the terrorist act(s) occurred or should occur.</li> </ul>
6. Targeted financial sanctions related to terrorism and terrorist financing	Partially Compliant	<ul style="list-style-type: none"> <li>• The prohibition on persons or entities making funds or other economic resources available to persons or entities designated under UNSCRs does not extend to persons acting on behalf of designated persons or entities.</li> <li>• The freezing obligation does not apply to funds or other assets owned by designated persons (natural or legal), as well as funds controlled by them or by persons acting on their behalf or at their request.</li> <li>• • With regard to DNFBPs there is no provision specifically imposing the obligation to report the freezing of funds and other economic resources.</li> </ul>
7. Targeted financial sanctions related to proliferation	Largely Compliant	<ul style="list-style-type: none"> <li>• There is no express provision to permit the addition to frozen accounts interests or other income owed to them and payments due under contracts.</li> <li>• There is no protection for bona fide third parties acting in good faith.</li> <li>• The freezing requirement under CFT does not apply to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.</li> <li>• Reporting entities are not obliged to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements, including attempted transactions, of the relevant UNSCRs.</li> <li>• There is no protection of the rights of <i>bona fide</i> third parties acting in good faith.</li> <li>• There are no specific measures for monitoring and ensuring compliance by</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
		reporting entities with their obligations under Recommendation 7.
8. Non-Profit Organizations	Partially Compliant	<ul style="list-style-type: none"> <li>● Authorities do not monitor the compliance of NPOs with the requirements of R.8 including risk-based measures applied to them</li> <li>● Cabo Verde has not conducted the following activities: <ul style="list-style-type: none"> <li>– did not identify the subset of organizations covered by the FATF definition of NPOs;</li> <li>– did not take steps to identify the characteristics and types of non-profit organizations that, by virtue of their activities, may be at risk of TF abuse;</li> <li>– did not review nor adapted its measures relating to the NPOs sub-sector that can be used abusively for TF support;</li> <li>– The authorities did not conduct risk-based supervision of NPOs on terrorism financing issues;</li> <li>– There is no information to demonstrate that authorities periodically reassess the potential vulnerabilities of the NPO sector to terrorist activities.</li> </ul> </li> </ul>
9. Financial institution secrecy laws	Compliant	There is a legal framework for this recommendation
10. Customer due diligence	Partially Compliant	<ul style="list-style-type: none"> <li>● There is no legal obligation to identify and verify the identity of the customers of financial entities (criterion 10.4).</li> <li>● There is no legal obligation for financial entities to apply CDD measures provided for in criterion 10.12 to the beneficiaries of life insurance policy.</li> <li>● There is no legal obligation regarding the requirements of criteria 10.15 and 10.20.</li> <li>● The AML does not provide for the requirements set out in recommendation 10 to prevent and combat TF.</li> </ul>
11. Record-keeping	Largely Compliant	<ul style="list-style-type: none"> <li>● The requirement to ensure that records should be sufficient to permit reconstruction of individual transactions so as to provide evidence for prosecution is focused on money laundering investigations.</li> <li>● The AML Act does not require FIs to make the records available swiftly and upon appropriate authority.</li> </ul>



Recommendation	Rating	Factor (s) underlying the rating
12. Politically Exposed Persons	Largely Compliant	<ul style="list-style-type: none"> <li>● All criteria of this recommendation, except for criterion 12.4, were considered to be with regard to.</li> <li>● The corresponding requirements for TF are not in law</li> </ul>
13. Correspondent banking	Largely Compliant	<ul style="list-style-type: none"> <li>● There are no legal provisions for this Recommendation in relation to TF.</li> </ul>
14. Money or value transfer services	Largely Compliant	<ul style="list-style-type: none"> <li>● There is a legal framework for this recommendation. However, the compliance program of MVTs agents, provided for in AML Article 18, does not include measures to prevent and combat the financing of terrorism.</li> </ul>
15. New technologies	Partially Compliant	<ul style="list-style-type: none"> <li>● The AML Act does not establish an obligation for the reporting entities to identify and assess the TF risk.</li> <li>● The requirements set out in criterion 15.1 for cross-border transfers are not clearly laid down in the Republic of Cabo Verde's AML Act.</li> </ul>
16. Wire transfers	Partially Compliant	<ul style="list-style-type: none"> <li>● There is no legal obligation for FIs to collect information on the name and address of the beneficiary of cross-border wire transfers.</li> <li>● There is no legal obligation as to the requirements set out in criteria 16.2, 16.3, 16.4, 16.6, 16.16, 16.17 and 16.18.</li> <li>● It was not possible to verify any legal provision requiring FIs to adopt freezing measures and to comply with the prohibitions to carry out transactions with designated persons and entities in accordance with the obligations laid down in the relevant UN Security Council Resolutions on TF prevention and elimination, such as UNSCR 1267 and 1373 and its subsequent resolutions (criterion 16.18).</li> </ul>
17. Reliance on third parties	Partially Compliant	<ul style="list-style-type: none"> <li>● There is no requirement for FIs to immediately obtain the relevant CDD information, and for the third party to have measures in place for compliance with CDD and record keeping requirements.</li> <li>● There is no provision in the AML Act dealing with a situation where FIs rely on a third party in the same financial group.</li> <li>● There is confusion regarding the meaning of “third parties of intermediaries”.</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
18. Internal controls and branches and subsidiaries abroad	Partially Compliant	<ul style="list-style-type: none"> <li>• There is no legal requirement regarding the application of a ML/TF program, adequate to ML/TF risk and commercial activity dimension (criterion 18.1).</li> <li>• There is no legal requirement regarding information sharing policies and procedures required to comply with customer due diligence and for ML/TF risk management (the ML/TF program applicable at group level) criterion 18.2.</li> <li>• There is no requirement as set out in Recommendation 18 to prevent and combat TF.</li> </ul>
19. Higher-risk countries	Partially Compliant	<ul style="list-style-type: none"> <li>• There is no legal obligation to apply countermeasures proportional to risks: a) whenever the FATF so requests; and b) irrespective of any request by the FATF to that effect (criterion 19.2).</li> <li>• There is no requirement as set out in Recommendation 19 to prevent and combat TF.</li> </ul>
20. Reporting of suspicious transaction	Partially Compliant	<ul style="list-style-type: none"> <li>• There is legal framework for this recommendation only for ML suspicions. There is no framework for TF suspicions.</li> </ul>
21. Tipping-off and confidentiality	Compliant	<ul style="list-style-type: none"> <li>• There is a legal framework for this Recommendation.</li> </ul>
22. DNFBP: customer due diligence	Partially Compliant	<ul style="list-style-type: none"> <li>• There is a legal framework for this Recommendation, which is interlinked with recommendation 10.</li> </ul>
23. DNFBP: other measures	Largely Compliant	<ul style="list-style-type: none"> <li>• There is a legal framework for all the criteria of this Recommendation, with the exception of criterion 23.3, as it was not possible to verify any legal obligation for DNFBPs to apply the measures set out in Recommendation 19 on countries at a higher risk.</li> </ul>
24. Transparency and beneficial ownership of legal persons	Largely Compliant	<ul style="list-style-type: none"> <li>• Cabo Verde has not assessed the ML/TF risks associated with all types of legal persons created in the country.</li> <li>• There is no provision in the Act that expressly provides for mechanisms to monitor the quality of assistance received from other countries in relation to BOI</li> <li>• Reporting entities are required to cooperate and provide information to law enforcement</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
		<p>authorities, particularly the judiciary authorities (Judge and Public Prosecutor) and the FIU, with the exception of criminal police agencies (Judiciary Police and National Police)</p> <ul style="list-style-type: none"> <li>• There are no specific requirements to ensure that legal persons cooperate with competent authorities in determining their beneficial owners.</li> <li>• There is no legal provision for the explicit materialization of mechanisms to monitor the quality of assistance received from other countries with regard to BOI.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	Largely Compliant	<ul style="list-style-type: none"> <li>• There is no provision in the Cabo Verde legal order that provides for instances where trusts may be set up abroad but operated by trustees of those who have ownership / control in Cabo Verde.</li> </ul>
26. Regulation and supervision of FIs	Partially Compliant	<ul style="list-style-type: none"> <li>• Deficiencies in the implementation of risk-based supervision covering all financial sectors are identified. RAS implementation in banking system supervision will partly address these deficiencies but does not cover entities under the auspices of the AGMVM or the insurance sector.</li> <li>• ML risk is only one of the RAS criteria.</li> <li>• RAS is still in the process of implementation.</li> <li>• TF risk is not present in the RAS criteria.</li> </ul>
27. Powers of Supervisors	Partially Compliant	<ul style="list-style-type: none"> <li>• Although the BCV is endowed, through the AML, its Organic Law and Organic Regulation, with the necessary and adequate powers to supervise or monitor and ensure compliance by FIs with their obligations to prevent and combat ML, such powers do not cover TF.</li> </ul>
28. Regulation and supervision of designated non-financial businesses and professions	Partially Compliant	<ul style="list-style-type: none"> <li>• The absence of risk-based DNFBP supervision has a strong implication in the final rating of this recommendation.</li> <li>• There are measures relating to the holding and acquisition of significant shareholdings or control in casinos (Article 11 (2) of the GL). However, these measures only apply to a minimum of 60% of the shares that the concessionaires need to have represented by nominative or registered shares, which may</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
		imply that the concessionaires may not know shareholders holding the remaining capital.
29. Financial Intelligence Units	Largely Compliant	<ul style="list-style-type: none"> <li>● There are no obligations for reporting entities to communicate TF suspicious transactions and the FIU receives information on related predicate offences.</li> <li>● The FIU does not carry out strategic analysis and its operational autonomy is doubtful.</li> <li>● There is no requirement for the FIU to disseminate the results of its analysis to relevant competent authorities, other than the AG and the JP, whether spontaneously or upon request.</li> </ul>
30. Responsibility of law enforcement and investigative authorities	Compliant	<ul style="list-style-type: none"> <li>● The Recommendation is fully met</li> </ul>
31. Powers of law enforcement and investigative authorities	Compliant	<ul style="list-style-type: none"> <li>● Special investigative mechanisms, such as covert actions, controlled deliveries and joint operations provided for in the criminal investigation law, do not apply to investigations into TF and proliferation.</li> </ul>
32. Cash Couriers	Partially Compliant	<ul style="list-style-type: none"> <li>● Cabo Verde lacks a formal mechanism that allows for greater coordination and cooperation among customs, immigration and other related authorities on cross -border transportation of currency and BNIs.</li> <li>● There is no requirement to stop or restrain currency or BNI where there is suspicion of TF or predicate offences.</li> <li>● The formal mechanisms for cooperation between Customs authorities and their international counterparts are inadequate.</li> <li>● There are no specific sanctions for persons who are carrying out a physical cross-border transportation of currency and BNIs that are related to ML/TF.</li> </ul>
33. Statistics	Compliant	<ul style="list-style-type: none"> <li>● The results of criminal investigations and convictions or of the operation of criminal intelligence in the context of which data and information exchange between the Public Prosecutor's Office, the Judiciary Police and the FIU are not known or communicated</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
		<ul style="list-style-type: none"> <li>Statistical data on the average proportion of investigations initiated from RAFs are not known.</li> </ul>
34. Guidance and feedback	Largely Compliant	<ul style="list-style-type: none"> <li>Supervisors of DNFBPs have not issued guidelines to DNFBPs to facilitate compliance with AML/CFT obligations</li> </ul>
35. Sanctions	Largely Compliant	<ul style="list-style-type: none"> <li>The sanctions provided for in the AML Act must apply to both FIs and DNFBPs, as well as to members of corporate bodies, persons who exercise management, leadership or managerial tasks, or act on their behalf; the mention of mere disciplinary responsibility restricts the scope that the measure should have.</li> </ul>
36. International instruments	Largely Compliant	<ul style="list-style-type: none"> <li>Cabo Verde has not fully implemented the requirements of the instruments due to deficiencies in its AML/CFT system.</li> </ul>
37. Mutual legal assistance	Compliant	<ul style="list-style-type: none"> <li>No requirement to use investigative techniques for TF purposes</li> <li>There is no provision in the Caboverdean legislation establishing procedures for the implementation and maintenance of a process of monitoring progress in the execution of MLA regarding forms of international judicial cooperation in criminal matters</li> </ul>
38. Mutual legal assistance: freezing and confiscation	Largely Compliant	<ul style="list-style-type: none"> <li>There is no provision regarding situations where the perpetrator is unavailable by reason of flight or absence.</li> </ul>
39. Extradition	Compliant	The Recommendation is fully met
40. Other forms of international cooperation	Largely Compliant	<ul style="list-style-type: none"> <li>It is unclear whether feedback also covers information on ML predicate offences</li> <li>Law enforcement authorities are not able to use special criminal investigation mechanisms to obtain information on behalf of foreign counterparts in terrorist financing and proliferation offences in accordance with domestic law, except in response to a request for mutual legal assistance</li> <li>Inability of the FIU to receive information on ML predicate offences, when using the FIU Law as a legal basis to cooperate</li> </ul>

Recommendation	Rating	Factor (s) underlying the rating
		<ul style="list-style-type: none"> <li>• Inability of the FIU in TF cases, when using the AML Act as a legal basis to cooperate</li> <li>• Reason why the need to harmonize the legal framework the FIU uses to cooperate and prevent gaps should be considered relevant</li> </ul>

## TABLE OF ACRONYMS

AFRICOM	United States Africa Command
AG	Attorney General
AGMVM	Auditor-General of Securities Market
AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism (also used for Combating the financing of terrorism)
AT	Tax and Customs Authority
BCV	Central Bank of Cabo Verde
BNI	Bearer Negotiable Instrument
BO	Beneficial Owner
CCC	Commercial Companies Code
CCOC	Coordination Commission to Combat Organized Crime
CCP	Code of Criminal Procedure
CDD	Customer Due Diligence
CEBS	Committee of European Banking Supervisors
CENCOM	Customs Information Network of the Customs Anti-Fraud Network
CFT	Countering the financing of terrorism (also used for Combating the financing of terrorism)
CPF	Counter Proliferation Financing
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Business or Profession
EDD	Enhanced Due Diligence
FATF TF	Financial Action Task Force Financing of Terrorism
FI	Financial Institutions
FIU	Financial Intelligence Unit
GAB	Office for Administration of Assets
GRA	Asset Recovery Office
IFH	Institute for Housing Promotion
IGAE	General Inspectorate of Economic Activities
IGCI	Construction and Real Estate Inspectorate
IO	Immediate Outcome
IN	Interpretive Note
JP	Judicial Police

KYC	Know Your Customer
MER	Mutual Evaluation Report
MIEM	Ministry of Infrastructure and Maritime Economy
ML	Money Laundering
MOU	Memorandum of Understanding
MPD	Movement for Democracy
MVTS	Money or Value Transfer Service(s)
NCAA	National Civil Aviation Agency
NIB	Bank Identification Number
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
NRA	National Risk Assessment
OFI	Other Financial Institutions
Palermo Convention	United Nations Convention against Transnational Organized Crime 2000
PACED	Project to Support the Consolidation of the Rule of Law
PAICV	African Party for the Independence of Cabo Verde
PEP	Politically Exposed Person
PF	Proliferation financing
PNILDC	National Plan for the Fight against Drugs
R.	Recommendation
RCAS	Risk and Control Assessment System
RBA	Risk-Based Approach
SRB	Self-Regulatory Bodies
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Provider
Terrorist Financing Convention	International Convention for the Suppression of the Financing of Terrorism 1999
TF	Terrorist Financing
UCID	Independent and Democratic Cabo Verdean Union
UN	United Nations



UNSCR

United Nations Security Council Resolution

Vienna Convention

United Nations Convention against Illicit Traffic in Narcotic Drugs  
and Psychotropic Substances 1988