



Anti-money laundering and counter-terrorist financing measures

Samoa

Mutual Evaluation Report

September 2015



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APG Secretariat

Locked Bag A3000

Sydney South

New South Wales 1232

AUSTRALIA

Tel: +61 2 9277 0600

E Mail: mail@apgml.org

Web: www.apgml.org

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Executive Summary

1. This report provides a summary of the anti-money laundering (AML) and counter-terrorist financing (CFT) measures in place in Samoa as at the date of the on-site visit (3 to 14 November 2014). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Samoa's AML/CFT system, and provides recommendations on how the system could be strengthened

A. Key Findings

- While further improvements are required, some substantial, Samoa has significantly increased its overall levels of technical compliance with the FATF Standards since its 2006 mutual evaluation.
- Samoa has developed a reasonable overall understanding of money laundering (ML) and terrorist financing (TF) risks, but further work is needed to identify the nature and scope of proceeds-generating crimes types (both foreign and domestic) and the threats that they pose, particularly in relation to Samoa's offshore (international sector), as well as risks associated with the recently established casino sector.
- Although Samoa faces some domestic ML risks – and has identified the large remittance sector, use/cross-border movement of cash, and the domestic banking sector as areas of higher risk/materiality – the international (offshore) sector, particularly international business companies (IBCs), poses the main ML/TF risks.
- Samoa has not yet sufficiently shared the results of its 2012 National Risk Assessment (NRA) with the private sector, nor has it implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF. Samoa has a good institutional basis for national co-operation and co-ordination, but effectiveness needs to be improved at both strategic and operational levels. The development of a national AML/CFT strategy informed by Samoa's understanding of risk will assist in guiding policy and effectiveness improvements.
- Samoa has made only limited use of financial intelligence as a key input into investigations, though more use has been made of financial intelligence and information to trace assets. With recent and planned further increases in resources, the Samoa Financial Intelligence Unit (SFIU) will be better placed to improve the level of dissemination of financial intelligence to, and co-operation with, law enforcement, to conduct strategic analysis, and to conduct increased outreach to financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs).
- Samoa has not undertaken any ML investigations or prosecutions. This reflects relatively low levels of domestic proceeds-generating crime, a decision by authorities to concentrate relatively scarce investigative resources on investigating predicate offences and seizing related proceeds of crime, and a lower penalty for ML when compared to a range of other serious offences. While the evaluation team accepts that the number of ML investigations in Samoa, in particular for more serious proceeds-generating offences, will be relatively low, it does not justify a complete absence of ML investigations; other, comparable small jurisdictions have undertaken some ML investigations/prosecutions. Samoan authorities are strongly encouraged to pursue ML investigations, in particular for more serious offences (in the context of Samoa) and/or third-party ML.
- Samoa's legal framework for confiscation is generally sound and Samoa has taken concrete action in recent years to pursue the forfeiture of criminal proceeds. Confiscation is being pursued as a policy objective and Samoa's recent proceeds of crime suppression efforts are to be commended. However, confiscation efforts to date have been largely concentrated on lower level drug offences.
- Samoa's TF offence is mostly consistent with the international standards, but some significant technical deficiencies remain. There is no evidence of terrorism or TF having occurred in Samoa which is consistent with the low level of risk identified in the 2012 NRA and in other regional

assessments of TF risk. The main risk appears to relate to the international sector, but no TF cases have been detected either domestically or by foreign counterparts.

- Samoa's legislative framework for seizing without delay terrorist funds and assets requires significant improvement. There does not appear to be any legal framework by which Samoa can implement targeted financial sanctions relating to proliferation financing.
- Samoa introduced significant enhancements to its AML/CFT preventive measures following its 2006 MER. However, further improvements are needed to improve compliance with the revised FATF Standards and in response to the 2012 NRA. The domestic banking sector has a better understanding of ML/TF risks than other domestic sectors. Some sectors have implemented AML/CFT measures, but significant weaknesses exist regarding the implementation of key preventive measures such as beneficial ownership, PEPs, wire transfers, correspondent banking and ongoing monitoring.
- Potential ML/TF risks are generally well understood in the international sector, but the ability of trust and company service providers (TCSPs) to identify and mitigate actual risks requires significant improvement. TCSPs are generally effective in obtaining beneficial ownership information on creating IBCs, but insufficient information is obtained for TCSPs to effectively implement all of their ongoing customer due diligence (CDD) and suspicious transaction reporting (STR) obligations, though strengthened provisions will be implemented with effect from late 2015.
- Samoa has in practice focussed its supervision in recent years on higher risk sectors such as banks, the remittance sector and the TCSPs, but it has not introduced a comprehensive, risk-based approach to supervision based on a sound understanding of ML/TF risks at institution and sector level. The frequency and intensity of compliance inspections of domestic FIs is inadequate and has not commenced for domestic DNFBP sectors, including the recently established casino sector, reflecting in part a lack of supervisory resources. Supervision of TCSPs, while more frequent, is insufficient in depth and scope.
- Some important measures are in place to prevent misuse of legal persons and arrangements (in particular IBCs), but strengthening of controls (now underway) is required. TCSPs appear to understand and implement requirements to identify the ultimate beneficial owners of IBCs on their creation, but such information is only updated annually. Competent authorities can generally obtain beneficial ownership information from Samoan TCSPs in a timely manner, including documentation from third-party introducers. Samoa has generally been able to respond promptly to international requests for basic and beneficial ownership information.
- Samoa demonstrates a strong willingness to provide international assistance and has made significant commitments as a party to a number of international agreements relating to mutual assistance. Although a small and under-resourced jurisdiction, it is clear that Samoa treats all international requests as high priority and deals with them accordingly.

B. Risks and General Situation

2. Samoa's 2012 NRA identifies the international (offshore) sector, in particular IBCs, money transfer operators (MTOs) and the cross-border movement of cash as areas of higher risk, as well as highlighting the importance of the domestic banking sector due to its materiality. The NRA does not quantify or estimate the value of domestic or foreign proceeds of crime in Samoa, and does not in any depth consider the types or volume of threats associated with predicate offences. However, the level of domestic proceeds-generating crimes seems to be low, with the main relevant crime types being relatively low level fraud and drugs cases. Samoan authorities assess the risk of terrorism and TF to be low, which is supported by previous reports, open source materials and on-site interviews.

3. There have been a small number of foreign requests for information relating to Samoan IBCs which indicate possible misuse for ML or associated predicate offences (eg tax offences), but none has led to any request for investigation by the Samoan authorities or to the charging of any IBC, beneficial owner or office-holder of an IBC with an offence. The small number of requests may reflect low levels

of criminality, an inability to detect such criminality, or a combination of both. Authorities are however aware of the inherent risks posed by the offshore sector and as noted above have taken some measures recently to address the risks.

C. Overall level of compliance and effectiveness

4. Samoa has significantly increased its overall levels of technical compliance with the FATF Standards since its 2006 mutual evaluation, though some important deficiencies remain, including in relation to the criminalisation and prevention of ML, TF and proliferation financing, preventative measures (CDD), regulation and supervision of FIs and DNFBPs, powers of supervisors and sanctions. In terms of effectiveness, Samoa has achieved strong results in relation to international co-operation, and moderate results in relation to risk, policy and co-ordination; preventive measures; legal persons and arrangements; confiscation; TF investigation and prosecution; and TF preventive measures and financial sanctions. Though some measures are in place, only low levels of effectiveness have been achieved in relation to supervision; use of financial intelligence; ML investigation and prosecution; and no measures are in place for proliferation financing financial sanctions.

C.1 Assessment of risk, co-ordination and policy setting

5. Samoa has improved its overall understanding of its ML/TF risks in recent years, and is to be commended for its ongoing efforts to identify, assess and understand its ML/TF risks, having completed its first NRA in 2012 and commencing its second NRA in 2014. While the results of the NRAs are generally sound and accepted by the evaluation team, the NRAs do not sufficiently consider the nature and scope of proceeds-generating crimes (both domestic and foreign) and the risks that they pose. Samoa is also encouraged to conduct a more comprehensive assessment of its TF risks and of risks associated with the recently established casino sector. The level of understanding of ML/TF risks varies between government agencies and the results of the 2012 NRA have not been sufficiently shared with the private sector, whose understanding of risk is variable.

6. Although there is little firm evidence of the proceeds of foreign predicate crimes being laundered in Samoa or through its offshore sector, the current lack of ongoing due diligence by TCSPs on IBCs raises serious doubts regarding their ability to detect misuse of IBCs.

7. The 2012 NRA has not resulted in a significant review of Samoa's AML/CFT policies or strategies to combat ML/TF. The Money Laundering Prevention Authority (MLPA) and the MLP Task Force provide a good basis for strategic co-ordination and the necessary framework to develop and enhance AML/CFT systems, but effectiveness needs to be improved at both the strategic/policy level, including through the development of a national AML/CFT strategy, and at the operational level. Urgent consideration is required to manage proliferation financing issues.

C.2 Financial intelligence, ML and confiscation

8. Samoa's level of technical compliance in relation to its legal system and operational issues has generally improved significantly since its 2006 evaluation, and levels of effectiveness are improving in relation to confiscation of criminal proceeds, but there is a low level of effectiveness in relation to use of financial intelligence and ML investigations.

9. Financial intelligence and other information are not being used for ML (or TF) investigations, though they are to some extent being used for the investigation of predicate offences and for the purposes of confiscation. The Samoa FIU (SFIU) is performing most of the primary functions of an FIU, but needs to improve its level of dissemination to, and co-operation with, law enforcement agencies and to develop the capacity to undertake strategic analysis. Despite a recent increase in staffing, the SFIU does not have sufficient resources to perform all its FIU functions, including analysis, outreach and education, as well as

its supervisory functions, though further recruitment is planned in 2015. This is strongly supported by the evaluation team.

10. Samoa has the basis for a sound ML offence, though some categories of predicate offences for ML are missing or not adequately covered, including tax offences. In addition, the maximum sentence for ML (7 years) is less than optimal when compared to the maximum penalty for other serious offences (10 – 14 years).

11. No ML cases have been investigated or brought for prosecution. Reasons for this include lack of resources, limited understanding on how to use financial intelligence to investigate and prosecute ML and TF, limited operational co-ordination between the SFIU and law enforcement, and a lower penalty for ML when compared to a range of other serious offences (though parallel investigations of ML with investigations of predicate offences could address this matter).

12. Samoa has the basis of an effective confiscation regime, and has begun to make good use of it over the last two to three years in relation to lower level drugs and fraud cases, however there is scope for increased proceeds of crime action in relation to more serious/complex predicate crimes. The effectiveness of the cross-border declaration system needs to be improved, particularly given that this has been identified as a higher risk area.

C.3 Terrorism financing and proliferation financing

13. There is no evidence of terrorism or TF having occurred in Samoa which is consistent with the low level of risk identified in the 2012 NRA and in other regional assessments of TF risk. The main risk appears to relate to the international sector, but no cases have been detected either domestically or by foreign counterparts. The evaluation team was satisfied that, should a TF case occur in Samoa or involving a Samoan entity, it would be given the highest priority by authorities.

14. Samoa's TF offence is mostly consistent with the international standards, but does not criminalise the collection or provision of funds to individual terrorists (other than those specified under the Counter-Terrorism Act (CT Act)) where there is no connection to a terrorist act or an act causing death or bodily injury. The maximum penalty with respect to legal persons is not sufficiently proportionate or dissuasive and there is an absence of an express mental element in the TF offence.

15. Samoa has a reasonably sound legislative framework for seizing without delay terrorist funds and assets in accordance with UNSCR 1267/1988 but is unable to propose individuals or entities for designation as required under these resolutions. Samoa has a legal mechanism to designate individuals and entities pursuant to UNSCR 1373 but no designations have been made. The mechanism for freezing the assets of a designated entity (reliance on the Proceeds of Crime Act) has significant deficiencies.

16. Samoan authorities have taken some action to prevent terrorists from raising, moving and using funds, however, in principle, the effectiveness of its targeted financial sanctions regime would be limited by the technical deficiencies in the CT Act. Limited steps have been taken by the SFIU to support effective implementation by providing regular updates (UN Al Qaida and Taliban lists) to FIs and TCSPs. The Transnational Crime Unit (TCU), through its involvement in INTERPOL, also receives regular updates on terrorist-related issues. No funds have ever been identified in the domestic or international sectors that have links to terrorism or TF. A concern exists in the non-profit organisation (NPO) sector where, even though the risk is low, supervision and engagement with the sector has been very limited for CFT purposes.

17. While there is dissemination of the proliferation resolutions and some awareness of the individuals and entities designated under them, there is no legal mechanism to freeze any funds or assets in the event they are found in Samoa. The limited awareness of proliferation issues in both government agencies and reporting entities further diminishes effectiveness.

C.4 Preventive measures and supervision

18. Samoa introduced significant enhancements to its AML/CFT preventive measures following its 2006 mutual evaluation report (MER) with the issuance of the MLP Act 2007 and MLP Regulations 2009, and the AML Guidelines 2010, to better align with the then 2003 FATF Standards. However, Samoa has not issued additional preventive measures since 2009 to further strengthen the country's AML/CFT regime in response to its 2012 NRA, recent ML/TF typologies and to come into compliance with the 2012 FATF Recommendations.

19. Other than in foreign-owned banks (following group policy/home standards), the risk-based approach and application of CDD has not been fully adopted and implemented. Technical deficiencies limit and undermine the level of the effectiveness of the various preventive measures to some extent. In particular, the need for FIs to assess, understand and mitigate their risks at an institutional level is not clearly understood or applied.

20. The banking sector has a good understanding of the ML/TF risks in Samoa. In contrast, the level of understanding of ML/TF risks in the other non-bank financial sectors (such as insurance, credit unions) and in majority of the DNFBPs is generally weak and very limited. This can be attributed mainly to the very limited engagement by the supervisory authorities, due to manpower and technical resources, including the fact that the findings of the 2012 NRA have not been shared with the private sector

21. While some sectors have implemented AML/CFT measures, significant weaknesses exist regarding the implementation of key preventive measures such as beneficial ownership, PEPs, beneficiary information for wire transfers, correspondent banking and ongoing monitoring. Concerns exist over the quantity and quality of STRs received by the SFIU which are predominantly related to internet scams and do not reflect the full range of risks/predicate crimes. The lack of additional supervisory guidelines is also a contributory factor for the non-identification of potentially suspicious transactions.

22. Regarding the international sector, despite the absence of clear definition of 'beneficial owner' under the MLP Act and Regulations, TCSPs are generally effective in obtaining and maintaining beneficial ownership information on creation of IBCs. However, sufficient information has not been obtained on many IBCs (for example, on the existence and operation of bank accounts by IBCs) for the TCSPs to effectively implement all of their ongoing CDD and STR obligations, and beneficial ownership information can be out of date as it may only be updated annually as part of the annual renewal process. Samoa has recently strengthened its legal framework for IBCs, including introducing obligations for TCSPs to have access to IBCs' financial information, which if implemented effectively (in late 2015) will improve TCSPs' ability to understand the nature and ownership and control structures of IBCs and to conduct meaningful ongoing due diligence.

23. There is a strong licensing (including licence renewal) framework for FIs. There are fit and proper requirements in place, however they do not extend to beneficial owners. There are measures in place to prevent criminals and their associates from operating within the DNFBP sectors.

24. Samoa has designated relevant AML/CFT supervisors for the different sectors and Samoa has made some efforts to supervise its FIs for compliance with AML/CFT requirements. However, risk-based supervision is undertaken by the supervisors only to a limited extent and the frequency and intensity of compliance inspections are inadequate. Except for the TCSP sector, there has been no AML/CFT supervision of the DNFBP sectors (the casino, legal, accounting, precious metal/stones and real estate sectors). Supervisory powers of the Central Bank of Samoa (CBS), SFIU and Samoa International Finance Authority (SIFA) are limited in some areas. Resources for AML/CFT supervision within the CBS and the SFIU are significantly inadequate, which has contributed to inadequate overall levels of AML/CFT supervision. There is, however, a strong level of co-operation between the supervisors.

25. Sanctions against FIs and DNFBPs for breaches of AML/CFT requirements have been minimal due to the low level of compliance inspections undertaken by the relevant supervisors. Insufficient feedback is being provided by supervisors to supervised entities.

C.5 Transparency and beneficial ownership

26. Samoa has broadly assessed the risks associated with international (though not domestic) legal persons and arrangements as part of the NRA process, and has a reasonable general understanding of how IBCs in particular can be misused for ML/TF. However, due to the limited day-to-day involvement of most Samoan TCSPs in the operation of the great majority of IBCs created in Samoa (which are created through third-party introducers and do not have a Samoan TCSP acting as a director or other office holder in the IBC), Samoan TCSPs' ability to detect and report suspicious activity is limited, which inhibits the authorities' ability to identify and understand the vulnerabilities and the extent to which legal persons are being misused for ML/TF. As noted above, recent strengthening of record-keeping requirements for IBCs relating to financial information will, if effectively implemented, significantly strengthen Samoa's ability to identify, assess and understand the vulnerabilities of IBCs and whether, and the extent to which, IBCs are, in fact, being misused for ML/TF.

27. Basic information for international legal persons and arrangements is publicly available; however, beneficial ownership information for international legal persons or arrangements is not readily available to the public except with the consent of the client. Competent authorities such as SIFA and the SFIU are however entitled to have access to beneficial ownership information for international legal persons and arrangements in a timely manner. A range of confidentiality/secretcy provisions apply to both domestic and international entities, however, all secrecy or confidentiality obligations are overridden by section 3 of the MLP Act 2007 and relevant provisions in the offshore sector legislation and the Tax Information Exchange Act 2012 and, in practice, both SIFA and the SFIU have been able to obtain beneficial ownership information regarding IBCs in a timely manner and to share such information internationally. Samoa generally has the ability to cooperate and respond to international requests for basic and beneficial ownership information relating to both domestic and offshore legal persons and arrangements, and has done so in practice.

28. Samoan TCSPs seem to have a very good understanding of the requirement to obtain beneficial ownership information in relation to legal persons and arrangements, and the requirements are generally well observed on creation of IBCs. This information is not always up to date, but is updated at least annually.

29. Risks associated with the domestic sector are much lower, but improvements are nonetheless required to minimise the risk of misuse. Samoa has a reasonable system of registers on the basic legal ownership and control information for domestic legal persons, which assists in preventing their misuse for ML/TF. Basic information on domestic legal persons is publicly available; however, information on domestic legal arrangement is not collected centrally, other than for charitable trusts. The ultimate beneficial ownership information for domestic legal persons is also not centrally collected. The domestic company registry system is passive and reactive, with little active monitoring and limited sanctions.

C.6 International co-operation

30. Samoa provides a wide range of international co-operation including mutual legal assistance, and other forms of co-operation in a timely and efficient manner.

31. Although Samoa has a legal mechanism to extradite, there is an absence of extradition treaties and only ten countries have been designated as extradition countries. However, requests for extradition are not common and Samoa reports only one recent request in 2012 from New Zealand. This was successfully carried out. Rather than the extradition process, Samoa tends to use powers under its

Immigration Act to deport nationals back to their own countries. This can be initiated as a result of a request from another country.

32. Samoa has initiated few formal international requests for assistance, but as its capacity to investigate predicate crimes and associated ML (both through the offshore and domestically) increases, Samoa is expected and encouraged to make increased use of international co-operation, particularly in relation to higher risk sectors (eg TCSPs, MTOs). Similarly, as AML/CFT supervisory efforts are strengthened, international co-operation with respect to supervisory issues should strengthen. Samoan authorities have excellent relationships with their regional counterparts and share information as a matter of routine.

33. Samoa has been able in all but one instance to share beneficial ownership information on request in a timely manner, despite the absence of publicly available information on beneficial ownership of legal persons and issues as to accuracy of such information. The one instance in which Samoa was unable to share beneficial ownership information was because the request did not meet the requirements of the mutual legal assistance legislation.

D. Priority Actions

34. The priority recommended actions for Samoa, based on these findings, are:

- Strengthen future assessments of ML/TF risks to include more detailed consideration of (i) the types and volume of threats associated with predicate offences (domestic or foreign), (ii) indicators in relation to terrorism and TF threats; (iii) the risks from the recently established casino sector, and (iv) qualitative and quantitative data on the risks arising from the international sector, in particular IBCs;
- Develop a national AML/CFT strategy or policy on the basis of the risks identified in the NRA, implement a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks, and improve co-ordination at strategic and operational levels;
- Continue to expand the resources of the SFIU so that it can better carry out its FIU (and supervisory) functions, including strategic analysis and the quality and quantity of its operational analysis and dissemination;
- Pursue ML investigations as a matter of policy, particularly (but not only) in relation to more serious proceeds-generating offences and third party money laundering, when they occur;
- Pursue confiscation action in more serious/complex cases as opportunities to do so arise (including in relation to pursuing the proceeds of foreign predicate crimes which may be being laundered in/through Samoa);
- Remedy the technical deficiencies in the TF offence, develop an overarching strategy for managing terrorism and TF, and take appropriate steps to improve the capacity of competent authorities to detect and investigate terrorism and TF;
- Strengthen the legal framework for targeted financial sanctions (TFS) relating to terrorism and introduce a legal framework for TFS relation to proliferation financing;
- Improve the effectiveness of the cross-border declaration system needs, particularly given that this has been identified as a higher risk area.
- Amend International Companies Act, Trust Act, Companies Act, MLP Act and MLP Regulations to address the technical deficiencies identified in this report and TC Annex and issue additional, updated guidance to FIs and DNFBPs;

- Ensure that there is adequate assessment, understanding and mitigation of ML/TF risks, including appropriate mechanisms being put in place by FIs and DNFBPs to document and provide risks assessment information to the relevant supervisors;
- Resources of the CBS and SFIU to undertake AML/CFT supervision responsibilities should be strengthened.
- Supervision of FIs and DNFBPs should be based on risk. The CBS and SIFA should strengthen the frequency and intensity of on-site inspections of key financial sectors. Supervision of the DNFBP sectors should commence on the basis of ML/TF risk
- Supervisors should increase their engagement with FIs and DNFBPs to promote a better understanding of the AML/CFT obligations and ML/TF risks and trends facing Samoa.
- Ensure that TCSPs are required to understand their ML/TF risks, have sufficient information, including in relation to the existence and operation of bank accounts, to enable them to ‘know their customer’ (including the beneficial owner of the IBC) and be able to undertake sufficient monitoring of their business relationships to meet their ongoing CDD, record-keeping, STR reporting and other AML/CFT obligations;
- Enhance the accuracy and timeliness of beneficial ownership information held by TCSPs for IBCs by (i) requiring change of beneficial ownership to be recorded within one month of occurring, (ii) effectively applying the new financial information requirements under the IC Act to ensure that TCSPs understand who is the person who ultimately owns or controls the IBC, and (iii) undertaking periodic tests on selected customer files to determine if copies of beneficial ownership documentation held by a third party introducer can be supplied rapidly.

E. Table of Effective Implementation of Immediate Outcomes

Effectiveness
1. Risk, Policy and Co-ordination – <i>Moderate level of effectiveness</i>
<p>Samoa is achieving Immediate Outcome 1 to some extent as demonstrated by its improving understanding of its ML/TF risks, as well as some co-ordination of activities to address key aspects of the ML/TF risks, though policy and operational co-ordination require significant further development.</p> <p>Samoa is to be commended for completing its first NRA in 2012 and its progress in finalising an updated NRA which was commenced in 2014. While the 2012 NRA identifies major ML/TF risks in terms of channels or vulnerabilities, it does not sufficiently identify ML/TF risks in Samoa and, in particular, does not sufficiently identify the types or volume of threats associated with predicate offences, both foreign and domestic. Although government authorities have some understanding of risks, this varies between agencies.</p> <p>IBCs created in Samoa’s offshore sector in particular present a potential international conduit for ML, particularly in light of the limited knowledge in Samoa of the true business and activities of many IBCs, and consequently the difficulty in monitoring the activity of the business. Samoan authorities are aware in general terms of the risks posed by the offshore sector and there is little firm evidence of the proceeds of foreign predicate crimes being laundered through the offshore sector. This may result from a lack of detection, rather than a lack of such activity. There have only been a small number of foreign requests for information relating to possible misuse of Samoan IBCs for ML or associated predicate offences, and none has led to any request for investigation by the Samoan authorities or to the charging of any IBC, beneficial owner or office-holder of an IBC with an offence.</p> <p>The risks associated with the recently established casino sector had not been considered or assessed at the time of the on-site visit. There has been only very limited national co-operation or co-ordination in relation to targeted financial sanctions relating to the proliferation of weapons of mass destruction.</p>

The 2012 NRA has not resulted in the development of a national AML/CFT policy or strategy or in a significant review of current AML/CFT priorities. While the identified ML/TF risks are to some extent already being addressed by national AML/CFT policies and activities, the objectives and activities of the competent authorities are not fully consistent with the evolving risks and more needs to be done to apply a risk-based approach to AML/CFT. Areas where a strengthening of activity is required include in the investigation of ML, the supervision of the TCSP, MTO and casino sectors, and in the application of effective measures in relation to the cross-border movement of funds.

The results of the 2012 NRA have not been shared with the private sector.

2. International Co-operation – *Substantial level of effectiveness*

Samoa demonstrates most of the characteristics of an effective system in this area. Samoa gives high priority to requests for international co-operation and is able to provide a wide range of international co-operation including mutual legal assistance and other forms of co-operation in a timely and efficient manner. All formal requests are dealt with on an urgent basis and the processes for the execution of requests are clear. Most requests are processed within one to two months of receipt.

Samoa has itself initiated few formal international requests for assistance, but as its capacity to investigate predicate crimes and associated ML (both through the offshore and domestically) increases, Samoa is encouraged to make increased use of both formal and informal international co-operation, particularly in relation to higher risk sectors (eg TCSPs, MTOs). Similarly, as AML/CFT supervisory efforts are strengthened, international co-operation with respect to supervisory issues should strengthen.

While Samoa has the legal mechanism to extradite, requests for extradition are not common and Samoa reports only one recent request in 2012 from New Zealand which was successfully carried out. Although there is an absence of extradition treaties, Samoa has designated ten countries as extradition countries. Rather than using the extradition process, Samoa tends to utilise the powers under Samoa's Immigration Act to deport nationals back to their own countries. This can occur as a result of a request from another country.

Samoa's authorities generally have well established bilateral and multilateral arrangements with major partners and work closely and effectively with their regional counterparts and share information as a matter of routine. Informal co-operation is generally effective, though as noted above the level of informal co-operation initiated by Samoan competent authorities will need to increase as its investigative and supervisory efforts increase.

Despite the absence of publicly available information on beneficial ownership of legal persons and some issues as to accuracy of such information, Samoa has been able except in one instance to effectively share beneficial ownership information in response to the relatively few requests that it has received.

3. Supervision – *Low level of effectiveness*

Samoa has begun to demonstrate some of the characteristics of an effective system in this area, but fundamental improvements are needed.

There is a strong licensing and licence renewal framework for financial institutions¹. There are fit and proper requirements in place to prevent criminals and their associates from operating within the financial sectors. However these fit and proper measures do not extend to beneficial owners of financial institutions. There are measures in place to prevent criminals and their associates from operating within the DNFBP sectors

Samoa has designated relevant AML/CFT supervisors for the different sectors and there is a strong level of co-operation between the supervisors, though a lack of supervisory resources in the CBS and SFIU has resulted in inadequate overall levels of supervision. The supervisory resources in SIFA are generally

¹ The definition of 'financial institution' in the MLP Act and includes both FIs and DNFBPs in FATF terms. To avoid confusion, unless otherwise indicated, the term 'financial institution' is used in the narrower FATF sense.

adequate, although the scope and frequency of its supervision of offshore entities needs to be strengthened. Risk-based supervision is undertaken by the supervisors to a limited extent based on a general understanding of risks gained from prudential supervision and from Samoa's two NRAs. Other than through the NRA process, supervisors do not however have mechanisms to regularly identify and assess the ML/TF risks of the FIs and DNFBP sectors they supervise.

Some efforts have been made by the CBS to supervise banks and MTOs for compliance with AML/CFT requirements. However, the frequency and intensity of these compliance inspections are considered very inadequate and there has been little or no effort to use supervisory tools other than on-site inspections to assess compliance with AML/CFT obligations. Supervision of the international banks and insurance companies by SIFA has been inadequate. Except for the TCSP sector, there has been no AML/CFT supervision of the small DNFBP sector (the casino, legal, accounting, precious metal/stones and real estate sectors). The scope and intensity of supervision of the TCSP sector needs to be increased. Insufficient feedback is being provided to supervised entities by the supervisors and SFIU.

The powers of supervisors to apply sanctions are limited. Sanctions against FIs and DNFBPs for breaches of AML/CFT requirements have been minimal due to the low level of compliance inspections undertaken by the relevant supervisors.

Insufficient feedback is being provided to supervised entities.

4. Preventative Measures – *Moderate level of effectiveness*

Samoa exhibits some characteristics of an effective system for applying preventative measures, particularly for FIs. Samoa's legal framework for preventive measures is generally adequate, though technical deficiencies, some serious, need to be addressed. While the AML Guidelines issued in 2010 are not legally enforceable, they are well regarded and observed by FIs/DNFBPs and provide a good basis for compliance. Improvements are required to the legal framework and updates to the guidance to strengthen the implementation and effectiveness of preventative measures and to bring them into alignment with the revised Standards.

The banking sector is the largest component of the domestic financial system and demonstrates a high level of understanding of its ML/TF risks and an awareness of its duties and responsibilities in mitigating risk. The domestic banks have a strong compliance culture when it comes to customer identification, undertaking CDD and STR reporting, but levels of STR reporting are nonetheless too low. The banks also have robust AML/CFT training programs.

MTOs, another high risk area, also have reasonably high level of understanding of ML/TF risks and have a good level of awareness of the obligation to identify and verify customer identity, as well as to obtain full originator and beneficiary information when processing inward and outward remittances, particularly the larger and foreign-controlled MTOs. Other FIs and the DNFBP sectors do not consistently display a similar level of understanding of risk and awareness of duties and obligations.

In relation to the offshore sector, TCSPs are important gatekeepers due to the significant number of IBCs registered in Samoa. TCSPs have an important role to play in mitigating ML/TF risks as they are mainly involved in creating and registering IBCs, many of which rely on third-party introducers. TCSPs are captured by Samoa's AML/CFT regime and demonstrate a good general understanding of their risks and obligations although, as noted above, their ability to conduct meaningful ongoing due diligence on the vast majority of IBCs is very limited. Recent amendments to Samoa's international legislation, which will take effect from late 2015, if effectively implemented, will enhance the ability of TCSPs to know their customer and conduct meaningful ongoing due diligence.

Internal AML/CFT training in all industries except banking does not appear to be adequate, regular or current. The limited training is reliant on the supervisory authorities and often does not consider ML/TF risk assessments, which is central to a risk-based regime.

The level of suspicious transaction reporting appears to be inadequate, especially in the non-banking sectors. Nearly all recent STRs concern suspected internet 'scams' which is not fully consistent with the

broader ML/TF risks.

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

International legal persons² (in particular IBCs) are identified as high risk in the 2012 NRA due to the inherent risks that they pose. Although there is only limited evidence to date to suggest it has occurred, there is a concern that criminals may misuse legal persons and arrangements, in particular IBCs, to launder or to hide criminal proceeds, and that such activity is not being detected by current CDD, investigative and other measures.

Samoa's system of ensuring access to basic and beneficial ownership information on legal persons, which relies primarily on measures imposed on legal persons and TCSPs under the relevant international sector legislation and the MLP Act, demonstrates some characteristics of an effective system. Samoa has taken a number of measures under the MLP Act and the relevant international legislation aimed at preventing the misuse of legal persons and arrangements, though further strengthening of the legal regime and implementation of new requirements, which has already commenced, is needed. Requirements to obtain and maintain accurate basic and beneficial ownership requirements are generally in place and observed by TCSPs, though beneficial ownership information is only updated annually for many IBCs.

Basic information for foreign international legal persons and arrangements is publicly available; however, beneficial ownership information for foreign international legal persons or arrangements is not available to the public except with the consent of the client. A limited number of competent authorities such as SIFA and the SFIU are able to obtain access to and to share beneficial ownership information for foreign international legal persons and arrangements for investigative and other purposes (for example, tax information exchange). In the relatively few cases where this has been required in response to international requests, the beneficial ownership information has been obtained and provided, however, the identification data and other relevant documentation relating to IBCs which are held by intermediaries outside of Samoa may not always be produced in a timely manner.

Risks associated with the domestic sector are much lower, but improvements are nonetheless required to minimise the risk of misuse. Basic information on domestic legal persons is publicly available; however, information on domestic legal arrangements is not collected centrally. The ultimate beneficial ownership information for domestic legal persons is also not centrally collected. The domestic company registry system is monitored weekly but is passive and reactive, with limited sanctions.

6. Financial Intelligence – *Low level of effectiveness*

Samoa's use of financial intelligence and other information for ML/TF and associated predicate offence investigations demonstrates some of the characteristics of an effective system, but fundamental improvements are required.

Samoa has made only very limited use of financial intelligence as a key input into investigations of ML and predicate crime, though more use has been made of financial intelligence to trace assets. Factors include the relatively low level of STR and border currency reporting, which limits the scope of analysis and dissemination possible by the SFIU, as well as an insufficient (though slowly growing) understanding amongst law enforcement authorities of the value of financial intelligence and other information and the role that the SFIU can play in supporting investigations. The value to investigative agencies of the proactively disseminated intelligence reports for ML and predicate investigations has not been demonstrated.

The SFIU has access to a wide range of financial and other information, including both commercially available databases and from government entities, and is performing most of the primary functions of an FIU to a limited extent. However, the SFIU needs to significantly improve its level of dissemination to, and co-operation with, law enforcement agencies and to develop the capacity to undertake strategic

² Throughout this report, the term 'international legal persons' is used when referring as a group to the various types of legal entities that operate in Samoa's offshore sector, ie international business companies, international partnerships and international segregated fund companies.

analysis. Despite a recent increase in staffing, the SFIU does not have sufficient resources to perform all its FIU functions, including analysis, outreach and education, as well as its supervisory functions, though further recruitment is planned in 2015.

Practical operational co-operation and exchange of information between the SFIU and other competent authorities is limited and needs to be greatly strengthened. While law enforcement agencies indicate that the information disseminated by the SFIU is normally of good quality, they also indicated that the flow and types of information and the level of operational co-operation with the SFIU needs to be improved. In support of this, there also needs to be an improved understanding by law enforcement agencies of what the SFIU can do to support law enforcement in investigating both ML and predicate offences, and better use made of the SFIU's considerable powers to obtain financial information and intelligence.

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

Samoa's level effectiveness in relation to ML investigations is low. There have been no ML investigations in Samoa, despite ML having been criminalised since 2000.

Samoa has significantly strengthened its legal framework since the 2006 MER and Samoa now has the basis for a solid ML offence, though some categories of predicate offences for ML are missing or not adequately covered, including tax offences. In addition, the maximum sentence for ML (7 years) is less than the maximum penalty for other comparable serious offences (10 – 14 years).

While there are clearly designated authorities to investigate ML, law enforcement agencies need to significantly enhance their understanding of financial intelligence and how it can be used to initiate and assist in the investigation of a predicate offence and/ or an ML investigation

Samoa has concentrated its efforts to combat proceeds-generating offences on the investigation of predicate offences and confiscation of associated proceeds. The authorities believe that that any sentence imposed for a ML conviction in a self-laundering case (the majority of likely possible domestic ML cases in Samoa) would in all likelihood be served concurrently with the predicate offence, and would not justify the additional expenditure of relatively scarce resources. The lower maximum penalty for ML compared to a number of predicate crimes was also cited by authorities as a factor. These factors do not however justify the complete absence of ML investigations and prosecutions. It is important to be realistic about the 'optimal' number of ML investigations, in particular given the seemingly low level of domestic proceeds-generating offences; it is quite possible that the number of such cases each year will be very low, but it is noted that other Pacific Island jurisdictions with broadly similar risks have undertaken ML investigations and/or prosecutions in recent years.

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

8. Confiscation – *Moderate level of effectiveness*

Samoa demonstrates a number of characteristics of an effective system and, if it can build on recent efforts, should be able to implement the further improvements required to achieve a substantial level of effectiveness in this area.

Samoa has significantly updated its legal framework since the 2006 MER, with confiscation now provided for in the Proceeds of Crime Act 2007 (POCA). The POCA provides a sound legal basis for confiscation of the proceeds of crime.

Samoa has begun to make good use of its confiscation regime over the last two to three years in relation to low level drugs and fraud cases, however there is scope for increased use of proceeds of crime legislation in relation to more serious/complex predicate crimes.

While Samoa does not have an explicitly stated national AML/CFT strategy or policy in relation to confiscation of the proceeds of crime, it has in recent years concentrated its limited investigative resources on investigating and prosecuting predicate offences as well as confiscating criminal proceeds and instrumentalities of crime.

The legal framework for the confiscation of falsely or undeclared cross-border transportation of currency/bearer negotiable instruments (BNI) is generally sound, but effectiveness needs to be significantly improved through increased resources, improved operational co-ordination and, as appropriate, through Samoa seeking international assistance and co-operation to make up for what it lacks in terms of resources, equipment and training.

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

There is no evidence of terrorism or TF having occurred in Samoa, which is consistent with the low level of risk identified in the 2012 NRA and in other regional assessments of TF risk. The main risk appears to relate to the international (offshore) sector, but no cases have been detected either domestically or by foreign counterparts.

Samoa's TF offence is mostly consistent with the international standards, but some significant technical deficiencies remain.

Based on the assessment of risk and context undertaken in the 2012 NRA, recent threat assessments undertaken for international events hosted by Samoa and through regional assessments, the Samoan authorities have a good general understanding of the level of TF risks. The 2012 NRA does however note the need for improved information holdings and to develop and maintain valid and reliable indicators in this area.

There seems to be a high-level strategic commitment to address TF issues if they were to arise, evidenced by the creation of the MLPA and the MLP Task Force. Although there have been no TF cases identified or investigated to date, Samoa has prioritised the investigation of transnational crime generally, including terrorism and terrorist financing (should they occur), through the creation of the joint-agency TCU which is linked to the wider Pacific network of transnational crime units.

Despite the existence of the TCU, understanding about TF within law enforcement is limited and there is limited specialist capacity available to undertake a TF investigation if required. However, Samoa's open approach to international co-operation and track record in drawing on resident foreign law enforcement liaison officers should allow it to overcome knowledge and capacity gaps in the case that a TF case was initiated. Prosecution authorities appear to have the capacity to prosecute a TF case.

While it is very difficult to assess effectiveness in the absence of the detection or investigation of TF, the evaluation team is satisfied that Samoa would be able to identify and investigate TF reasonably effectively and would, therefore, be able to demonstrate a number of the characteristics of an effective system.

10. TF Preventive measures & financial sanctions – *Moderate level of effectiveness*

Samoa has a low risk for terrorism and TF as identified in the 2012 NRA and no funds have ever been identified in the domestic or international sectors that have links to terrorism or terrorist financing. No terrorist assets have ever been identified or frozen in Samoa pursuant to the application of targeted financial sanctions.

The Counter Terrorism Act provides the ability to freeze terrorist assets without delay but this is limited to the freezing of assets of terrorists and terrorist groups designated by the UN under the UN Taliban/Al Qaida sanctions under UNSCRs 1267/1989 and 1988. In relation to UNSCR 1373, an entity or individual

declared by the Samoan Prime Minister under the Counter Terrorism Act is subject to the confiscation and restraining provisions of the POCA, but it is very unclear how this would work in practice as it has never occurred.

In terms of implementation, the financial sector, including the international financial sector, receives the Al Qaida and Taliban lists from the SFIU and monitors and verifies them against bank accounts and customers.

While the banking sector and TCSPs report having a high-level of awareness of their obligations in terms of terrorist financing, this is not reflected in any guidance to check if a customer or entity is acting on behalf of, or at the direction of, a designated entity. Other FIs, DNFBPs and NPOs do not appear to have sufficient awareness of potential terrorism financing risks and obligations. Furthermore, there has been insufficient outreach to and oversight of NPOs for AML/CFT purposes.

While significant improvements are required, taking into consideration the low level of risk, Samoa has a moderate level of effectiveness in this area.

11. PF Financial sanctions – *Low level of effectiveness*

Samoa has a low level of effectiveness for Immediate Outcome 11 due to there being no legal mechanism existing to freeze funds relation to the proliferation of weapons of mass destruction.

Despite the dissemination of the United Nations proliferation resolutions and some limited awareness of individuals and entities designated under the proliferation resolutions, there does not appear to be any legal framework by which Samoa can implement targeted financial sanctions relating to the proliferation of weapons of mass destruction.

Samoa appears to have relatively limited exposure to proliferation financing risks, although it should be noted that the offshore sector, including IBCs, could be used to facilitate business or transactions involving proliferation financing. While the offshore sector has some understanding around the obligations related to AML/CFT, there seems to be a limited understanding of mitigating proliferation risks.

F. Table of Compliance with FATF Recommendations

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> • The 2012 NRA (and the draft 2014 NRA seen by the evaluation team) does not fully identify all key risks with the casino sector an area of note. • The NRA does not in any depth consider the types or volume of threats associated with predicate offences, nor does it draw to any real extent on the risks identified by law enforcement or the private sector concerning underlying predicate offences. • Although the private sector was engaged in undertaking the NRA, only general feedback has been provided and no feedback on findings has been provided on-site to FIs or DNFBPs. • Samoa has not implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks. • Trustee companies providing offshore financial services

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>in Samoa under any law that is administered by SIFA, may be exempted from any obligation arising under the MLP Act. While in practice only one limited exemption has been granted, this potentially very broad exemption was not included on the basis of a proven low risk; on the contrary, the NRA suggests the risk in the offshore sector is high.</p> <ul style="list-style-type: none"> • While the MLP Regulations allow for simplified CDD where risk is low and enhanced CDD where risk is high, this has not been tied to the findings of the 2012 NRA.
2. National co-operation and co-ordination	PC	<ul style="list-style-type: none"> • No national AML/CFT policy informed by risk. • No central body appears to have formal responsibility for national AML/CFT policies. • Domestic co-ordination needs to be improved at a policy level and, in particular, at an operational level. • No agencies or mechanism to coordinate efforts to combat the financing of weapons of mass destruction.
3. Money laundering offence	PC	<ul style="list-style-type: none"> • Samoa does not have full coverage of all 21 designated predicate offences and not all offences meet the threshold to be considered a serious offence. • The types of property covered are wide but it is unclear whether the definitions cover documents evidencing title to or an interest in an asset as required by the Vienna and Palermo Conventions. • The maximum penalty for ML for a natural person is not proportionate and the maximum penalty for a legal person is not dissuasive.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Not all ML predicate offences fall within the definition of a serious offence and accordingly property and proceeds relating to these offences cannot be made subject to a forfeiture order.
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> • The TF offence does not include a fault element with respect to the provision or collection of funds or property; nor does it criminalise the collection or provision of funds in relation to aircraft safety, nuclear material, and fixed platforms offences. • It is not clear whether the ancillary offences (other than attempt) require the TF offence to be committed. • The definition of 'person' includes a variety of entities that are legal persons and the offence provision applies to those entities. However, the main sanction is imprisonment and only a natural person can be subject to this sanction. There is no liability for directors or high level officials of legal persons in relation to the TF offence. The maximum financial penalty for a legal person is not considered to be sufficiently proportionate

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		or dissuasive as it is the same penalty available for a natural person.
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> • Samoa does not have a mechanism for proposing persons and entities for designation under UNSCRs 1267 and 1988. • It is unclear which regime for forfeiture or restraining orders applies in any given case. Section 45 of the CT Act applies the forfeiture and restraining order provisions of the POCA to terrorist property as if the property were already forfeited or subject to a restraining order. • The definition of ‘terrorist property’ is not sufficiently wide. • There are no provisions dealing with foreign designation requests under UNSCR 1373. • Procedures for delisting are inadequate.
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> • There is no legal basis for implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.
8. Non-profit organisations	PC	<ul style="list-style-type: none"> • Samoa has not undertaken a domestic review of its NPO sector since the 2006 MER and no recent outreach or training has been conducted. • There is no specific requirement for NPOs to keep and maintain records for five years nor any requirement for NPOs to follow a ‘know your beneficiaries and associated NPOs’ rule. • There is limited monitoring of NPOs for compliance with registration and annual reporting requirements and the sanctions available under the ISO are not proportionate and dissuasive. • No specific points of contact or procedures for international NPO requests have been established outside of MLA and law enforcement co-operation networks.
9. Financial institution secrecy laws	C	
10. Customer due diligence	PC	<ul style="list-style-type: none"> • The term ‘beneficial owner’ has not been defined in the MLP Act or MLP Regulations; FIs are not required to identify the beneficial owner of an account; only to ‘take reasonable measures’ to determine if a customer is acting on behalf of another person or persons (including on behalf of a beneficial owner or a controller). • There are no clear provisions under the MLP Act and MLP Regulations to apply CDD measures to existing customers on the basis of materiality and risk, and at appropriate times. • There are no specific provisions under the MLP Act and

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>MLP Regulations to prohibit FIs from pursuing the CDD process if it will only tip-off the customer when there is reasonable ground for suspicion of a ML/TF activity.</p> <ul style="list-style-type: none"> • There is no requirement for the originating FI to obtain and maintain beneficiary information. • There is no specific requirement under the MLP Regulations to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, as well as to apply the same to a beneficiary who is a legal person or a legal arrangement when such legal beneficiaries present higher risk. • There are no provisions under the MLP Act or the MLP Regulations that require risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification. • Provisions in the MLP Regulations relating to the conduct of ongoing due diligence and monitoring of customers do not include materiality as a consideration in the CDD process. • It is not clear when FIs should apply enhanced CDD where the ML/TF risks are higher, or under what circumstances that ML/TF risks are considered higher.
11. Record keeping	C	
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • Obligations regarding PEPs cover only foreign PEPs and do not apply to domestic and international organisation PEPs. • Approval from senior management is required before entering into a business relationship with a PEP, however, there is no obligation to impose this measure on existing customers. • There is a requirement for FIs to identify and verify each beneficiary of a life insurance policy however it does not extend to requiring that reasonable measures be taken to determine whether the beneficiaries (and/or the beneficial owner of the beneficiary) are PEPs.
13. Correspondent banking	PC	<ul style="list-style-type: none"> • There are no provisions in the MLP Act, Regulations or enforceable means explicitly requiring FIs to put in place control measures for cross-border correspondent banking relationships. • There are no explicit requirements in the MLP Act, Regulations or enforceable means requiring FIs, with regard to payable-through accounts, to satisfy themselves that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
14. Money or value transfer services	C	
15. New technologies	PC	<ul style="list-style-type: none"> • There are no specific requirements for FIs to undertake ML/TF risk assessments prior to introduction of new products, practices and technologies and to take appropriate measures to manage and mitigate the risks, although in practice the CBS and FIs it regulates appear to undertake risk assessments of new products or delivery channels before they are endorsed by the CBS and introduced into the market. This is not however the case for the offshore sector.
16. Wire transfers	PC	<ul style="list-style-type: none"> • There is no requirement for FIs to include full beneficiary information with cross-border wire transfer messages. • Ordering FIs are required to obtain and retain the originator information with the wire transfer. If a customer does not provide satisfactory evidence of identity, the FI shall not proceed further with the transaction or the transfer of funds though these requirements do not apply to beneficiary information. • The MLP Act does not require FIs to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information.
17. Reliance on third parties	PC	<ul style="list-style-type: none"> • There are no specific rules in place requiring that ML/TF risk be taken into account when determining in which countries the third party that meets the conditions can be based. • There are no specific rules or guidelines in place on the applicability of third party reliance involving FIs that are part of the same financial group.
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> • There are no specific requirements under the MLP Act and MLP Regulations requiring implementation of group-wide AML/CFT programmes encompassing all branches and majority-owned subsidiaries within the financial group; and the adoption of policies and procedures that will allow sharing of information among entities under the financial group for purposes of CDD and ML/TF risk management, as well as provision for appropriate safeguards on the confidentiality and use of information exchanged.
19. Higher-risk countries	NC	<ul style="list-style-type: none"> • There is no requirement for FIs to apply enhanced CDD, proportionate to the risks, to business relationships and transactions from countries for which this is called for by the FATF. • There are no clear requirements under the MLP Act or MLP Regulations specifically enumerating possible counter-measures to be applied to any identified higher

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>risk countries.</p> <ul style="list-style-type: none"> Domestic competent authorities in Samoa have no mechanism in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT system of other countries.
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> The limitations in the scope of both the ML and TF offences limit the scope of the STR reporting requirement.
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> The deficiencies identified in R.10 - 12, 15 and 17 apply equally to DNFBPs. The ability of Samoan TCSPs to conduct ongoing due diligence of IBCs is limited.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> The deficiencies identified in R.18 - 21 apply equally to DNFBPs. The ability of Samoan TCSPs to detect and report STRs is limited.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> There is no clear process for the obtaining or recording of beneficial ownership information (as defined by the FATF) for domestic legal persons. The 2012 NRA does not assess the risks associated with domestic companies and domestic other legal persons. Full basic information for IBCs is not available publicly without the consent of the IBC. Beneficial ownership information for IBCs is only updated annually. There is no mandatory requirement to keep registers of IBCs, though some registers are kept.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> Trustees of domestic and foreign trusts are not required to obtain, keep up-to-date and hold adequate, accurate and current information on trustees, settlors, beneficiaries or protectors of trusts in Samoa. There are no criminal or civil sanctions or penalties for breaches of trust by a trustee. Most measures only apply when a trust has been created by a financial institution/DNFBP and do not apply to trusts that are created by other parties.
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> Fit and proper requirements for FIs do not extend to the beneficial owners. Supervisors apply risk-based supervision to some extent based on understanding of risks derived from the NRA and prudential supervision. Other than through the NRA process, there is however no formal mechanism or

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>processes for the supervisors to regularly update their assessment of sectoral ML/TF risks particularly when there are major events or changes to a particular financial institution or sector.</p> <ul style="list-style-type: none"> International banks are required to establish a ‘physical presence’ in Samoa but this does not include a clear requirement that meaningful mind and management be located within Samoa.
27. Powers of supervisors	PC	<ul style="list-style-type: none"> CBS and SIFA do not have powers to compel the production of information for the purpose of assessing FIs’ compliance with the MLP Act or to impose sanctions on their supervised entities for AML/CFT breaches. The SFIU’s power to apply sanctions for AML/CFT breaches is limited.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> Supervision of DNFBPs is not performed on a risk-sensitive basis, nor is a risk-based approach used when assessing the adequacy of the AML/CFT internal controls, policies, and procedures. While there is a designated competent authority for each category of DNFBP, DNFBPs are not yet subject to systems for monitoring their compliance with AML/CFT requirements, other than TSCPs, whose compliance is monitored by SIFA.
29. Financial intelligence units	LC	<ul style="list-style-type: none"> The SFIU has not performed strategic analysis. The basis on which the SFIU disseminates information on request by a competent authority is not clear, although it is occurring in practice.
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> Samoa has the power under the Counter Terrorism Act 2014 to undertake controlled deliveries of property as an investigative technique, but not for ML or other associated predicate offences.
32. Cash couriers	LC	<ul style="list-style-type: none"> Samoa’s declaration system only extends to personal luggage, rather than to cargo more generally, and does not fully cover mail. There is no explicit power for competent authorities to request and obtain further information from the carrier with regard to the origin of the currency or BNIs, and their intended use upon discovery of a false declaration or disclosure of currency or BNIs or a failure to declare. The interface between Customs’ and Immigration’s databases on incoming passengers is not integrated and is not fully adequate for implementation of this Recommendation.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
33. Statistics	LC	<ul style="list-style-type: none"> Statistics regarding informal international co-operation are not consistently kept.
34. Guidance and feedback	PC	<ul style="list-style-type: none"> Guidance has not been updated to reflect the 2012 NRA, the passage of the CT Act in 2014 or to reflect any feedback from reporting institutions. There is only limited feedback between government agencies and very little ongoing feedback between the government, supervisors and the private sector.
35. Sanctions	PC	<ul style="list-style-type: none"> The range of sanctions applicable to FIs and the DNFBP sectors, which rely largely on criminal sanctions under the MLP Act, is not considered proportionate and dissuasive.
36. International instruments	PC	<ul style="list-style-type: none"> Samoa is not a party to the UN Convention against Corruption (Merida Convention) or to the Palermo Convention. The amendment of the Narcotics Act has covered many of the obligations in relation to the offences under the Vienna Convention, though some gaps remain regarding special investigative techniques and criminalisation of ML.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> While the Mutual Assistance in Criminal Matters Act 2007 (MACMA) and the POCA include some powers to facilitate investigations in response to an MLA request, no information was provided as to the availability and use of a broad range of other powers and investigative techniques in response to an MLA request. Some predicate offences are not deemed serious offences which limits the range of MLA that can be provided. The MACMA requires dual criminality for all MLA, including non-coercive actions. Non-coercive actions such as assistance in locating or identifying a person are tied to a serious offence as Samoan law makes no distinction between coercive or non-coercive measures for MLA purposes.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> There is no clear basis for co-operation in non-conviction based confiscation.
39. Extradition	LC	<ul style="list-style-type: none"> There is no requirement for Samoan authorities to instigate a domestic prosecution at the request of the country seeking extradition. There are limited designations and extradition treaties which prevents extraditions from taking place.
40. Other forms of international co-operation	LC	<ul style="list-style-type: none"> There is no general provision enabling competent authorities to conduct inquiries on behalf of foreign counterparts and to exchange information that would be obtainable if the inquiry was a domestic enquiry.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • It is not clear whether competent authorities other than the SFIU have a broad power to exchange information with non-counterparts.

MUTUAL EVALUATION REPORT OF SAMOA

Preface

This report summarises the AML/CFT measures in place in Samoa 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 Samoa's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Samoa, and information obtained by the evaluation team during its on-site visit to Samoa from 3 to 14 November 2014.

The evaluation was conducted by an evaluation team consisting of Ms Fiona Leonard, Deputy Chief Parliamentary Counsel, Parliamentary Counsel Office, New Zealand (legal expert); Ms Tatpicha (Kelly) Chaiyatat, Legal Officer, Anti-Money Laundering Office, Thailand (additional legal expert); Ms Caroline Pickering, Manager Policy & Compliance, Financial Intelligence Unit, Fiji (financial expert); Mr Edwin Firmacion, Assistant Manager, Bangko Sentral ng Pilipinas, Philippines (financial expert); Mr Ismael Aguon, Chief of Police, Palau (law enforcement/financial intelligence unit expert); Mr Bob Williams, Head, Financial Intelligence Unit, Cook Islands (financial/law enforcement expert); Mr Eliot Kennedy, Assistant Secretary, APG Secretariat and Mr David Becker, Director, Technical Assistance and Training, APG Secretariat.

The report was reviewed by Mr Hari Kumar Nepal, Nepal Rastra Bank/Financial Intelligence Unit (Nepal); Ms Angela Jamieson, AUSTRAC (Australia); Mr Shaun Mark, Australian Federal Police (Australia); Ms Nguyen Thi Thuy Ngoc (Vietnam); Mr Richard Pratt (Group of International Finance Centre Supervisors) and Mr Jonathan Pampolina (IMF Legal Department).

Samoa previously underwent an APG mutual evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation has been published and is available at www.apgml.org.

Samoa's 2006 mutual evaluation concluded that the country was compliant with one Recommendation, largely compliant with four, partially compliant with 30, and non-compliant with 14. Samoa was rated compliant or largely compliant with one of the 16 core and key Recommendations. In July 2014 Samoa exited the APG's enhanced second round mutual evaluation follow-up and was placed on regular follow-up, as Samoa remained at the NC/PC level in relation to six core/key Recommendations (R.1; R.5; R.23; R.35; SRI; SRIII). In accordance with APG members' decision at the 2013 Annual Meeting (to phase out the APG's second round follow-up process in 2014 for all members on regular follow-up), this marked the end of the follow-up process for Samoa under the APG's second round follow-up procedures.

1. ML/TF RISKS AND CONTEXT

1. Samoa is a small island country located in the Pacific region, approximately 4,200 km southwest of Hawaii and about 4,350 km northeast of Sydney, Australia. It has a land area of 2,820 square kilometres and a population of approximately 180,000. The capital city is Apia. The official languages are Samoan and English. The official currency is the Samoan Tala (SAT).

2. Samoa gained independence in 1962, the first South Pacific island country to do so, and has a parliamentary government that incorporates certain traditional practices into its governmental system. The Constitution provides for a head of state; a unicameral legislature elected by universal suffrage and, in practice, composed primarily of the heads of extended families, or ‘matai’; the protection of land rights and traditional titles; and other fundamental rights and freedoms. There is a Cabinet of 13 Ministers who comprise the Executive Council, and a Legislative Assembly of 49 members. Members of Parliament sit for five-year terms. The political situation in Samoa has been stable over a number of years.

3. The Samoan economy is relatively small, open and largely cash-based. Real GDP totalled \$1,110 million SAT (approximately \$US482 million³) in December 2013, registering an annual growth of 1%. The Samoan economy has traditionally been based on agriculture and fishing. Since the early 1990s, the manufacturing, construction, and especially tourism sectors have also become significant contributors to GDP. The Samoan financial sector constituted 10% of GDP in 2012-13, with the international financial services (offshore) financial sector accounting for roughly 5% percent of GDP. Samoa is one of the world’s highest recipients of remittances as a share of GDP.

4. In the financial year 2012-13, domestic fiscal and monetary policies were focused on facilitating economic recovery from Cyclone Evan, which struck the country in December 2012. Economic growth has been relatively slow and driven largely by the construction sector, focusing on reconstruction of damages caused by cyclone Evan.

1.1 ML/TF Risks

5. This section of the mutual evaluation report presents a summary of the evaluation team’s understanding of the ML/TF risks in Samoa. Samoa’s assessment and understanding of its risks is set out in chapter 2.

6. **Samoa faces a range of ML risks – primarily relating to its international (offshore) sector – and low TF risks**, and the following are the most important in the Samoan context.

7. **As outlined in Samoa’s 2012 National Risk Assessment (NRA), the international sector – in particular international business companies (IBCs) – money transfer operators and the cross-border movement of cash are areas of higher risk, as is the domestic banking sector due to its materiality.** In addition, though it is quite limited (one small casino), the evaluation team considers that potentially significant risks arise from the recently established casino sector. Overall, and as discussed further below, the level of domestic proceeds-generating crimes, in particular more serious such crimes, appears to be quite low.

8. **The main ML/TF risks in Samoa relate to the international sector, and it is important to understand both the nature of those risks and the steps already taken and planned by Samoa to address them.** Despite some inherent risks, there is only limited evidence of the proceeds of foreign predicate crimes being laundered in Samoa or through its offshore sector (for example, on the basis of detections by domestic authorities or requests from foreign counterparts relating to Samoa’s offshore sector). In the last three years, the Samoan authorities have however received and responded to three requests for information relating to Samoan IBCs concerning possible fraud and/or money laundering

³ One Samoan tala equalled approximately US\$0.43 at the time of the on-site visit.

activities. The lack of more such requests may be due to a lack of ML/TF and predicate crimes involving the offshore sector, despite the risks, or an inability to detect such crimes, or a combination of both.

9. **IBCs in particular (by far the largest part of the offshore sector) present a potential international conduit for ML (and TF),** particularly in light of their characteristics (relative anonymity, concerns regarding transparency of ownership and control information, the possibility of complex corporate structures etc) as well as their tax-exempt status. It is important also to note that, while it has taken and is taking some important steps, Samoa has been slower than some other offshore financial centres to take action to address its ML/TF risks. As a result, there is a real risk that those seeking to use IBCs to launder money may have been drawn to Samoa in the past because of the relative weaknesses in Samoa's AML/CFT controls. While it is very difficult to determine, this suggests that the absence of evidence of ML (or TF) may be as much or more due to the fact that the system has not been able to detect it, rather than an assumption that, despite the absence of fully effective controls, ML or TF does not exist in the IBC sector.

10. **AML/CFT controls in Samoa's offshore legislation have strengthened in recent years and continue to do so, but the historic business model of most TCSPs involved in the creation of IBCs poses some particular ML/TF risks, particularly in relation to the ability of TCSPs to conduct meaningful ongoing due diligence of IBCs which they create.** Generally, at present Samoan TCSPs offer only a very limited service in relation to IBCs. In most cases, IBC registration and renewal on the basis of business introduced by an affiliated (foreign) TCSP is the only service offered by Samoan TCSPs. Only a small proportion of IBCs have a local (Samoan) TCSP act as a corporate director, nominee shareholder and/or become involved in the creation and/or operation of an IBC's (overseas) bank account, if any. In general terms:

- on creation of an IBC, TCSPs are required to identify and verify the identity of the beneficial owner of the IBC, and appear consistently to do so in practice;
- while the legal requirements need some strengthening in technical compliance terms, TCSPs are also required to determine the nature of the business of the beneficial owner, the source of wealth and funds, the expected nature of the relationship etc;
- however, even where full and proper CDD on the ultimate beneficial owner is conducted on the establishment of the IBC, the limited nature of the service offered by the Samoan TCSP, and its lack of involvement in the day-to-day operations of the IBC (including any transactions undertaken by the IBC), makes it difficult or impossible in practice for the TCSP to conduct meaningful ongoing CDD. With only modest annual fees and minimal contact with the IBC's activities, the TCSP tends not to undertake much monitoring of the IBC.

11. **Samoan authorities are generally aware of the risks posed by the offshore sector and have taken a number of important steps since the 2006 MER to mitigate the risks arising from IBCs in particular.** TCSPs are captured as 'financial institutions' under the Money Laundering Prevention Act 2007 (MLP Act) when they create legal persons or arrangements, including IBCs and international/foreign trusts and, as noted above, are required to identify and verify the identity of the ultimate beneficial owner (natural person) behind an IBC, as well as the directors. In practice, Samoan TCSPs do regularly seek to establish the source of funds of the beneficial owner of the IBC and conduct checks of beneficial owners and directors of IBCs on commercial and other databases. Through amendments to the International Companies Act 1988, bearer shares were immobilised (since 2008) and subsequently abolished (as of April 2014). There has also been a significant increase in supervisory resources and the frequency of inspections of TCSPs by SIFA, though further strengthening of supervision is required (as discussed in this report).

12. **In addition, in April 2014 there was an important strengthening of financial record-keeping requirements under the International Companies Act 1988 relating to the financial activities of IBCs which, if fully and effectively implemented, should by the end of 2015 significantly increase the capacity of TCSPs to conduct ongoing due diligence and to detect of suspicious activities by IBCs.** These recent changes were not however fully implemented at the time of the on-site visit in

November 2014 and, as outlined in this report, significant concerns remain about the extent to which TCSPs currently understand the beneficial ownership of IBCs and are able to detect and report suspicious transactions undertaken by IBCs.

13. Risks relating to the international banking and insurance sectors also exist, but are limited to some extent by the relatively small scope of these sectors and the fact that most of their business is in house/captive or of a private/fiduciary nature. International banks are primarily used for tax planning purposes and to carry out in-house treasury functions for their parent organisations. Seven international banks are licensed with SIFA; five are class B1 international banks and two are B2 international banks. B1 international banks can accept minimum deposits from the general public in USD\$ amounts ranging from \$5,000 to \$50,000. B2 international banks are restricted to offshore banking business as specified in their license and can accept deposits only from those persons or entities whose names are listed in the undertaking that accompanies the license application. Samoa advises that the five B1 international banks are however operating as B2 international banks and therefore do not accept deposits directly from the public at large, though they do conduct transaction with IBCs that may deal with the general public. This reduces, but does not eliminate, ML/TF risks, which are yet to be formally assessed by the Samoan authorities⁴. Of the four international insurance companies licensed with SIFA, three are captives and one offers long term and general insurance, but operates as a captive to underwrite general and life insurance business for the companies within its group. The key risk identified for insurance relates to risks associated with changes in shareholder. To mitigate this risk, the International Insurance Act 1988 requires that no shares are to be issued or transferred that will result in any change in the beneficial ownership without an application to be made seeking the prior written approval of the Registrar (SIFA).

14. Concerning domestic ML/TF risks, based on predicate crime statistics and feedback from the authorities, the level of domestic proceeds-generating crimes seems to be low, with the main relevant crime types being relatively low level fraud and drugs cases (mainly related to marijuana, largely for personal use). Samoa's domestic financial system is small, and there is a relatively low risk of large amounts of ML derived from domestic sources. The use of harder drugs (methamphetamine and cocaine) seems to be growing, though is still at a relatively low level. While it is not immune from drug trafficking and use, Samoa has generally been spared the experience of other comparable Pacific island jurisdictions of being used as a large drug trans-shipment point (unlike in several other Pacific countries, there have been no very large seizures in Samoa of drugs destined for other markets); this is partly a matter of geography, with Samoa lying between the main sea routes across the Pacific. Samoa has been relatively free from the influence of organised crime, but there are elements undertaking profit-driven crime in Samoa, particularly in relation to drug trafficking. Most of the recent suspicious transaction reports (STRs) reported and disseminated have related to possible romance and other foreign scams.

15. The risks associated with the small casino sector have not been assessed but, given the ML/TF risks identified internationally in relation to this sector, are potentially relatively high in the Samoan context. Samoa passed legislation in 2010 allowing for the establishment of casinos and Samoa's first (and, so far, only) casino started operating in October 2014. The potential risks associated with the casino sector were not assessed in the 2012 NRA, and had not been assessed as part of the draft 2014 NRA shared with the evaluation team at the time of on-site visit. Given the ML/TF risks identified internationally in relation to the casino sector, it is critical that these risks be identified (and addressed) by Samoa at the earliest opportunity⁵. These risks are highlighted by the fact that the licence for a casino previously granted was cancelled by the Gambling Control Authority (the licensing authority) in August 2013 after a key person associated in the casino company was discovered to be under investigation for corruption abroad (the investigation had arisen after the granting of the license).

⁴ As discussed in chapter 2 of this report, an Australian tax case – which was reported after the on-site visit – involves Samoan offshore entities, including an international bank.

⁵ Subsequent to the on-site visit in November 2014, Samoa informed the evaluation team that casinos have now been included in the draft 2014 NRA.

16. **Corruption does not appear to be a large-scale problem in Samoa, though it occurs and is an important current focus of the government.** Both the Ombudsman and the Auditor General have recently received additional resources to support efforts to combat corruption. During on-site interviews, a range of views was expressed to the evaluation team regarding the scale and type of corruption activities in Samoa, but there does not appear to be a large-scale domestic corruption problem which would generate large amounts of proceeds of crime. Public sector corruption seems largely limited to misappropriation of funds, some irregularities in cash management and procurement and middle and lower levels of the public sector. Allegations of abuse of power at higher levels tend to relate to claims about undue influence on government decisions, rather than personal gain. Samoa was ranked 50 (out of 175 countries) in 2014 by Transparency International. The risk of the proceeds of foreign corruption being laundered through Samoa – in particular, the offshore sector – certainly cannot be discounted. Authorities are broadly aware of these risks.

17. **Although further and more sophisticated analyses of the risk of TF need to be conducted, the evaluation team is satisfied that the risk of terrorism and TF in Samoa is low.** Samoan authorities assess the risk of both terrorism and TF to be low, which is generally supported by previous reports, open source materials and on-site interviews. No terrorist or TF activity, or terrorist funds, have ever been detected within Samoa or other Pacific island states involving Samoans and there have been no cases or attempts of TF detected, nor intelligence indications of such activities involving Samoa or Samoans. Nor have there been any foreign requests to Samoa for information or assistance relating to either terrorism or TF involving Samoa or Samoans. Samoa's Transnational Crime Unit (TCU) has undertaken terrorism threat assessments with the support and assistance of the New Zealand Police and Australian Federal Police. In particular, a terrorism threat assessment was undertaken for the Third International Conference on Small Island Developing States (SIDS) which was held in Apia in September 2014. This assessment commenced 12 months prior to the conference and confirmed the risks of terrorism as low. Furthermore, Samoa has been a member of INTERPOL since 2010 and the TCU actively uses the INTERPOL network as a means of assessing risk generally, including the risk of terrorism and TF. The primary risk of TF involving Samoa would appear to relate to the possible movement of funds through the offshore sector, but no such cases have ever been detected. This may be as a result of TF activity going undetected, however investigations of any Samoan IBCs involved in TF activity would, as a matter of course (given IBCs hold their bank accounts etc outside of Samoa), involve international co-operation and are therefore more likely to be initiated in another jurisdiction. Samoa has however never received a foreign request relating to possible TF. While no separate assessment of the TF risks through the remittance sector has been conducted, no suspicious transactions relating to terrorism or TF have ever been detected in this or any other sector.

1.2 Materiality

18. **Samoa's financial system is largely dominated by banks,** with the insurance sector being very small by comparison. There is no securities sector in Samoa. The domestic banking sector, which plays a central role in the economy, comprises approximately 60% of the entire financial sector, and the two foreign-owned commercial banks constitute approximately 65% of the domestic banking sector. The other two commercial banks are local (domestic) banks. The total consolidated assets of foreign-owned banks was \$757 million SAT (approximately \$US329 million) in June 2014, while total consolidated assets of the local banks was \$410 million SAT (approximately \$US178 million).

19. **The vast majority of domestic non-bank FIs, including insurance companies and credit unions are very small.** Only two of the institutions – the National Provident Fund (NPF) and the Development Bank of Samoa (DBS) – have relatively important market shares in the financial sector. The NPF is the only pension fund in Samoa and participation is compulsory for all public and registered private sector entities. The DBS is fully owned by the Government with an objective of financing projects in selected priority sectors, like agriculture, fishing, and tourism industries.

20. As noted above, **Samoa is one of the world's highest recipients of remittances as a share of GDP.** Samoan expatriates abroad tend to maintain strong ties with their families, villages and churches.

Private remittances, mostly from Samoan emigrants, are equivalent to about 26% of GDP. Remittances come mainly from American Samoa, Australia, New Zealand and the United States. Remittances tend to be regular (eg monthly) and relatively small on average (between SAT 500 and 1,000, or \$US200 - 400). There were 15 licensed money transfer operators (MTOs) in Samoa as at the date of the on-site visit, though two larger, multinational remittance companies hold a majority of market share.

21. **In terms of financial inclusion issues, the Central Bank of Samoa (CBS) is working to increase access to the financial system in Samoa but levels of penetration are relatively high.** In 2014, there were more than 10,600 regulated deposit accounts per 10,000 adults. To further improve financial inclusion, the CBS is currently working towards establishing an effective financial consumer protection regime; an enabling environment for inclusive insurance markets and micro insurance; integrating financial education into the core school curricula; and continuing the work to put in place the appropriate legal and regulatory framework for payments.

22. **Samoa's international sector, while quite small compared to other international financial centres, is relatively large compared to the domestic sector and has grown significantly since the 2006 MER and now constitutes approximately 5% of GDP.** There are nine trust companies (TCSPs) operating in Samoa's international sector, whose primary activity is the creation of international business companies (IBCs), very largely on the basis of introduced business from affiliated TCSPs based in Hong Kong, Singapore, Chinese Taipei and elsewhere. The majority of clients are from China. Samoan IBCs can only be formed through a Samoan TCSP. As noted above, IBCs constitute by far the largest component of the offshore sector; there were approximately 34,000 active IBCs in late 2014, as well as 155 international trusts (now being phased out in their current form), seven international banks (mainly used only for in-house banking for affiliated entities, with total assets of \$125 million SAT – approximately US\$54 million) and small numbers of segregated funds and international insurance companies (similarly used only for in-house or 'captive' insurance for affiliated entities).

1.3 Structural Elements

23. **In general, the key structural foundations of an effective AML/CFT system appear to be present in Samoa.** Political and institutional stability and accountability and rule of law are all present. There is a professional and independent judicial system, which consists of the District Court, the Land and Titles Court, the Supreme Court and the Court of Appeals. The Court of Appeals is the highest court; it has appellate jurisdiction only and can review the rulings of any other court.

24. The following departments, agencies and public authorities have a significant role to play in the implementation of Samoa's AML/CFT system:

- **Money Laundering Prevention Authority (MLPA)** – established under section 4 of the MLP Act is, formally, responsible for supervising FIs/DNFBPs⁶ under the MLP Act, issuing guidelines to FIs/DNFBPs on CDD, and for establishing the Samoa Financial Intelligence Unit (SFIU), which has been created as part of the CBS. The functions of the MLPA are performed by the Governor of the CBS, who also chairs the Money Laundering Prevention (MLP) Task Force;
- **MLP Task Force** – established under section 5 of the MLP Act, the MLP Task Force is the advisory body to the MLPA and aims to strengthen co-operation among competent authorities in implementing the AML/CFT regime. The MLP Task Force includes as members the Attorney General; Police Commissioner; CEO Samoa International Finance Authority (the offshore regulator); CEO Ministry for Revenue (Customs); CEO Ministry of the Prime

⁶ It should be noted that the MLPA itself does not actively supervise financial institutions; 'relevant supervisory authorities' (a term used in section 45 of the MLP Act), have been prescribed under schedule 1 of the MLP Regulations 2009 to be the Central Bank of Samoa, the Samoa International Finance Authority, the Samoa Institute of Accountants and the Samoa FIU. See chapter 6 for more detail.

Minister & Cabinet (Transnational Crime Unit and Immigration); CEO Ministry of Commerce, Industry and Labour; CEO Ministry of Finance and Director of the SFIU;

- Central Bank of Samoa (CBS) – an independent institution established to administer monetary policy functions including issuing currency and to license and supervise FIs and prudentially supervise non-bank FIs. The CBS is responsible for AML/CFT supervision of any financial institution that it otherwise regulates or supervises (ie domestic banks, money changers, MTOs, insurance companies and brokers). As noted above, the CBS houses the SFIU, and the Governor of the CBS is responsible for carrying out the functions of the MLPA and chairs the MLP Task Force;
- Samoa FIU (SFIU) – established under section 6 of the MLP Act, in addition to its FIU role the SFIU is also responsible for regulation and supervision of DNFBBPs other than TCSPs and accountants, that is casinos, lawyers, dealers in precious metals/stones and real estate agents. The SFIU is part of the CBS and, in practice, its staff are also involved in AML/CFT supervision of entities supervised by the CBS;
- Samoa International Finance Authority (SIFA) – an independent statutory authority established to oversee the governance of Samoa’s international financial services (offshore) sector (ie international banks, international insurance companies and TCSPs);
- Attorney-General’s Office (AGO) – an independent office established under section 41 of the Constitution, the Attorney-General is both the chief prosecutor and chief legal adviser of Samoa, and is a member of the TCU Management Committee and the MLP Task Force. The AGO is the central authority for formal international co-operation;
- Samoa Police Service – the designated authority responsible for investigating ML and TF offences. The Criminal Investigation Division (CID) of the police is responsible for investigating domestic cases and commercial crime, including ML. The Commissioner of Police is a member of the MLP Task Force;
- Samoa Transnational Crime Unit (TCU) – responsible for supporting investigations of predicate crimes, ML and TF that include a transnational element. The TCU was established in 2002 to provide investigative and operational intelligence to tackle transnational crime including drug trafficking, ML and terrorism. The TCU is a multi-disciplinary unit within the Ministry of the Prime Minister & Cabinet, made up of specialist officers from the Police Service, Ministry of Revenue (which includes Customs) and Immigration Department. Investigative powers of the Unit only arise from the powers held by the seconded staff working within the TCU;
- Ministry of Revenue – has dual roles of revenue collection and taxation as well as border management and investigation. Samoa Customs is also involved in investigating ML and related predicate offences in co-operation with other enforcement agencies through its participation in the TCU. Customs is also a member of the MLP Task Force;
- Samoa Immigration Department – contributes to AML/CFT investigations through its participation in the MLP Task Force and the TCU and is particularly concerned with predicate offences such as human trafficking. The Immigration Department maintains the Border Management System database which contains information on the movement of people into and out of Samoa. This information is accessible to the TCU.
- Samoa Institute of Accountants (SIA) – responsible for AML/CFT supervision of accountants that it licenses.

25. **There is a high-level commitment to address ML/TF issues**, evidenced by Samoa’s long-standing membership of the APG (Samoa has been an APG member since May 2000) and the creation in 2007 of the MLPA and the MLP Task Force.

26. **Although the capacity and resources of the primary competent authorities have generally increased since the 2006 MER (including in the last couple of years), resource challenges remain in some agencies.**

1.4 Other Contextual Factors

27. **A concern that may have future AML/CFT implications is that global and regional risk concerns ('de-risking') may result in domestic banks closing the accounts of money transfer operators (MTOs),** even though MTOs generally have a good level of awareness of their AML/CFT obligations when processing inward and outward remittances. Samoan authorities are concerned about the potential implications of this development for AML/CFT controls (and, more broadly, for the economy) if such steps are undertaken. This potential issue was raised during the on-site visit by both the government and the MTOs.

1.5 Scoping of Higher-Risk Issues

28. In deciding on which higher risk issues to prioritise, the evaluation team reviewed Samoa's 2012 NRA, Samoa's technical compliance and effectiveness submissions and supporting documentation, and consulted Samoan authorities. The evaluation team also reviewed relevant external literature and identified, as a starting point for the mutual evaluation, important risks, significant features of Samoa's AML/CFT environment, and issues that merited deeper attention given their central role in Samoa's AML/CFT system. The issues listed below are the specific higher risk issues that were examined in greater detail in the on-site visit and the mutual evaluation report (MER):

- financial sector issues, including the threats and vulnerabilities facing the banking, money transfer and international banking sectors, and the extent to which legislative measures (including in relation to beneficial ownership information), controls and supervision are mitigating these risks;
- understanding the risks posed by the offshore sector, in particular through IBCs, and the extent to which those risks are being effectively mitigated through beneficial ownership requirements (for both IBCs and other offshore entities), controls on the use of introduced business, requirements for monitoring the customer, and the regulation and supervision of TCSPs;
- the AML/CFT compliance monitoring framework for DNFBPs, and in particular the threats posed by casinos (noting Samoa's first casino open one month before the start of the on-site visit), and what controls are in place to mitigate ML/TF risks;
- understanding the major threats facing Samoa, including the magnitude of proceeds of crime generated by various crime threats, as well as any specific threats/risks associated with the international sector;
- the threats posed by the cross-border movement of cash and the vulnerabilities in the AML/CFT system (identified as an area of high risk in the 2012 NRA), and whether the measures taken by the authorities since 2012 are proving effective in addressing these threats and vulnerabilities;
- whether and, if so, how supervisors and reporting entities are taking a risk-based approach to supervision and risk management, including whether use has been made of the 2012 NRA in terms of resource allocation;
- the reasons behind the lack of any ML investigations, including whether appropriate use is being made of financial intelligence and whether operational co-ordination is effective;
- whether there are sufficient staffing, resources, and capacity for competent authorities; and
- formal and informal international co-operation, including in relation to the international financial sector and the provision of beneficial ownership information by Samoa to foreign counterparts.

2. NATIONAL AML/CFT POLICIES AND CO-ORDINATION

Key Findings

- **Samoa has improved its overall understanding of its ML/TF risks in recent years**, though its understanding of the nature and scope of proceeds-generating crimes (both domestic and foreign), and its understanding of the threats posed by such crimes and the vulnerabilities in Samoa's AML/CFT system require further development.
- **Samoa is to be commended for its ongoing efforts to identify, assess and understand its ML/TF risks.** Samoa completed a national risk assessment (NRA) in 2012 and is finalising an updated NRA which was commenced in 2014, which has led to a better understanding and articulation of the ML/TF risks facing Samoa. The 2012 NRA does not however sufficiently identify ML/TF risks in Samoa and, in particular, it does not sufficiently consider the types or volume of threats associated with domestic or foreign predicate offences.
- **The 2012 NRA has not resulted in a significant review of Samoa's AML/CFT policies or strategies to combat ML/TF.** While the identified ML/TF risks are to some extent already being addressed by national AML/CFT policies and activities, the objectives and activities of the competent authorities are not fully consistent with the evolving risks and more needs to be done to apply a risk-based approach to AML/CFT.
- **The level of understanding of ML/TF risks varies between government agencies and the results of the 2012 NRA have not been sufficiently shared with the private sector.**
- **The risks associated with the recently established casino sector have not been considered or assessed** even though ML/TF risks internationally have been determined as high. Other areas where a strengthening of activity is required include in the investigation of ML, the supervision of the TCSP and MTO sectors, and in the application of effective measures in relation to the cross-border movement of funds.
- **There is little firm evidence of the proceeds of foreign predicate crimes being laundered in Samoa or through its offshore sector, but IBCs in particular present a potential international conduit for ML and TF.** There have been a small number of foreign requests for information relating to Samoan IBCs which indicate possible misuse for ML or associated predicate offences, including tax evasion, but none has led to any request for investigation by the Samoan authorities or to the conviction of any IBC, beneficial owner or office-holder of an IBC for an offence.
- The MLPA, through the MLP Task Force, provides a good basis for strategic co-ordination and the necessary framework to develop and enhance its AML/CFT systems, but **effectiveness needs to be improved at both the strategic/ policy level and, in particular, at the operational level.**

2.1 *Background and Context*

(a) *Overview of AML/CFT Strategy*

29. **Samoa has not developed a formal, clearly articulated AML/CFT national strategy or policy.** Samoa does however adopt a multi-agency approach to developing and implementing AML/CFT policies. The Money Laundering Prevention Authority (MLPA) is responsible for overall co-ordination of AML/CFT issues, and it has an advisory body, the MLP Task Force, which is chaired by the Governor of the CBS and which aims to strengthen the level of co-operation among competent authorities in implementing the AML/CFT regime.

(b) *Institutional Framework*

30. An institutional framework is in place to provide the basis for the development of national policies and co-ordination on AML/CFT issues at a policy and operational level. As outlined in chapter 1

above, the MLPA is responsible for overall co-ordination of AML/CFT issues and was created following the 2006 MER, through passage of the Money Laundering Prevention Act 2007 (MLP Act), and the MLPA is supported by the MLP Task Force.

(c) *Co-ordination and Co-operation Arrangements*

31. The main co-ordination mechanism in both policy and operational terms is the MLP Task Force. Different agencies take the lead in focusing on different aspects of AML/CFT issues such as the SFIU (financial intelligence issues and assisting with national co-ordination), CBS and SIFA (preventative measures and supervision), AGO (MLA and extradition), TCU (transnational crime), police (investigations of predicate offences including ML), Customs (cross-border cash) and tax authorities (taxation offences). In addition, memorandums of understanding (MOUs) have been signed between the MLPA/SFIU and a number of key agencies. This institutional framework captures most relevant agencies. In practice, however (as discussed further below), the MLP Task Force appears to give only limited consideration to national policy issues, and as noted above no formal policies or strategies have been developed to reflect or respond to the risks identified in either 2012 NRA or the draft 2014 NRA.

(d) *Country's assessment of Risk*

32. As noted above, Samoa undertook an initial NRA in 2012 with a follow-up commenced in 2014 (to be finalised). The 2012 NRA was conducted under the supervision of the MLPA in collaboration with the MLP Task Force, using subject matter experts and data collected from Task Force members as well as from the private sector. Sectors considered included: commercial banks, insurance companies, MTOs, trustee companies (and the entities that they create), public accountants, moneylenders, credit unions, dealers in precious metals, lawyers, real estate agents, car dealers and non-profit organisations. The scope and nature of the 2012 NRA (and draft 2014 NRA) is analysed below.

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

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

33. **Samoa is rated partially compliant (PC) with R.1.** The 2012 NRA generally identifies areas of higher risk, but there are some important gaps in the process of identifying threats/vulnerabilities/risks. In addition, while some initial steps have been taken, Samoa has not implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks.

Recommendation 2 – National Co-operation and Co-ordination

34. **Samoa is rated PC with R.2.** Samoa is yet to develop a national AML/CFT policy informed by ML/TF risks but has taken some important steps to improve national co-operation and co-ordination. There are however some significant gaps in national cooperation and national coordination, in particular at the operational level and in relation to proliferation financing issues.

Recommendation 33 – Statistics

35. **Samoa is rated largely compliant (LC) with R.33.** Samoa maintains comprehensive statistics in relation to STRs, proceeds of crime, predicate crimes and mutual legal assistance, and captures some but not all information regarding informal international co-operation.

2.3 *Effectiveness: Immediate Outcome 1 (Risk, Policy and Co-ordination)*

(a) *Country's understanding of its ML/TF risks*

36. **Samoa has a reasonable general understanding of its ML/TF risks, but this understanding requires further development.** Samoa has undertaken two national risk assessments since 2012, with the draft 2014 NRA awaiting consideration and sign-off from cabinet. The resources already devoted to the development of the 2012 and 2014 NRAs and the commitment to undertake regular updates of the NRA in the future is welcomed. The 2012 NRA was approved by the MLP Task Force in November 2013 and is used as the basis for evaluating Samoa's assessment of its AML/CFT risks.

37. **A reasonably wide and representative range of public and private sector stakeholders was involved in the development of the 2012 NRA, preparation of which was well coordinated.** The Office of the Attorney General (AGO) in conjunction with the Samoan FIU (SFIU) co-led development of the 2012 NRA, with further consultation being held with the MLP Task Force and representatives from the private sector including banks and MTOs.

38. **The 2012 NRA is principally based on an analysis of ML/TF indicators or typologies and their impact.** Data used included STRs, case studies and feedback from relevant competent authorities. As discussed further below, however, more use could have been made of predicate crime statistics and other intelligence sources (for example, regional crime assessments) as a basis for identifying ML/TF risks in Samoa. The rating methodology included an assessment of the current impact, likelihood of an increase, and consequences of an increase to arrive at an overall rating of risk. This methodology appears to have been applied in a reasonable and logical manner.

39. **The 2012 NRA identifies the offshore sector (in particular IBCs), MTOs and the cross-border movement of cash as areas of higher risk, as well as highlighting the importance of the banking sector due to its materiality.** The evaluation team considers that these are reasonable conclusions, as far as they go. In terms of materiality and other contextual issues, the domestic banking sector (60% of the entire financial sector) plays a very important role, as does the remittance sector. While relatively small compared to other offshore financial centres, Samoa's offshore sector nonetheless constitutes approximately 5% of Samoa's total GDP and poses inherent risks which have been accurately described in broad terms the NRA.

40. **While it is a good start, the 2012 NRA does not however sufficiently identify and assess the domestic and international ML/TF risks for Samoa, including through the offshore sector.** The NRA itself notes that it is an initial 'generic' risk assessment and that further iterations of the NRA will use more specific risk assessment tools. Samoan authorities assess the risk of terrorism and terrorist financing as low, which is supported by previous reports, open source materials and on-site interviews. The 2012 NRA does however note the need for improved information holdings and to develop and maintain valid and reliable indicators in this area; this is strongly supported by the evaluation team.

41. **The NRA does not sufficiently consider the types or volume of threats associated with predicate offences** (this is also true of the draft 2014 NRA, which at the time of the on-site visit included only limited information on predicate offences). Samoan authorities advised that future iterations of the NRA include additional analysis of the types and volume of ML threats associated with predicate offences, which is strongly supported by the evaluation team. It is important that law enforcement agencies which, as outlined in chapter 3 of this report are not sufficiently focussed on ML issues, including risk, are be more closely involved and contribute more actively to the NRA process in future.

42. **The overall risk for trustee companies is rightly assessed by the Samoan authorities as 'inherently' high, but authorities need to develop a better understanding of the actual risks that exist in the sector.** The NRA identifies as sources of risk the higher-risk customers that IBCs deal with such as non-resident customers (including PEPs), the use of third parties and exposure to the international financial system through the use of bank accounts in countries in which clients/companies reside. As noted in chapter 1 (and analysed further in chapters 4 and 5 below), IBCs are not generally subject to ongoing scrutiny by either Samoan TCSPs or the Samoan supervisory authorities, due to the normal TCSP business model. It is therefore difficult to ascertain whether the lack of firm evidence of ML, associated predicate crimes and TF results from a lack of criminal activity, a lack of capacity to detect

such activity, or both. It is noted that the Australian Taxation Office did issue a taxpayer alert in 2010 regarding arrangements where Australian resident entities use a promoted tax avoidance or evasion scheme in Samoa and/or other low tax jurisdictions to artificially create deductions for purported expenses and/or to establish structures to conceal income or assets⁷. In addition, an Australian tax matter, which is still before the courts, involved a Samoan international bank and an international trust company. It is also noted that the 2007 mutual evaluation report of China⁸ noted that a significant form of ML is through offshore companies; as outlined above, much of Samoa's IBC business comes from China through Hong Kong. There have however been very few foreign requests for information relating to IBCs (with the exception noted above from the Australian Taxation Office) and no ML prosecutions involving Samoan IBCs.

43. **Authorities have taken some important steps to address the risks arising from IBCs**, including through increased supervision and amendments to the International Companies Act to immobilise (in 2008) and, more recently, to abolish bearer shares and to require all IBCs to provide additional financial information to TCSPs. If implemented effectively, these measures will increase the quality of CDD measures and to reduce the risk of misuse of IBCs for ML/TF purposes (see further discussion under IO.4 and IO.5 below). Although some international company incorporation agents advertise the advantages of Samoan IBCs as 'guaranteeing' the confidentiality of beneficial ownership by law, the confidentiality provisions contained in the International Companies Act are in fact overridden by the MLP Act and other provisions in the offshore legislation. Despite the existence of various secrecy provisions in offshore legislation, in broad terms both SIFA (as the offshore regulator) and the SFIU have the ability to pierce the corporate veil and to obtain and share as appropriate beneficial ownership and other information (see analysis of R.9 in the TC Annex and IO.4 below).

44. **The risks associated with the casino sector have not been assessed, which is an important gap, despite the sector being small (one casino) and only very recently established.** Samoa opened its first casino in October 2014. The risks associated with the casino sector were not assessed in the 2012 NRA, nor had they been assessed in the NRA 2014 at the time of the on-site visit. Given the ML/TF risks identified internationally in relation to the casino sector, it is critical that Samoa's risks be identified at the earliest opportunity, and that any additional AML/CFT measures that may be required are put in place while the casino sector is in its infancy (Samoa has confirmed that casinos will be analysed in the final version of the 2014 NRA).

45. **Government authorities have recently developed a better understanding of ML/TF risks through the NRA process, but this could be further improved, particularly among law enforcement agencies.** The agencies on the MLP Task Force contributed to and were to varying extents involved in developing both the 2012 and 2014 NRAs. During the on-site visit, however, not all agencies seemed to fully appreciate all the ML/TF risks, with only the SFIU, CBS, AGO and SIFA demonstrating a strong understanding of the risks identified. While they have some understanding of the ML/TF risks, law enforcement agencies need to further develop their understanding and to focus more on the identified risks.

46. **The results of the 2012 NRA have not been sufficiently shared with the private sector.** The private sector provided input into both the 2012 and 2014 NRAs but has a limited understanding of the outcomes and implications of the NRA. It is noted also that increased strategic analysis by the SFIU (eg of ML/TF typologies and trends) would assist FIs and DNFBPs in understanding and assessing the risks. Despite this, both domestic and foreign-owned commercial banks generally demonstrated a high level of understanding of their ML/TF risks, as well as an awareness of their duties and responsibilities to mitigate these risks, based on their own assessments of risk. However, other FIs and the DNFBP sectors, which have fewer resources to assess risks and rely more of the Government's assessment of risk, did not

⁷ See <http://law.atof.gov.au/atolaw/view.htm?DocID=TPA/TA20104/NAT/ATO/00001>. At least one recent Australian tax case – which was reported after the on-site visit – involves Samoan offshore entities.

⁸ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20China%20full.pdf> (see paragraph 13)

consistently display a similar level of awareness. Regular on-site supervision could assist in improving this.

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

47. **Samoa has not developed a national AML/CFT policy or strategy and there has been no formal policy response to the outcomes of the 2012 NRA.** Preliminary consideration has been given by Samoa as to how the ML/TF risks identified in the 2012 NRA should be addressed by national AML/CFT policies (for example, through the re-allocation of resources and priorities, legislative amendment etc), but this process has not formally commenced. The MLP Act 2007, MLP Regulations 2009, MLP Guidelines 2010, the 2012 NRA and the Central Bank of Samoa's four year strategic plan (which includes the activities of the Samoa FIU) go some way towards providing an AML/CFT policy framework which addresses areas of higher risk, however no national AML/CFT policy or strategy has been clearly articulated on the basis of the identified risks. The Samoan authorities have indicated that they intend to formally review the allocation of resources and AML/CFT implementing measures (for example, frequency of on-site visits to regulated entities) on a risk basis, as well as the need for legislative and other changes, following the completion and adoption of the 2014 NRA and the MER in 2015.

48. **In practice, a risk-based approach to supervision has to some extent recently begun to be applied to higher risk areas including the offshore sector, the domestic banking sector and money transfer operators.** Decisions on AML/CFT supervision priorities by the Central Bank, SFIU and SIFA over the past few years (ie, both before and since the 2012 NRA was developed), have in practice tended to focus on sectors of higher risk and materiality, though implementation has been somewhat patchy (see analysis of IO.3 in chapter 6).

(c) Exemptions and application of enhanced measures

49. **Only one limited exemption has been granted to one TCSP under the MLP Act in relation to certain customer due diligence (CDD) obligations.** The exemption was granted under section 3A of the MLP Act to allow a short period of additional time for copies of beneficial ownership information in relation to IBCs to be provided to the Samoan TCSP by foreign third party introducers. This exemption was not granted on the basis of the results of the 2012 NRA, but was separately assessed by the Central Bank/SFIU in consultation with SIFA as being consistent with the TCSP's risks and obligations under the MLP Act and Regulations.

50. **More broadly, however, it is of concern that the MLP Act contains a very broad power to exempt entities supervised by SIFA (the offshore regulator) from the obligations imposed by the MLP Act.** Section 3A of the MLP Act states that all trustee companies providing offshore financial services in Samoa under any law that is administered by SIFA, may be exempted from any obligation arising under the MLP Act, in accordance with Guidelines issued to that effect by the Money Laundering Prevention Authority. While it is important to note that no such guidelines have in fact been issued, the potential to do so remains and it has not been demonstrated that the potentially very broad exemption under section 3A of the MLP Act was included on the basis of a proven low risk for the offshore sector. In fact, on the contrary, the 2012 NRA notes the 'inherent' risks associated with the offshore sector which suggests careful reconsideration of this issue should be undertaken by the authorities. The evaluation team urges Samoa to review section 3A of the MLP Act and to amend or withdraw it as appropriate.

51. **Samoa requires FIs/DNFBPs to perform additional CDD for categories of customer, business relationships or transactions with a higher risk of ML such as for politically exposed persons who are specified as being higher risk customers, however, these generic risk-based requirements pre-date the 2012 NRA.** The Samoan authorities indicated that they intend to review and amend as required the MLP Act and MLP Regulations following completion of the 2014 NRA and adoption of the mutual evaluation report in 2015.

52. **While some banks have implemented a risk-based approach to CDD (customer on-boarding and risk assessment), implementation is limited and variable in this sector**, particularly for the two local domestic banks that do not have as sophisticated customer database and monitoring systems as their international counterparts. Application of both simplified and enhanced due diligence for low and high risk customers does not appear to be consistent (see analysis of IO.4 in chapter 5).

53. **The MLP Regulations also allow for simplified CDD where risk is low, however this has not been tied to the findings of the 2012 NRA.** Where it decides to apply simplified CDD, a financial institution/DNFBP must ensure that it fully understands the nature of the relationship and any transactions, and should have in place procedures to monitor developments (in jurisdictions involved in international transactions). Due to the limited and irregular on-site supervision, it is unclear whether the majority of institutions have such procedures and utilise them (see analysis of IO.3 in chapter 6).

(d) Objectives and activities of competent authorities

54. **The 2012 NRA has not sufficiently informed AML/CFT objectives at the national and/or policy level.** The objectives and day-to-day activities of competent authorities do not adequately reflect the risks that have been identified both formally, in the 2012 NRA, and otherwise by the Samoan authorities. While law enforcement agencies appear to have a good understanding of predicate crime risks, their understanding of ML risk is less well developed, which is reflected in the complete absence of ML investigations. There were no indications that law enforcement focuses its resources and efforts on areas of higher ML risk. The AGO appears to have a reasonably good understanding of AML/CFT risks, though the AGO is dependent on law enforcement investigations to initiate ML prosecutions. However, conversely, law enforcement agencies have not been encouraged by prosecutors to focus on higher ML risk areas. Concerning the risks posed by the cross-border movement of cash/BNI (also identified as higher risk in the 2012 NRA), while some efforts have been made in recent years to improve enforcement (for example, through improved signage at the airports and the introduction of X-ray machines which can detect large amounts of cash), improved implementation and effectiveness is required.

55. **As noted above, there is in practice some consistency between the objectives and activities in the AML/CFT supervisory approach and risk-based national policies, though not on the basis of a formal approach or decision.** Samoa has not implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks. However, the limited supervision that *has* been undertaken over the last five years, to Samoa's credit, has been targeted at some higher risk areas such as TCSPs, MTOs and the banks. Self-regulatory organisations are not playing an active role in AML/CFT supervision, risk-based or otherwise.

(e) Co-operation and co-ordination

56. **An institutional framework is in place to provide the basis for the development of national policies and co-ordination on AML/CFT issues at a policy and operational level, but effectiveness needs to be improved, including through a clearer articulation of a national AML/CFT policy.** As noted previously, the MLPA is responsible for overall co-ordination of AML/CFT issues, and the MLP Task Force is the advisory body to the MLPA. To further strengthen co-operation, MOUs have been signed between the MLPA/SFIU and a number of key agencies. This institutional framework captures most relevant agencies though it is suggested that consideration be given to including the Ombudsman and Auditor General on the Task Force. The Task Force usually meet every quarter. Examples of outputs include: establishment of a Confiscated Assets Fund to deposit/credit proceeds of forfeited assets; the signing of MOUs between the SFIU and the various members of the Task Force to strengthen coordination and cooperation; appointment of additional members of the Task Force (i.e. Ministry of Finance (MOF) and the Ministry of Commerce, Industry and Labour (MCIL)); and coordination of the 2012 and 2014 NRAs. In practice, however, the MLP Task Force appears to give insufficient regular consideration to policy issues and as noted above no policies have been developed to reflect or respond to the risks identified in either the 2012 NRA or the draft 2014 NRA.

57. **There are significant gaps in national co-operation and co-ordination at the operational level and in relation to proliferation financing issues.** Operational co-operation and co-ordination between the SFIU and the law enforcement agencies (Samoa Police and Customs) in particular needs to be significantly enhanced. These agencies do not have a sufficient understanding of how they can work effectively together to identify and mitigate the risks posed by predicate crimes and the associated ML and proceeds of crime. The SFIU and TCU have some co-operation. The SFIU and AGO generally cooperate and coordinate efforts well in relation to proceeds of crime and international co-operation issues (both formal and informal), however this good working relationship is not resulting in any ML investigations. There is also good co-operation and co-ordination between the AML/CFT supervisory authorities (CBS, SIFA and SFIU) on supervision of FIs and TCSPs. There has also been some co-ordination between these supervisory authorities and other licensing authorities (such as the Gambling Control Authority) and other competent agencies such as the AGO and Police on licensing matters, though AML/CFT supervision of the casino needs to be strengthened and better coordinated.

58. **Outside of the NRA process, there is no clear process for the supervisors (CBS, SFIU, SIFA) to regularly identify and assess the ML/TF risks of the FIs/DNFBPs they supervise.** As discussed further under IO.3, supervisors do not maintain an up to date and in-depth understanding of the ML/TF risks for each institution and each financial sector and AML/CFT supervision priorities are not being sufficiently driven by ML/TF risks.

59. **There has been only very limited national co-operation or co-ordination in relation to targeted financial sanctions relating to the proliferation of weapons of mass destruction.** The Central Bank has circulated some information to FIs.

(f) Communicating ML/TF risks to the private sector

60. **More efforts should be made by authorities to ensure that all FIs and DNFBPs, particular those identified as being higher risk, are aware of the results of the national risk assessment.** The 2012 NRA has not been made public. Despite this, both domestic and foreign-owned commercial banks demonstrate a high level of understanding of their ML/TF risks, as well as an awareness of their duties and responsibilities to mitigate these risks. MTOs also demonstrate a reasonable understanding of their risks. However, other FIs and the DNFBP sectors do not consistently display a similar level of awareness and rates of suspicious transaction reporting across all sectors are generally too low, though the quality of STRs is improving according to the authorities (see analysis in chapter 5). Further outreach and education and more regular on-site supervision would assist in improving this.

61. **Additional and updated guidance, reflecting the results of the 2012 and 2014 NRAs and changes in the FATF Standards, would improve the understanding of ML/TF risks,** identification of potentially suspicious transactions (red flag indicators), and could cover new sectors (casinos) and emerging risks (such as harder drugs), improved customer identification, ongoing due diligence, enhanced and ongoing customer risk assessments (low/medium/high) and measures for identifying and managing politically exposed persons (PEPs) consistent with the new FATF Standards.

62. **Generally the international sector FIs/entities supervised by SIFA, in particular TCSPs, understand their AML/CFT obligations and have some awareness of the risks attached to offshore and international business.** However, both the supervised entities and the supervisor (SIFA) indicated that they would benefit from additional training on risks in the offshore sector.

Conclusions on Immediate Outcome 1

63. **Samoa is to be commended for undertaking its first NRA in 2012 and committing to review and update its assessment of risk every two years as evidenced by the yet to be finalised 2014 NRA.** While both NRAs highlight the major ML/TF risks in terms of channels or vulnerabilities, neither sufficiently considers the types or volume of threats associated with foreign and domestic predicate

offences. It would be helpful for example, to identify the extent of assets held by IBCs and transactions undertaken by them as relevant data for the understanding of risks. It is of concern that the risks associated with the casino sector have not been assessed either in 2012 where planning was already underway for the launch or in 2014 prior to the first casino opening in October 2014. In addition, Samoa is yet to articulate a clear policy response to its NRA.

64. **The MLPA, through the MLP Task Force, provides a good basis for strategic co-ordination and the necessary framework to develop and enhance its AML/CFT systems, but effectiveness needs to be improved at both the strategic/ policy and operational levels.** Operational co-ordination and co-operation between some key government agencies requires significant improvement, particularly between law enforcement agencies and the SFIU. Not all agencies appear to have a well-developed understanding of the ML/TF risks. In addition, improved co-operation and co-ordination is required in relation to the financing of weapons of mass destruction, which will allow for the development of policies and statutory instruments to implement Recommendation 7.

65. **The results of the NRA have not been shared with the private sector, which has a varying understanding of ML/TF risks in Samoa.** More needs to be done by the authorities to communicate evolving ML/TF risks to the private sector, including sharing of the results of NRAs and strategic analysis of ML/TF trends and typologies (once the SFIU starts to conduct such analysis) with the private sector, in an edited form if necessary.

66. **While some initial steps have been taken since the 2012 NRA, Samoa has not implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks.**

67. Samoa is achieving Immediate Outcome 1 to some extent as demonstrated by its developing understanding of its ML/TF risks and co-ordination of some activities to address key aspects of the ML/TF risks, however major improvements are required. **Overall, Samoa has a moderate level of effectiveness for Immediate Outcome 1.**

2.4 Recommendations on National AML/CFT Policies and Co-ordination

68. Although Samoa now has an established mechanism for undertaking NRAs, improvements in the methodology and scope of future assessment of risk are required. Future national assessments of risk need to:

- a. More actively involve law enforcement agencies in the process, and make better use of law enforcement information and intelligence holdings (including through relevant regional mechanisms/assessments);
- b. Identify the types and volume of threats associated with predicate offences (domestic or foreign), including through consultation with relevant foreign competent authorities (including regulators and law enforcement agencies in countries whose nationals and entities are involved in Samoa's offshore financial centre, for example, China, Hong Kong and Singapore);
- c. Develop improved information holdings and develop and maintain valid and reliable indicators in relation to terrorism and terrorist financing threats;
- d. Assess the risks from the recently established casino sector, and those DNFBPs which have not been assessed.
- e. Consider use of both qualitative and quantitative data on the risks facing Samoa and the operation of AML/CFT measures, including collecting data on the value of assets owned by IBCs registered in Samoa (regardless of the location of the assets), the value of transactions going through the Samoan IBCs, and the nature of IBC activities (eg asset holding, trading in specific sectors etc)

69. Samoa should:

- a. Task the MLPA to articulate and publish a national AML/CFT strategy or policy on the basis of the risks identified in the NRA;
- b. Implement a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks. This includes developing policies to address higher risks.

70. While the MLPA and MLP Task Force are tasked with the co-ordination and strengthening of co-operation in implementing the AML/CFT regime, there are gaps in ML/TF knowledge, national co-operation and co-ordination amongst government agencies:

- a. National co-operation at both the strategic/policy and operational levels, needs to be strengthened by educating all agencies on ML/TF, what the ML/TF risks are, the role of each agency in AML/CFT and how the agencies can support and work together to strengthen the AML/CFT regime and increase the number of investigations, prosecutions and convictions for ML. The MLPA and the MLP Task Force should play the central co-ordination role in setting out the steps that need to be taken, which could be articulated in the national AML/CFT strategy/policy recommended in the previous paragraph.
- b. Feedback needs to be strengthened between agencies at both strategic and operational levels to assist in judging the effectiveness of implementation (including risk information, level and quality of STR reporting, the targeting of supervision and to support outreach efforts).
- c. Consideration should be given to including the Ombudsman and Auditor General on the MLP Task Force.

71. Samoa should prioritise efforts to raise awareness of ML/TF risks among FIs and DNFBPs, including by:

- a. Providing regular, updated and consistent guidance to the private sector on risk and their conduct of enterprise level risk assessments.
- b. Building on efforts already undertaken in the 2012 and 2014 NRA process to better feed FIs' and DNFBPs' findings of risk into the NRA process.
- c. Providing feedback to the private sector on the NRAs undertaken to ensure they are aware of ML and TF risks facing Samoa, including through publishing or otherwise sharing the results of the NRAs with the private sector (in edited form if necessary).

72. Samoa should develop a mechanism to address the lack of co-ordination in proliferation financing issues.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

- **Samoa's level of technical compliance in relation to its legal system and operational issues has generally improved significantly since its 2006 evaluation**, and levels of effectiveness are improving in relation to the operation of the SFIU and in confiscation of criminal proceeds, but there is a low level of effectiveness in relation to ML investigations.
- **No ML cases have been investigated or brought to the AGO for prosecution.** Financial intelligence and other information are not being used for ML (or TF) investigations, though they are to some extent being used for the investigation of predicate offences and for the purposes of confiscation.
- **The SFIU is performing most of the primary functions of an FIU, but needs to improve its level of dissemination to, and co-operation with, law enforcement agencies** and to develop the capacity to undertake strategic analysis. Recent and planned further recruitment of staff will assist in this area.
- **There needs to be a commitment from all agencies involved in the investigation and prosecution of crime to focus on ML where appropriate.** This will require an improved understanding of each agency's role and responsibilities, enhanced domestic co-ordination, particularly at an operational level between law enforcement agencies and the SFIU, improved and appropriate resourcing to enable the successful investigation and prosecution of ML offences.
- **The police should pursue ML cases in parallel with their investigations of predicate offences, in particular more serious offences where they occur**, and make better use of financial intelligence and the current legal framework.
- **Criminal sanctions for ML are not proportionate compared to other serious crimes in Samoa**, which may have contributed to the lack of ML investigations.
- **Samoa has the basis of an effective confiscation regime, and has begun to make good use of it over the last two to three years in relation to low level drugs and fraud cases**, however there is scope for increased proceeds of crime action in relation to more serious/complex predicate crimes.
- **The effectiveness of the cross-border declaration system needs to be improved**, particularly given that this has been identified as a higher risk area.

3.1 Background and Context

(a) Legal System and Offences

73. There have been significant changes to Samoa's AML/CFT legal framework since the 2006 MER. In 2007 Samoa passed the following key pieces of legislation to *inter alia* update the legal framework for criminalising ML, proceeds of crime, and operating the FIU:

- the Money Laundering Prevention Act 2007 (MLP Act), which repealed and replaced the Money Laundering Prevention Act 2000; and
- the Proceeds of Crime Act 2007 (POCA).

74. ML is criminalised under section 11 of the POCA. Despite the threshold for ML predicate offences having been lowered from five years to 12 months since the 2006 MER, there are still some gaps in Samoa's coverage of designated categories of predicate offences. Most predicate crimes are contained within the Crimes Act 2013, though a number of predicate crimes are also contained in other, specific legislation (for example, the Counter Terrorism Act 2014, the Narcotics Act 1967, the Customs Act 2014 and tax legislation).

75. In relation to confiscation, Samoa has made significant progress since the 2006 MER. Confiscation is now provided for in Part III of the POCA. The confiscation provisions apply if a person is convicted of a serious offence (ie an offence punished by a maximum sentence of more than one year's imprisonment). Samoa's system for declaration of cross-border movements of cash/bearer negotiable instruments Samoa is set out in the MLP Act and the Foreign Exchange Regulations 1999.

76. The Samoa Financial Intelligence Unit (SFIU) is established under the MLP Act within the Central Bank of Samoa. The SFIU has been a member of the Egmont Group since 2011.

77. A number of agencies have responsibility for investigating ML, TF and other predicate offences, though the primary responsibility lies with the Criminal Investigation Division of the Samoa Police. The TCU supports investigations of ML and TF cases that include a transnational element.

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

Money Laundering and Confiscation:

Recommendation 3 – Money laundering offence

78. **Samoa is rated PC with R.3.** While the ML offence is mostly compliant with the international standards and most of the criteria are met, several of the 21 designated categories of offences are not predicate offences for ML. There are no offences with respect to piracy (robbery or violence at sea), there is insufficient coverage of tax offences and offences relating to illicit trafficking in stolen and other goods, counterfeiting and piracy of products and smuggling do not meet the threshold requirement for being a serious offence. The definition of property does not appear to cover legal documents or instruments that evidence title, or an interest, in property.

79. **The maximum penalty for ML for a natural person – 1,000 penalty units (ie \$100,000 Tala, or approximately US\$40,000) or imprisonment for a period not exceeding seven years or more – is considered dissuasive but is not proportionate compared to other serious crimes in Samoa** (normally punishable by 10 – 14 years' imprisonment). There are no separate criminal sanctions for a legal person, meaning the criminal penalties for a natural person apply; the maximum available fine (\$100,000 Tala) cannot be considered to be dissuasive. Third party and self-laundering are criminalised, laundering the proceeds of foreign predicates is covered and there is a range of ancillary offences.

Recommendation 4 – Confiscation and provisional measures

80. **Samoa is rated LC with R.4.** The legal framework contained in the POCA is consistent with the FATF standards. However, not all ML predicate offences fall within the definition of a 'serious offence' and accordingly property and proceeds relating to these offences cannot be made subject to a forfeiture order.

Operational and Law Enforcement:

Recommendation 29 – Financial intelligence units

81. **Samoa is rated LC with R.29.** The SFIU meets nearly all of the technical requirements under the standards. The main area of technical deficiency relates to the absence of strategic analysis. Despite there being some confusion over the respective roles and functions of the SFIU, MLP Authority and the CBS, with decisions/recommendations made by the Director of the SFIU being referred to the Governor of the CBS for final consideration, in practice the evaluation team was satisfied that the SFIU is generally operationally independent and autonomous.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

82. **Samoa is rated Compliant (C) with R.30.** There are designated law enforcement authorities with responsibility for ensuring that ML, associated predicate offences and TF, are properly investigated and confiscation action is taken, including the AGO, Samoa Police, the TCU, Customs and Immigration.

Recommendation 31 – Powers of law enforcement and investigative authorities

83. **Samoa is rated LC with R.31.** Investigative authorities generally have all the powers that they require to investigate ML, TF and associated predicate offences, including under the Police Powers Act 2007, the Criminal Procedures Act 1972, the Customs Act 2014, the Counter Terrorism Act 2014 and the POCA. However, there is no broad power to undertake controlled deliveries (other than for offences under the Counter Terrorism Act).

Recommendation 32 – Cash Couriers

84. **Samoa is rated LC with R.32.** The MLP Act 2007 requires the declaration of all physical cross-border transportation of currency and BNIs above \$20,000 SAT (approximately US\$8,600) in Samoan or equivalent foreign currency. Under the Foreign Exchange Regulations 1999, commercial banks are required to report to the Central Bank all inward individual foreign exchange transaction receipts over \$30,000 SAT (US\$12,900). Customs and Immigration officials and police officers have broad powers to enforce the declaration system. The Foreign Exchange Regulations cover money sent by post, but Samoa's declaration system under the MLP Act does not extend to mail and only extends to cash/BNIs on the person or in the person's luggage, rather than to cargo more generally. Basic co-ordination arrangements are in place, but the interface between Customs' and Immigration's databases on incoming passengers is not integrated and is not fully adequate for implementation of Recommendation 32.

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

(a) Use of financial intelligence and other relevant information

85. **While Samoan authorities generally have powers to obtain access to a broad range of financial and other information, they have made only limited use of financial intelligence and information as a key input into investigations of predicate crime, though more use has been made of financial information to trace assets.** No ML or TF investigations have been undertaken to date. The limited use of financial intelligence and other information arises from several factors, including: the low overall level of suspicious transaction and border currency reporting, limited resources in the SFIU, insufficient operational co-ordination and co-operation between law enforcement agencies and the SFIU, and a lack of a well-established or sufficiently widespread mind-set amongst law enforcement agencies to use financial information and intelligence to 'follow the money' and to initiate ML investigations. Financial information and intelligence – both intelligence disseminated by the SFIU and, more commonly, financial information/records obtained directly by the Samoa Police through use of search warrants served directly on FIs – has been used predominantly for the investigation of predicate offences and/or to trace assets, often in the context of forfeiture (confiscation) action.

86. **Where it does need to obtain additional information, the SFIU generally does so effectively.** Under the MLP Act, the SFIU has access to a wide range of financial and other information, including both commercially available databases (such as World-Check and Accuity) and from government entities. Where further information is required from another government agency (for example, the Samoa Police, TCU, SIFA or MCIL), this will normally be done by letter, though in urgent cases information can be obtained by email or telephone. The manual nature of this procedure can slow down the analysis process somewhat, although the SFIU indicated that agencies normally respond to requests quite quickly (ie within a week). The entire process from receipt of an STR, analysis and dissemination on average takes one to two weeks. Law enforcement agencies do not have direct access to the SFIU's database, but can spontaneously request information from the SFIU. As discussed further below, this is not however a common occurrence, with investigative authorities making only limited use of the SFIU's financial intelligence.

87. **The SFIU makes effective use of its extensive powers to directly obtain additional information from reporting entities when analysing STRs.** The SFIU regularly uses these powers when undertaking its analytical work on receipt of an STR, and can request information from any financial institution/DNFBP regardless of whether it submitted the original STR. Each reporting entity is required to appoint a Money Laundering Reporting Officer (MLRO) which facilitates the provision of any information sought by the SFIU, and the SFIU indicated that FIs generally respond to requests promptly. In 2014, the SFIU made seven requests for further information from the four domestic banks. Between 2003 and 2013, twelve requests for further information were made to banks and trustee companies. Most responses were received between one and seven working days.

88. **The very limited staffing in the SFIU until very recently has resulted in limited operational analysis and no capacity to undertake strategic analysis.** Until recently, the SFIU has not had sufficient resources to perform all its functions, but its staffing has recently increased from two to four staff, with further recruitment planned in 2015 with the eventual aim of expanding to a total of seven staff (who would be responsible for both FIU and supervisory functions). The four current staff are: the Director, Assistant Manager, an analyst and an IT/systems specialist. The analyst and IT/systems specialist were recruited only in 2014. The SFIU is located within the Financial Stability Group of the CBS, which incorporates the AML/FIU Department, the Supervision Department and the Financial System Development Department. The Assistant Governor of the Financial Stability Group, who is responsible for these three departments, has been appointed as Director of the SFIU and exercises the Director's formal functions under the MLP Act. On a day-to-day basis, the Director of the SFIU shares responsibility for managing the work of the FIU with the Assistant Manager of the SFIU.

89. **The SFIU has responsibility for both FIU and AML/CFT supervisory functions, but does not have sufficient resources to carry out these functions.** Formally, under the MLP Act/Regulations, the SFIU is responsible for supervision only of the legal, real estate and casino sectors; informally, SFIU staff have also assisted the CBS Supervision Department with its AML/CFT supervisory responsibilities under the MLP Act in relation to entities supervised more generally by the CBS, eg banks, MTOs, insurance. Additional recruitment for the SFIU is a priority for 2015, with a particular focus on engaging strategic analysts. This recruitment should enable the SFIU to expand its intelligence functions and level of activity, including outreach to reporting entities regarding their reporting obligations, which it is hoped will enhance the level of STR reporting and operational analysis and will allow the SFIU to commence strategic analysis, as well as to increase its supervisory capacity. If and when the AML/FIU Department is further expanded, the intention is that it will formally assume responsibility for all AML/CFT supervision from the Supervision Department on behalf of the CBS. It is important that the Assistant Governor/Director of the SFIU carefully monitors the SFIU's staffing workload to ensure that SFIU staff are focussed sufficiently on core FIU functions and that the expanded resources of the AML/FIU Department are sufficient overall for it to effectively meet both its core FIU functions as well as its expanded supervisory functions.

(b) Types of reports received and requested

90. **The SFIU receives, or otherwise has access to, STRs, border currency reports (BCRs), capital inflow and outflow reports above \$30,000 SAT and information on all inward and outward remittances.** While numbers fluctuate somewhat, an average of approximately 20 to 25 STRs have been submitted over the past four years. The majority of recent STRs are related to possible 'scams' (fraud).

91. Statistics for the last four years are as follows:

Table 1: STRs and other information received/disseminated, 2011 – 2014

Year	STRs received/no. of transactions covered by STRs ⁹	STRs disseminated	BCRs received	Requests received by SFIU from other agencies ¹⁰
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⁹ One STR may relate to more than one transaction. Number of transactions is shown in brackets.

2011	17 (158)	1	0	4
2012	45 (91)	3	4	4
2013	20 (40)	5	2	3
2014 ¹¹	13 (13)	6	1	3
Total	95 (302)	15	7	14

Table 2: STRs received by sector, 2011 – 2014

STRs by sector	2014	2013	2012	2011	Total
Banks	8	14	42	13	77
MTOs	3	5	3	3	14
Trustee Companies	2	0	0	1	3
Lawyers	0	1	0	0	1
Total	13	20	45	17	95

Table 3 Capital inflow/outflow reports and remittances per year (in \$SAT million)

Year	Inwards ¹²	Outwards ¹³	Remittances ¹⁴	Capital Inflows ¹⁵ (4)
2014	1,071.0	925.0	390.0	533.0
2013	1,179.0	957.0	423.0	610.0
2012	1,026.0	866.0	406.0	541.0
2011	908.0	785.0	380.0	554.0

92. **Whilst noting that smaller jurisdictions generally do not get large numbers of STRs, the evaluation team nonetheless considers the number of STRs to be insufficient.** The SFIU is of the view that, while the overall numbers of STRs are lower than would be expected given the overall level of risk, the *quality* of STRs has improved in recent years. The SFIU stated that banks and MTOs, which provide the bulk of STRs, are taking a more active role in questioning customers and obtaining further information before deciding whether to submit an STR. The SFIU also stated that the improving quality of STRs is demonstrated by the fact that the number of disseminations per year has steadily increased in recent years, despite the number of STRs being fairly steady during the same period (after a spike in 2012). This indicates that the information being received from reporting entities is becoming more accurate and relevant. The evaluation team notes and accepts these observations, but nonetheless considers the level of STR reporting to be too low, particularly in the non-bank sectors, bearing in mind risks. Given the risks associated with the offshore sector, the very low level of reporting by TCSPs is of particular concern. It is to be hoped that recent changes to the International Companies Act will allow TCSPs to have a better understanding of IBCs and place them in a better position to detect and report suspicious transactions (see analysis under IO.4 and IO.5).

¹⁰ This includes two requests direct from international agencies in 2014.

¹¹ January – September 2014

¹² Includes all incoming transfers from foreign jurisdictions.

¹³ Includes all outgoing transfers to foreign jurisdictions.

¹⁴ Represents money gifts, financial donations and gifts in kind from non-residents for which no service or return transaction is expected.

¹⁵ Represents only incoming transfers of SAT\$30,000 and above.

93. **The low overall level of STRs is partly explained by the limited levels of outreach and training by the SFIU to reporting entities regarding their reporting obligations.** This in turn has partly been a function of the lack of resources in the SFIU referred to above. This issue is discussed further in the analysis of IO.4 below (see section 5.3(c) below), but the number, quality and usefulness of STRs could be improved through the using of updated/additional guidance and with improved outreach and training to reporting entities on their obligations.

94. **While the casino operator has been made aware of its STR reporting obligations, no STRs had been submitted in the short time it had been operating prior to the evaluation on-site visit.** The casino started operations in October 2014, and it may be too early to judge what an appropriate level of STR reporting from the casino would be, but a continued lack of reporting would be a concern given the inherent risks in the sector. The SFIU sent initial information packs to the casino just prior to its opening regarding its obligations under the AML/CFT legislation, including STR reporting, but no direct contact had been initiated by the SFIU with the casino since it began operating. Inspectors from the Gambling Control Authority (GCA) were actively involved in visiting the casino at the time of the on-site visit, but do not see AML/CFT supervision/regulation as part of their role (see IO3 in chapter 6 for further discussion regarding this issue). It is important that the SFIU undertake further outreach to the casino regarding its reporting (and other) obligations as soon as possible to ensure an appropriate flow of financial intelligence.

95. **There is a very low level of BCRs, which is of concern given that the Samoan economy is largely cash-based and is one of the world's highest recipients of remittance as a share of GDP.** The SFIU and law enforcement agencies are still in the early stages of addressing the risks and vulnerabilities identified in their 2012 NRA, which includes the cross-border movement of cash. Customs is primarily responsible for enforcement of the border declaration regime, which is broadly sound in technical terms. Co-ordination between the SFIU, Customs and Immigration on BCRs has improved in recent years but a lot more work needs to be done. While a lack of resources and capacity building is still an on-going challenge, Samoa continues to work on improving both incoming and outgoing passenger awareness to comply with BCR requirements. Additionally, the SFIU, Customs and Immigration are also improving their co-ordination with TCU and the Samoa Police on the sharing of BCRs and other intelligence so that Samoa may improve the detection of cash at the border as well as improving investigations of proceeds of crime, ML and, should it occur, TF (see analysis of IO.8 above for further detail).

(c) FIU analysis and dissemination

96. **FIU analysis and dissemination supports the operational needs of competent authorities, in particular the Samoa Police and the TCU, only to a limited extent.** Factors limiting the usefulness of SFIU analysis and dissemination include the relatively low number of STRs being submitted by reporting entities, and the very low number of BCRs; the resource challenges facing the SFIU, which have sometimes caused delays in operational analysis and have prevented any strategic analysis from taking place; and the limited functionality of the SFIU database. As noted above, the SFIU has recently employed a new analyst and an IT specialist and is developing a new database; it is expected that this welcome increase in resources and technical capacity will improve the SFIU's analytical functions and support to competent authorities.

97. **While limited in volume and scope, based on feedback provided by recipient agencies during the on-site visit, the quality of the operational analysis conducted by the SFIU is generally good, despite the challenges faced by the SFIU.** The SFIU uses a simple Excel database which permits basic analysis, but does not facilitate more sophisticated analysis. The SFIU analyzes and assesses all STRs and other relevant information provided by the local institutions and authorities as well as information received from foreign counterparts. Once an STR has been received from a reporting entity, the SFIU can require that entity (as well as other FIs) to provide it with all necessary information concerning the transaction and the suspicion, and it does so on a regular basis. The SFIU also requests other relevant agencies (the Samoa Police, TCU, MCIL) for information and checks both commercial databases and Central Bank information regarding capital inflows/outflows and inward/outward

remittances. Based on its analysis and assessment, and if it has reasonable grounds to suspect that transactions are suspicious, the SFIU disseminates reports to the appropriate law enforcement and supervisory authorities.

98. **The number of disseminations by the SFIU to law enforcement is low, but has steadily increased in recent years to an average of five or six per annum.** All of the intelligence reports disseminated in recent years by the SFIU have related to suspected internet scams/fraud. While investigations have been undertaken by the Samoa Police and/or the TCU on the basis of the disseminated material (and some investigations are continuing), none has yet led to successful a prosecution of a predicate crime or ML. The quality of the disseminated information has not been the issue; rather, the need for international co-operation and the difficulty in ‘following the money’ overseas and identifying the true perpetrator in such cases were cited by the SFIU and law enforcement agencies as the major obstacles to successful investigations of disseminated intelligence to date. The difficulties faced are demonstrated by the following examples.

Box 1 – Case Example: FIU analysis and dissemination, cybercrime/internet scam

Investigations into two STRs disseminated by the SFIU in 2012 were carried out by the Criminal Investigation Division of the Police Service. No charges were laid against any persons with regards to these matters. According to the report from the Investigating Officer, the people were victims of an internet scam and fraud. However, it was difficult to trace the people who put together the scam. The identities of the person(s) are unknown the names used are false. The TCU is establishing a database which looks at recording the types of scams and releasing a report that can be used as a warning to the general public.

Box 2 – Case example: FIU analysis and dissemination, possible fraud

Mr R was reported by a money transfer operator due to the significant amount of inward transfers (approximately SAT\$105,000 – or US\$45,000) he received from various senders in a foreign country. SFIU requested the commercial banks to check whether they have any records on Mr R. A request was also made to the FIU in the foreign country for any information about the senders and a report was received. Three local commercial banks confirmed that they do not hold any account for Mr R whilst one bank held an account for Mr R. The account was inactive since January 2013. SFIU prepared a summary report and disseminated the information to Police and TCU in 2014 for information and investigation. Mr R is suspected to be involved in a scam operation. Investigations are ongoing.

99. **Although SFIU information has not been used for the purposes of ML investigation, some use of SFIU information has occurred in proceed of crime actions.** The Attorney General’s Office, which is responsible for proceeds of crime actions, has sought the assistance of the SFIU as part of the intelligence gathering process. The AGO stated that the financial information and intelligence provided by the SFIU, mainly in relation to MLA and proceeds of crime requests, is of good quality and is generally provided in a very timely manner.

Box 3 – Case example: request to FIU for proceeds of crime purposes

In 2011, the AGO requested SFIU for bank accounts of the defendant who has been charged and convicted of theft of \$22,000 and is serving an imprisonment term of 2 years 4 months. SFIU collected the information from banks and provided to the AGO. No further information is available on the proceeds hearing.

100. **The SFIU has operational independence and is not subject to undue influence.** While the MLP Act is clear on this issue, in practice there has been some confusion of roles between the MLPA, CBS and the SFIU, with decisions/recommendations made by the SFIU being referred to the Governor of the CBS (who also constitutes the MLPA) through the Director of the SFIU for final consideration and approval (see TC Annex, Recommendation 29 for further information and analysis). The evaluation team is satisfied that this has not however affected the operational independence of the SFIU on a day-to-day basis, as the Governor has consistently and promptly supported the decisions/recommendations made by the Director of the SFIU, including in relation to requests for further information and disseminations, and has not sought to interfere in the operations of the SFIU. Where the Governor was not available to approve a request or dissemination, the Director of the SFIU has exercised his powers under the MLP Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

Act. Despite this modus operandi not having caused problems in practice, it is nonetheless recommended that the practice of seeking the Governor’s approval on operational decisions, the legal basis of which is unclear, cease and that the Director of the SFIU exercise his decision making powers under the MLP Act. In terms of the deployment of SFIU resources, while there is nothing specified in the CBS’s structural arrangements, in practice the Director of the SFIU has sufficient authority and autonomy regarding the deployment and management of SFIU staff.

(d) Co-operation and exchange of information

101. Law enforcement agencies met with by the evaluation team indicated that the information disseminated by the SFIU is normally of good quality, but also indicated that the flow and types of information and the level of operational co-operation with the SFIU needs to be improved. Law enforcement agencies stated that this could be achieved, for example, through more regular meetings with the SFIU (at least quarterly) and/or through the secondment of a police officer to the SFIU. These suggestions are supported by the evaluation team, which also notes that planned improvements in staffing and database systems should improve the SFIU’s capacity to analyses and disseminate useful information and to engage more actively with law enforcement partners. The SFIU also stated that the working relationship and level of operational co-operation with law enforcement agencies needs to be improved, including through the provision of more regular feedback by law enforcement agencies on the results of disseminations.

102. Domestic law enforcement agencies make limited use of SFIU information through spontaneous requests to the SFIU, but there is scope for greater use of this channel to support predicate and ML investigations. The Samoa Police, TCU and/or the AGO have between them made a total of three or four requests per year for SFIU assistance over the last four years to assist with domestic investigations and mutual legal assistance and informal international co-operation.

<p style="text-align: center;">Box 4 – Case examples: Requests to FIU for information for possible predicate crimes</p> <p>In 2012, police requested the assistance of the SFIU regarding a domestic case whereby a local was being charged with theft as a servant. SFIU gathered information from banks, prepared a report and disseminated to Police as per request. The suspect was convicted.</p> <p>In 2012, the TCU requested the SFIU for information pertaining to persons of interest suspected of being involved in transnational organised crime such as human trafficking and ML. SFIU collected information from banks and reported the findings back to the Police. The TCU requested the information as a joint operation by Samoa TCU and customs of another jurisdiction. The travel movements were suspicious and the modus operandi were similar to human trafficking from the Indian region. The TCU conducted surveillance on the person of interest (POI) and found that the main purpose for coming to Samoa was to facilitate visas for other countries (NZ, AUS, USA). It was recommended to not extend the POI’s permit to remain in Samoa and the POI was ultimately returned to their home jurisdiction as the other Pacific island jurisdiction involved refused them entry. Samoa TCU continues to monitor such movements.</p>
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103. Although some use is being made of SFIU information, law enforcement agencies lack a sufficiently well-developed understanding of the possible uses of financial intelligence and of the role, functions and powers of the SFIU, including how the SFIU could assist at the intelligence gathering stage with the investigations of both domestic and transnational predicate crimes, for example through exercise of its information collection and analytical functions under the MLP Act. The evaluation team is of the view that the use by the Samoa Police and the TCU of SFIU information and other financial intelligence to ‘follow the money’ generally associated with predicate offences to ML is limited in part due to a lack of understanding of the role of the SFIU. The police regularly obtain financial information directly from FIs (through the use of search warrants), but have not made sufficient use of the SFIU’s wide information gathering powers for intelligence or investigative purposes.

104. Despite the existence of formal mechanisms and powers to support co-operation and exchange of information, practical operational co-operation and exchange of information between

the SFIU and other competent authorities is limited and needs to be strengthened. While regular meetings of the MLP Task Force, which includes the SFIU and the main law enforcement agencies and supports co-operation at a strategic level, occur they do not result in adequate levels of operational co-ordination and co-operation on a day-to-day basis. The flow of financial intelligence and information through this mechanism, and through the MOUs between the SFIU and key law enforcement agencies and other competent authorities, to operational personnel is limited¹⁶.

105. **There are no prescribed processes in place to monitor the confidential use and maintenance of information exchanged between agencies, however it appears that authorities protect the confidentiality of the information that they exchange and use, as no violations of confidentiality have taken place.** In practice, the system is heavily based on ‘trust’ that the agencies will maintain professionalism and uphold the integrity of the office they are employed by and as required by the relevant legislation they administer regarding the confidentiality of information that they have access to or have acquired during the course of their employment. SFIU employees are bound by the confidentiality provisions in the MLP Act (section 44) and by the CBS Code of Conduct which, if breached, can lead to disciplinary proceedings. Each employee also signs a declaration of secrecy under the CBS Act 1984, breach of which is an offence. Physical systems and processes are in place for the recording and security of information within the SFIU, the Police and TCU. Regarding the safekeeping of records, all documents, reports and information received by the SFIU are securely stored in the SFIU office. Only SFIU staff have access to this room. The SFIU has its own database (an Excel spreadsheet) which is password protected. Reports (e.g. STRs, BCRs, CIs) received by the SFIU are entered in the database by SFIU staff. Customs also have clearly documented rules and regulations regarding the receiving, classification, storing and sharing of information, which were updated in 2013. All SFIU information is classified as secret and is generally seen only by the CEO and Assistant CEO of Customs in the first instance. Reporting entities are subject to strict confidentiality provisions under section 27 of the MLP Act relating to the submission of STRs; breach of these provisions is an offence subject to fine or imprisonment. To date no violations by reporting entities have occurred.

Overall conclusions on Immediate Outcome 6

106. **Samoa has made only limited use of financial intelligence as a key input into investigations of ML and predicate crime, though more use has been made of financial intelligence to trace assets.** The value to investigative agencies of the pro-actively disseminated intelligence reports for ML and predicate investigations has not been demonstrated. The SFIU produces financial intelligence based on STRs received and additional information from reporting entities as well as from a wide range of sources including the Central Bank, public and commercial databases, other government agencies and law enforcement information. However, the lack of consistent outreach or awareness to the wider financial and DNFBP sectors limits the numbers and types of STRs and other reports received by the SFIU. Further, the fact that the SFIU has not undertaken strategic analysis also undermines its ability to identify emerging ML/TF trends and threats to support targeted investigations of ML and predicate crimes.

107. **Practical operational co-operation and exchange of information between the SFIU and other competent authorities is limited and needs to be greatly strengthened.** There have been a limited number of requests by law enforcement for financial information from the SFIU over the last four years to assist with domestic investigations.

108. **Samoa has a functioning FIU that receives, analyses and disseminates STRs and related financial intelligence to law enforcement agencies.** The SFIU meets nearly all of the technical requirements under the standards. The main area of technical deficiency relates to the absence of strategic analysis, which has a significant impact on effectiveness. The SFIU has not had sufficient

¹⁶ The MOUs signed by the Money Laundering Prevention Authority (MLPA) on behalf of the SFIU with other key agencies (including the Police, Customs, Immigration, Central Bank and the Samoa International Financial Authority) to cooperate and exchange information may however technically be invalid as the SFIU (not the MLPA) is the only agency empowered under section 7(e) of the MLP Act to enter into an MOU with domestic agencies (see TC Annex, Recommendation 29).

resources to perform all its functions (which include both FIU and AML/CFT supervision functions), which also had a substantial impact on effectiveness. Samoa has begun to address this and recently increased SFIU staffing from two to four staff, with further recruitment planned in 2015. This is strongly supported by the evaluation team. Even with increased staffing, it will be important for the Director of the SFIU to ensure that sufficient staff are devoted to core FIU functions and that staff develop the necessary technical expertise to perform their functions.

109. This should enable expansion of its intelligence functions to include strategic analysis, as well as to enable more operational analysis and outreach to be undertaken reporting entities.

110. **Overall, Samoa has a low level of effectiveness for Immediate Outcome 6.**

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

(a) *Circumstances in which ML is being identified and investigated, use of other criminal justice measures*

111. **Despite ML being an offence since 2000, and some preliminary ML investigations having been commenced, there have been no ML investigations leading to ML prosecutions in Samoa.** Parallel financial investigations of predicate crimes are pursued only on a limited basis. While some financial investigations are successfully conducted, for example in fraud cases and for forfeiture purposes on conviction of an offender for the predicate offence, there is generally a lack of a mind-set to ‘follow the money’.

112. **In technical terms, Samoa generally has a sound legal and institutional framework for combatting ML.** Samoa’s ML offence is largely consistent with the international standards. The main areas of deficiency are incomplete coverage of the designated categories of predicate offences, the disproportionately lower maximum penalty (7 years) for ML when compared to the maximum penalties for many of the predicate offences (10 – 14 years) contained in the recently revised Crimes Act 2013, and the absence of a sufficiently dissuasive penalty for legal persons.

113. **The Samoan Police Service and the Transnational Crime Unit (TCU) are the main relevant authorities to investigate ML and have a clear designation to do so.** The Samoan Police Service has established a Criminal Investigation Division (CID) to investigate domestic crime, including ML cases, which are (or would be) the responsibility of the Fraud Squad. The TCU provides investigative and operational intelligence support to the Samoa Police to tackle transnational crime including drug trafficking, ML and terrorism and is responsible for investigating ML cases that include a transnational element. The TCU is a multi-disciplinary unit within the Ministry of the Prime Minister and Cabinet, and is made up of specialist officers from the Police Service, Ministry of Revenue (which includes Customs) and Immigration Department. The Samoan TCU is also part of the wider Pacific network of TCUs through the Pacific Transnational Crime Co-ordination Centre (PTCCC). The PTCCC is hosted by the Samoan government and could be called on to provide further support to Samoan TCU if intelligence arose which led to the ML being investigated in Samoa. Customs, which is part of the Ministry of Revenue, has been mainly enforcing tax and duty offences under the Customs Act and has an understanding that any cases of ML and TF will be forwarded to the Samoa Police for investigation.

114. **Samoan law enforcement agencies do have some expertise and resources to identify and investigate ML but lack experience in ML investigations and face resource and technical capacity constraints.** There are some qualified investigators capable of investigating ML cases within the Samoa Police and other agencies such as TCU (with advice as required from the AGO), but the resources dedicated to the analysis and investigation of complex/financial crimes are relatively scarce. There are no forensic accounting specialists within the Police or TCU, though there is some capacity to call on accountants/auditors (both from private practice and the Auditor General’s Office) to assist. This has been done in relation to some fraud cases. A number of police officers have received training on AML issues, in particular from the Australian Federal Police, though during the on-site visit the Police

themselves acknowledged that they have limited expertise and no experience in investigating ML and how to investigate and prosecute more complex financial crime. Further training, including on the detection and investigation of third-party ML, would no doubt assist, but a bigger challenge appears to be implementation of the training already received: that is, changing the mind-set to ‘follow the money’, identifying appropriate cases (which might be relatively rare given the low level of domestic proceeds-generating offences), where a ML offence can be used, and devoting sufficient resources to gather the necessary evidence.

115. The close working relationship established with the competent authorities, in particular the FIU and police from New Zealand and police from Australia, is another source of expertise that could be called on if required to support any ML investigation, particularly in a more complex case. Support provided to Samoa includes the placement of experienced staff as part of the PTCCC, and the placement by New Zealand and Australia of Liaison Officers who as appropriate act as advisers/mentors to the Samoa Police, as well as helping to coordinate the provision of operational co-operation.

116. The AGO has a coordinating role for investigations, and is responsible for proceeds of crime matters under the POCA. The evaluation team was impressed by the levels of professionalism and technical knowledge generally displayed by the AGO during the on-site visit. All solicitors have been trained in identification of proceeds of crime though all criminal prosecutions are handled by the Criminal Division of the AGO. However, as discussed below, the main focus of the AGO to date in this area has been on building the expertise of all involved agencies in the taking of forfeiture action, which is the AGO’s statutory responsibility under the POCA. Steps have been initiated to strengthen the limited accounting expertise and to develop forensic accounting capacity in the Audit Office, but these resources are fully dedicated to investigating predicate crimes (eg fraud) and associated confiscation action. No ML cases have been brought to the AGO for prosecution; nor has the AGO suggested to the Samoa Police that ML charges might be open on examination of a brief of evidence for a predicate crime. Two potential ML investigations have been identified in recent times, but to date investigations have been limited to gathering evidence on the predicate offence. One case involves money being deposited from an overseas account into a local account, while the second case involves the importation of a small amount of methamphetamine and any related money trail¹⁷.

117. Samoa has therefore in recent years concentrated its limited investigative resources on investigating and prosecuting predicate offences as well as seizing confiscated assets as this is seen as equally (or more) effective in deterring and preventing ML. Samoa has successfully prosecuted a number of proceeds-generating predicate offences and has successfully pursued the proceeds of crime in a number of cases (as outlined in the analysis of IO.8). Samoan authorities indicated that the securing of a conviction for the predicate offence allows the procedure for forfeiture of proceeds of crime, whereas ML investigations may not be able to provide sufficient evidence to secure a ML conviction. In addition, the authorities believe that any sentence imposed for a ML conviction in a self-laundering case (the majority of likely possible domestic ML cases in Samoa) would in all likelihood be served concurrently with the predicate offence. Samoa takes sentencing guidance from other similar jurisdictions (eg New Zealand - refer section 84(2) of the Sentencing Act 2002). Concurrent sentences, as distinct from cumulative sentences, are generally considered appropriate if the offence for which the offender is being sentenced is of a similar kind and connected to a series of offences. Other guidance in sentencing is provided by case law eg the NZ case of R v Wallace (CA 415/98) held that sentencing for money laundering should bear a relationship to sentences for the particular principal offending and should be approached on a similar basis. In addition, the lower maximum penalty for ML as compared to a number of predicate crimes was cited by authorities as a factor in the absence of ML investigations/prosecutions

¹⁷ The evaluation team as subsequently advised that the methamphetamine was confiscated and that no proceeds of crime were generated in Samoa from this importation; nor was their evidence detected of proceeds having been generated by previous importations. However, the AGO advised that proceeds of crime action is being taken in relation to the container in which the methamphetamine was imported as an instrument of the crime.

in Samoa (although it is noted that some predicate crimes such as trafficking and murder would necessarily warrant a higher maximum penalty than the penalty for ML).

118. **The evaluation team understands and accepts to some extent the reasoning behind this approach, in particular for minor self-laundering cases, and the fact that it is not always possible to undertake successful ML investigations and prosecutions relating to proceeds-generating offences, however this does not justify a complete absence of ML investigations and prosecutions.** Although the FATF Standards allow for the use of ‘alternative criminal justice measures’ where a ML investigation has been pursued but it is not possible to secure an ML conviction, these alternative measures should not diminish the importance of or be a substitute for prosecutions and convictions for ML. In addition, even if it were accepted that it was not possible (or, possibly more accurately, on balance considered not worthwhile) to pursue ML in some or many cases of self-laundering, it seems very unlikely that there have been no instances of third-party or stand-alone ML offences in Samoa (for both domestic and foreign proceed-generating offences) in the 14 years since the ML offence was introduced.

119. **Having said this, it is important to be realistic about the ‘optimal’ number of ML investigations that might be pursued each year, in particular given the low level of domestic proceeds-generating offences.** It is quite likely that the number of such cases each year will be low, but it is noted that other Pacific Island jurisdictions with broadly similar risks have undertaken limited numbers of ML investigations and/or prosecutions in recent years. The consistency of ML investigations with Samoa’s ML risk profile is discussed further in the next section of this report.

120. **The limited use of financial intelligence and information, and lack of sufficient operational co-ordination between the law enforcement agencies and the SFIU, is another factor behind the lack of ML investigations.** As discussed above under the analysis of IO6, there is a limited (though slowly increasing) flow of financial intelligence into and out of the SFIU through STR and other reporting and analysis, and the SFIU is available to provide financial analysis and intelligence support to the police and TCU if called upon to do so. This has happened to some extent (though not in relation to ML investigations), but there is scope for further day-to-day operational co-operation and co-ordination between the SFIU and investigative agencies. Central to the limited co-operation is an insufficiently well-developed understanding amongst investigative agencies of the role, functions and powers of the SFIU and how the SFIU can assist with the intelligence aspects of investigations of both domestic and transnational predicate crimes and associated ML.

121. **Another practical challenge facing the police and TCU in the investigation of the ML aspects of intelligence disseminated by the SFIU is that most cases have related to internet scams.** These cases are difficult to successfully investigate (see the examples in Box 1 above), and there is little or no cybercrime capacity with the TCU (though international counterparts could be called on for assistance). In addition, depending on the facts of each case and whether local Samoans have been involved as facilitators in the alleged scams, because these internet scams relate to people generally sending funds offshore, there may be no domestic offence/criminals to be investigated.

(b) Consistency with Samoa’s threat and risk profile and national AML/CFT policies

122. **Even though the risk of ML in Samoa appears to be relatively low domestically, risks are higher in the offshore sector, and a complete absence of ML investigations is not consistent with the country’s domestic and foreign risks and threats.** The Samoa Police maintain comprehensive annual statistics on crime types. For example, in the 2013-14 financial year, 13,389 criminal activities were recorded. Although financial crime and ML are not clearly recorded in these statistics, proceeds-generating criminal activity in 2013-14 included obtaining credit falsely (55), cybercrime (23), illegal lotteries (1) and drug offences (137). While it is very difficult to quantify with any precision, discussions with the Samoan authorities indicated that, on average, possibly up to five or six more serious proceeds-generating cases (relatively speaking) might be occurring per year in which ML investigations would be justified and possible, for example, more serious fraud, corruption and drug cases. Samoa is urged to begin to conduct these types of ML investigations on a regular basis.

123. **Samoa's prosecution of offenders for proceeds-generating predicate offences and taking of subsequent forfeiture action is partly consistent with the risk and threat profile in terms of domestic proceeds-generating crimes** (see IO.8). Such actions have largely related to possession of narcotics, though it is noted that there has been a relative lack of similar action in relation to more serious drugs cases and to fraud cases. Although some of the intelligence disseminations by the SFIU have involved the suspected use/misuse of MTOs to remit the proceeds of scam/fraud offences, there have been no prosecutions involving the channels identified as higher risk identified in the 2012 NRA (ie the international sector, MTOs and the cross-border movement of cash).

124. **While the lack of investigations in Samoa involving IBCs is noteworthy, given the potential risks posed by IBCs and identified, it is also noted that the perpetrators or proceeds of any foreign offences involving an IBC are very unlikely to be in Samoa (as only non-residents can create an IBC and very few IBCs have bank accounts in Samoa).** Therefore, any investigations of predicate and/or ML offences involving Samoan IBCS would most likely be triggered by a foreign request for information or assistance. While Greece sought information regarding beneficial owners of an international company in 2012, Samoa was unable to assist as the information did not meet the criteria for MLA as it did not relate to a criminal matter and no further requests were received from Greece as a result. In 2013, the UK requested information of a company set up under a trust in Samoa and advice was accordingly provided. No further assistance was requested.

Overall conclusions on Immediate Outcome 7

125. **While Samoa has the basis for a solid ML offence there have been no ML cases investigated or prosecuted.** The reasons for this include a lack of a clear policy (and associated law enforcement mind-set) to 'follow the money', the relatively low level of domestic proceeds-generating crimes, an under-developed capacity to investigate ML, low levels of operational co-ordination between agencies, the fact that the proceeds of any foreign offences involving Samoa (including its offshore centre) are unlikely to be in Samoa, and the fact that the penalties for ML are not dissuasive, when compared to those for many predicate offences.

126. **There is insufficient commitment from all agencies involved in the investigation and prosecution of crime to focus on ML convictions.** A ML conviction will require improved understanding of each agency's role and responsibilities, enhanced domestic co-ordination particularly at an operational level, and improved and appropriate resourcing (including financial and technical resources) to enable the successful investigation and prosecution of ML offences. Successful prosecutions would also act as an increased deterrent to offenders and would reinforce the need for and value of reporting by FIs and DNFBPs. The benefits to reporting institutions of submitting STRs and other reporting could be seen as minimal.

127. **Samoa has a low level of effectiveness for Immediate Outcome 7.**

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

(a) Confiscation as a policy objective

128. **Confiscation is being pursued as a policy objective.** Samoa does not have an explicitly stated national AML/CFT strategy or policy in relation to confiscation of the proceeds of crime, but it has in recent years concentrated its limited investigative resources on investigating and prosecuting predicate offences as well as confiscating criminal proceeds and instrumentalities of crime (as outlined above in the analysis of IO.7).

(b) Confiscation of proceeds from domestic and foreign predicates, and proceeds moved to other countries

129. **Samoa has a good legal framework for freezing, seizing and conviction-based confiscation of proceeds of crime and instruments of crime.** The Proceeds of Crime Act 2007 (POCA) contains an extensive array of powers to support seizure and confiscation. Seized and confiscated goods are effectively managed. In the event that the proceeds are not available to be confiscated, there is a power to order payment of equal value in substitution for the forfeiture, though this power has not been used.

130. **In addition, under the Mutual Assistance in Criminal Matter Act 2007 (MACMA), Samoa is able to provide assistance to foreign States in relation to the enforcement of foreign confiscation orders and restraining orders.** Samoa is also able to request assistance from foreign states to enforce orders made under MACMA. However, no requests have to date been made and accordingly it is not possible to determine the effectiveness of the law. The repatriation and asset sharing measures are also in place but have not been called into use.

131. **While the amounts confiscated are low in absolute terms, Samoa has in the last two to three years begun to make good use of its conviction-based proceeds of crime regime, regularly taking action to confiscate proceeds/instrumentalities of predicate crimes.** Between January 2012 and September 2014, the AGO has made 17 applications for restraining and/or forfeiture orders under the POCA, of which 13 have been successful (see Table 4 below for summary of confiscation action). These applications relate solely to domestic predicate offences (no confiscations have been made in relation to foreign predicate offences), the prosecution of which have been initiated by the police. The types of property restrained and/or forfeited include houses, cash (both located on persons/properties and in bank accounts), motor vehicles and other goods. The approximate total value of property forfeited to date is \$38,000 SAT (approximately US\$16,500).

Table 4: Confiscation action under the POCA, January 2012 – September 2014

	2012	2013	2014	Total
Restraining orders granted	-	1	2	3
Forfeiture orders granted	5	3	2	10
Did not proceed		1	3	4

Box 5: Case Example: Confiscation of instrument of crime

Attorney General v Faisaovale C.A. 06/11

The Supreme Court Decision in Attorney General v Faisaovale [2011] WSSC 56 (24 June 2011) was appealed by the AGO, as there was forfeiture of cash but forfeiture of the vehicle was declined. In the Court of Appeal, the AGO contended that the cash and the vehicle complement each other as instruments of crime and therefore are both ‘tainted properties’ pursuant to the Proceeds of Crime Act 2007. The Court of Appeal consequentially ordered the forfeiture of the vehicle to the State of Samoa.

(c) Confiscation of falsely or undeclared cross-border transportation of currency /BNI

132. **The 2012 NRA identifies the cross-border movement of cash as an area of higher risk, particularly given the cash-based nature of Samoan society.** The risks include concealing the movement of currency from one jurisdiction to another using people, luggage, mail or any other mode of shipment without declaration. The risk in this area is likely to have increased as a result of the recent opening of a casino in Samoa.

133. **While the legal framework appears generally adequate, Samoa’s ability to detect and seize falsely/not declared cross-border movements of currency/BNI is very limited.** This is primarily due to a lack of resources and technology to adequately screen persons and cargo at the border, a split of responsibilities and data and lack of operational co-ordination between relevant agencies (Customs, Immigration, Samoa Police and the SFIU), and the absence of timely intelligence to support targeting of

persons and cargo by enforcement officials. Some steps have been taken recently to improve the level of detection (increased signage; introduction of X-ray machines which can detect large amounts of cash), and further measures are planned (for example, use of canines trained in the detection of cash), but the lack of profiling means that the approach being taken is ad hoc and relies primarily on Customs officials having a suspicion that a person might be carrying undeclared cash.

134. **Very few border cash reports are being submitted (seven in total in the last four years) and there have been no detections or seizures of undeclared cash.** Samoan authorities believe that the legitimate carrying of cash in amounts below the threshold of \$20,000 SAT (US\$8,600, quite a large amount in the Samoan context) is quite common, so the level of reporting is not expected to be very significant. However, authorities nonetheless believe that there is under-reporting. Customs officials have been able to detect instances of undeclared high value/false value goods.

135. **Customs officials met during the on-site visit consider the risk of ML/movement of cash in the passenger environment to be relatively low, with higher risks existing in the cargo environment.** Fagalii and Faleolo Airport are the two international ports of entry in Samoa. Fagalii caters for flights to and from American Samoa whereas the latter accommodates a range of flights from New Zealand, Hawaii, Australia, Fiji, Tonga and other international ports. The two wharfs in Apia and Aleipata are also international ports as they cater for ferries from overseas, mainly Pago Pago, Tokelau, and Cook Islands. The cargo environment is considered to be porous despite the recent limited introduction of X-ray machines and use of canines at ports (there is only one machine and one canine available).

(d) Extent to which confiscation results reflect ML/TF risks and national policy and priorities

136. **Confiscation results do to some extent reflect the domestic ML/TF risks, with action taken primarily in relation to low level drug and, to a lesser extent, fraud cases, but more needs to be done in relation to more serious domestic crimes and the cross-border movement of cash.** The majority of domestic crimes in Samoa are possession of narcotics (mostly cannabis), burglary, assaults, and a growing rate of theft from an employer. Despite there having been no investigations and/or prosecution of ML, Samoa's recent proceeds of crime suppression efforts are to be commended in light of the fact that confiscation orders are routinely sought and granted in relation to assets associated with several of the crimes assessed as posing the highest ML risk (in particular, drug-related crime). However, it is noted that only very limited action has been taken in relation to more serious drugs offences, fraud, theft and burglary. While it is conceded that the overall level of domestic proceeds is quite low, and more serious/larger cases seem to be rare, Samoa is urged to consider taking confiscation action in relation to more serious cases wherever possible. Increased specialist law enforcement staff resources coupled with further training, particularly in relation to financial investigations, would secure even better results.

Overall conclusion on Immediate Outcome 8

137. **Samoa's legal framework for confiscation is generally sound and Samoa has taken concrete action in recent years to pursue the forfeiture of criminal proceeds under the Proceeds of Crime Act.** Confiscation is being pursued as a policy objective and Samoa's recent proceeds of crime suppression efforts are to be commended. However, confiscation efforts to date have been very largely concentrated on lower level drug crimes; the authorities are urged to pursue the proceeds of more serious offences, where they occur (for example, more serious fraud/theft cases and drug-related cases), and a wider range of predicate offences. Increased pursuit by the police of ML cases in parallel with their investigations of predicate offences would also increase the possibility of related confiscation action being taken. While the legal framework for the confiscation of falsely or undeclared cross-border transportation of currency /BNI is sound, effectiveness needs to be significantly improved through

increased resources, improved operational co-ordination and, as appropriate, through international assistance and co-operation.

138. **Samoa has a moderate level of effectiveness for Immediate Outcome 8.**

3.6 Recommendations on legal system and operational issues

Recommendations on IO.6:

139. Samoa should continue as planned to expand the resources of the SFIU so that the SFIU can better carry out its FIU (and supervisory) functions.

140. To avoid any appearance of lack of operational autonomy, the Director of the SFIU should exercise his clear decision-making powers under the MLP Act in relation to the functions of the SFIU (for example, in relation to operational issues and dissemination of intelligence) without reference to the Governor of the CBS (either as Governor or as the MLPA).

141. The SFIU should develop and then enhance its strategic analysis function, and increase the quality and quantity of its operational analysis and dissemination, including through the use of a more sophisticated database and analytical software, particularly given the relatively large number of capital inflow/outflow and remittance reports to which the SFIU has access.

142. The SFIU should use the national risk assessments as a basis to enhance increased outreach and education and to improve the quality and quantity of STR reporting.

143. The SFIU and CBS should engage more regularly with the private sector through increased industry consultation forums and up to date briefings and increased risk-based on-site supervision to improve the level and quality of STRs.

144. Law enforcement agencies (primarily the Samoa Police and TCU) should enhance their use of financial intelligence, particularly disseminations by the SFIU and through better use of SFIU information and intelligence holdings.

145. The SFIU and CBS should engage more regularly on an operational level with other government agencies involved in AML and CFT through joint initiatives, regular briefings, education on ML, financial intelligence, the role of the SFIU to support these agencies and assisting in facilitating engagement between the agencies and the private sectors through industry forums. Consideration should be given to the secondment of a police officer to the SFIU (possibly on a part-time basis) and/or placement of SFIU staff in the TCU and/or Samoa Police (again, most likely on a part-time basis).

Recommendations on IO.7:

146. The technical deficiencies in the criminalisation of ML, including the missing predicate crimes/inadequate coverage and inadequate sanctions for both natural and legal persons, should be addressed.

147. Priority should be given to improving strategic and, in particular, operational co-ordination between law enforcement, TCU, SFIU and AGO, including the improved use of financial intelligence.

148. ML investigations should be pursued as a matter of policy, particularly (but not only) in relation to more serious proceeds-generating offences and third party money laundering, when they occur.

149. Law enforcement agencies should develop an improved knowledge and understanding of ML and TF and how to use financial intelligence in investigating such crimes.

150. Law enforcement agencies should prioritise and give investigative focus to pursuing parallel financial investigations of ML and of major proceeds-generating offences, to target organised crime, tax offences, domestic and foreign proceeds of crime and other high threat areas.

Recommendations on IO.8:

151. Samoan police and prosecution authorities should continue to prioritise the confiscation of proceeds of crime and examine the complete chain of action to determine why actions to confiscate and recover criminal proceeds are not effective, including any legislative or institutional framework issues.

152. Priority should be given to pursuing confiscation action in more serious/complex cases as opportunities to do so arise (including in relation to pursuing the proceeds of foreign predicate crimes which may be being laundered in/through Samoa). This would complement and augment the frequent action already being taken in relation to pursuing the proceeds of lower level domestic drugs and fraud cases.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings

- **There is no evidence of terrorism or TF having occurred in Samoa** which is consistent with the low level of risk identified in the 2012 National Risk Assessment and in other regional assessments of TF risk¹⁸. The main risk appears to relate to the international (offshore) sector, but no cases have been detected either domestically or by foreign counterparts.
- **Samoa's TF offence is broadly consistent with the international standards**, but some significant technical deficiencies remain.
- **Samoa has a reasonably sound legislative framework for seizing without delay terrorist funds and assets in accordance with UNSCR 1267/1988** but is unable to propose individuals or entities for designation as required under these resolutions.
- **Samoa has a legal mechanism to designate individuals and entities pursuant to UNSCR 1373** but no designations (or declarations) have been made. The mechanism for freezing the assets of a designated entity (reliance on the POCA Act) has significant deficiencies.
- **There has been insufficient outreach to and oversight of NPOs for AML/CFT purposes.**
- **There does not appear to be any legal framework by which Samoa can implement targeted financial sanctions relating to the proliferation of weapons of mass destruction.**

4.1 Background and Context

153. **There has been no evidence to date of terrorism or TF occurring in or through Samoa.** This is consistent with Samoa's low risk terrorist financing profile, though some risk of terrorist financing remains primarily due to inherent risks associated with the international sector. Samoa has legal mechanisms relating to terrorism and TF, though there are some technical deficiencies in the framework. Terrorist financing was recently criminalised under the Counter-Terrorism Act 2014 (CT Act) and the offence is broadly consistent with international standards, although some significant deficiencies remain. Terrorist property can be frozen without delay or notice in the case of individuals or entities listed in the old UN Consolidated list (Al-Qaida and the Taliban). There is no ability however to immediately freeze property belonging to other terrorists or terrorist groups. Samoa has a relatively large and active NPO sector. While TF risks appear to be very low, awareness amongst NPOs of the potential risk of TF (and ML) could be improved and this sector is not adequately covered under the AML/CFT regime. Samoa does not have any legal mechanisms to implement targeted financial sanctions related to proliferation financing.

4.2 Technical Compliance (R.5-8)

Recommendation 5 – Terrorist financing offence

154. **Samoa is rated PC with R. 5.** The offence in section 23 of the CT Act covers the financing of a terrorist act or entities, but does not criminalise the collection or provision of funds to individual terrorists (other than those specified under the CT Act) where there is no connection to a terrorist act or an act causing death or bodily injury. Nor does it criminalise the collection or provision of funds in relation to aircraft safety, nuclear material, and fixed platform offences as these offences are not provided for within the definition of a terrorist act. The maximum penalty with respect to legal persons is not sufficiently proportionate or dissuasive and there is an absence of an express mental element in the TF offence.

¹⁸ Pacific Transnational Crime Assessment, 2014. Produced by the Pacific Islands Forum Secretariat.

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

155. **Samoa is rated PC with R.6.** In the CT Act, Samoa has adopted the ‘UN Consolidated List of Individuals and Entities belonging to or associated with the Taliban and Al-Qaida’ (although it is noted that this consolidated list no longer exists and that there are now two separate lists which combined would make up the original list). Property of these individuals and entities can be immediately frozen. There is however no mechanism for Samoa to propose individuals and entities for listing or delisting to the UN Sanctions Committee as required by UNSCR 1988. Samoa may declare individuals and entities to be terrorists or terrorist organisations (in compliance with UNSCR 1373) and most of the criteria to do so are based on the criteria in UNSCR 1373. To date no such declarations have been made. In the event a declaration were made, the property of the individual or entity would not be able to be immediately frozen. Reliance is made on the forfeiture and restraining order provisions of the Proceeds of Crime Act. There is no provision in the CT Act to give effect to cross-border requests to declare an individual or entity to be a terrorist/terrorist organisation under UNSCR 1373.

Recommendation 7 – Targeted financial sanctions related to proliferation

156. **Samoa is rated non-compliant (NC) with R.7.** Samoa does not have any legal mechanisms to implement targeted financial sanctions relating to proliferation of weapons.

Recommendation 8 – Non-profit organisations

157. **Samoa is rated PC with R.8.** There has been no targeted approach and limited outreach to the NPO sector on AML/CFT matters, and there is no monitoring of compliance with any AML/CFT requirements.

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

(a) *Extent to which terrorist financing is pursued and consistent with the country’s risk profile, integration with counter-terrorism strategies*

158. **Based on the assessment of risk and context undertaken in the 2012 NRA, the Samoan authorities, at a strategic level, have a good understanding of the level of TF risks, which have been assessed as low.** More broadly, Samoa is included in joint work to assess transnational crime risks, including terrorism risks, through the Transnational Crime Unit (TCU) and the broader Pacific Transnational Crime Co-ordination Centre (PTCCC) network. There have been no TF detections, investigations, prosecutions, or convictions in Samoa which is consistent with Samoa’s assessment of the TF risks it faces.

159. **There also seems to be a high-level strategic commitment to address TF issues (if they were to arise), evidenced by the creation of the MLPA and the MLP Task Force.** Key representation on TF issues is provided by the AGO, the Police, Customs, the TCU, Immigration and the SFIU. As outlined under the analysis of IO.7, this high level strategic co-ordination is not sufficiently replicated at an operational level, but given the low level of TF risk this concern has not had any practical impact to date. Moreover, based on discussions with relevant agencies during the on-site visit, and the evidence of good co-ordination in other cases involving international co-operation (see analysis of IO.2), the evaluation team is of the view that there would in fact be strong strategic and operational co-ordination between agencies should detection of something as serious as a possible terrorism or TF-related offence occur. The Small Island Developing States (SIDS) Conference, which was held in Samoa in August 2014 and involved significant security issues and international co-operation, is a recent good example of strong and effective strategic and operational co-ordination on the part of the Samoan authorities.

(b) *Extent to which terrorist financing is identified and investigated*

160. **Although there have been no TF cases identified or investigated to date, Samoa has prioritised the investigation of transnational crime generally, including potential terrorism and TF, through the creation of the joint-agency TCU which is linked to the wider Pacific network of TCUs through the PTCCC and to Interpol.** The TCU and broader PTCCC network contribute to the assessment of transnational crime risks, including TF, as well as investigative responses to TF at the targeting and investigation stages. The PTCCC is hosted by the Samoan government and would be called on to provide further support to the Samoan TCU in the situation that intelligence arose which led to the TF being investigated in Samoa. This strategic approach is taken to make full use of the few available resources in Samoa and to draw on specialist resources from outside of Samoa to address transnational crime risks.

161. **Despite the existence of the TCU and a good understanding of TF risks at a strategic level, understanding about TF within law enforcement at the operational level is limited and there is limited specialist capacity available to undertake a TF investigation if required.** There also appears to be a lack of focus on financial investigations or a sufficient interest in following the money. However, Samoa's open approach to international co-operation and track record in drawing on resident foreign law enforcement liaison officers should allow Samoa to overcome knowledge and capacity gaps if a TF case were initiated. The presence of liaison officers from foreign law enforcement agencies and the PTCCC based in Samoa ensures that immediate specialist technical capacity would be able to be obtained during the course of a potential TF investigation. The AGO would be closely involved in overseeing any terrorism or TF investigation by the TCU at an early stage.

162. **Prosecution authorities appear to have the capacity to prosecute a TF case.** As in the case of any ML investigations, Samoa would be able to draw on regional expertise as required through the Pacific Islands Law Officers' Network (PILON) and other specialist legal structures from partner governments to supplement capacity of the prosecutors' office if a TF prosecution were to be undertaken in Samoa.

163. **One area of TF risk is that Samoan-formed IBCs may be misused in another jurisdiction for TF purposes, though there is no evidence that this has actually occurred.** Investigations of such IBCs would, as a matter of course, involve international co-operation and are likely to be initiated in another jurisdiction. The risk is mitigated to some extent by Samoa's relative strengths in respect to international co-operation, as documented in IO.2, and the obtaining of beneficial ownership information in relation to IBCs (see IO.5). In relation to the latter, although requests are not common, Samoa has in fact been able to provide beneficial ownership information to a requesting country except in one MLA request which did not relate to a criminal matter. There are some challenges around the currency of the information as it may only be updated annually by the TCSP and with respect to being able to access the beneficial ownership information in a timely manner if the original documentation is held by a third party introducer. As recommended elsewhere in this report, it is important that TCSPs increase their ability to detect suspicious transactions, including any that may relate to TF. As outlined in the analysis of IO.10 below, TCSPs are aware of their obligations in relation to TF and check the names of individuals and entities on UN Taliban/Al Qaida sanctions lists received from the SFIU and report back the results of those checks (no funds have ever been detected).

164. **The majority of money sent to or from Samoa utilises a large international remittance company and the two foreign-owned domestic banks operating in Samoa.** These two banks are headquartered in Australia and have strong regulatory and compliance infrastructure and processes which would greatly assist in any funding associated with terrorism to be identified and managed. The remittance company also has CDD and other processes which support the identification of illicit funds either into or out of Samoa, and help to mitigate the risk of TF.

165. **The criminal sanctions for the TF offence relating to natural persons are proportionate and substantive and would support the application of effective sanctions.** However, given that the TF offence has not been used in Samoa, there is no basis on which to assess how well the sanctions are being applied in practice.

166. **There are sanctions for legal persons but, as noted in the TC Annex, they are not sufficiently proportionate or dissuasive.**

Conclusion of Immediate Outcome 9

167. **In the absence of any terrorism or TF ever having been detected or investigated in Samoa, on balance the evaluation team is satisfied that Samoa would be able to identify and investigate terrorist financing reasonably effectively and would, therefore, be able to demonstrate some characteristics of an effective system.** In coming to this conclusion, the evaluation team places significant weight on the low level of terrorism and TF risk in Samoa; this low level of risk, and the seriousness of any TF or terrorism investigation, makes it likely in the evaluation team's view that sufficient resources and priority would be given to the effective investigation of TF by the MLPA should it be required. The authorities strongly indicated that, should it be necessary, the investigation of TF would be given the highest priority by all relevant competent authorities. In addition, any TF offence is likely to be triggered by an international request for assistance and therefore get the necessary resourcing. It is recognised that the offshore sector is generally considered higher risk for ML which suggests that TF may have slightly higher risks and, although no evidence was available to support this, it is important that TCSPs increase their ability to conduct meaningful ongoing due diligence on IBCs and to detect suspicious transactions, including any which may relate to TF.

168. **The MLP Task Force ensures that strategic co-ordination would be in place to support the investigation and prosecution of TF and terrorism if it became necessary.** Operational co-ordination for transnational crime cases is well supported by the TCU/PTCCC framework, although domestic operational co-ordination generally requires improvement. In addition, while the risk for TF and terrorism is low, the capacity to investigate them requires improvement. However, in the unlikely event that a terrorism or TF investigation were required in Samoa, the evaluation team is satisfied that, firstly, the necessary operational co-ordination would occur, reflecting the high priority Samoa would place on any TF case and, secondly, that Samoa would be able to apply some investigative capacity, including if necessary with the assistance of resident foreign law enforcement liaison officers and/or the relevant Pacific island networks.

169. **Overall, in view of the above and taking into account risk issues, Samoa has a moderate level of effectiveness for Immediate Outcome 9.**

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

(a) Extent to which terrorists are deprived of assets and instrumentalities/implementation of targeted financial sanctions

170. **The legislative framework provides the ability to freeze assets without delay but this is limited to the freezing of assets of terrorists and terrorist groups designated by the UN under the UN Taliban/Al Qaida sanctions (UNSCRs 1267/1988 and 1989).** The type of property that can be restrained is subject to some limitations. Given that the obligation on parties to understand if their customers or parties to transactions have any relationship of ownership or control with a UN-designated entity is indirect, guidance does not appear to support the implementation of controls to check if a customer or transaction is an entity acting on behalf of, or at the direction of a designated entity.

171. **An entity or individual declared by the Samoan Prime Minister under the CT Act is subject to the confiscation and restraining provisions of the POCA,** though there have been no such declarations. Otherwise the POCA requires a conviction or pending charge for a serious offence (which Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

includes TF). The property must be ‘tainted property’ (proceeds and instrumentalities) or the defendant must have derived a benefit from or exercised control over the property.

172. **The SFIU has taken some steps to support effective implementation of targeted financial sanctions to ensure that freezing can occur without delay in the case of any matches with UN-designated persons or entities.** The SFIU provides regular updates to FIs and TCSPs to monitor the lists published by UN Sanctions Committees to ensure that they are aware of listings and de-listings, although the alerts are not automatic and are not provided to all reporting institutions, they are sent to the entities constituting the majority of the domestic and offshore sectors. The financial sector, including the international financial sector, receives the Al Qaida and Taliban lists from the SFIU and monitors and verifies them against bank accounts and customers. No funds have ever been identified in the domestic or international sectors that have links to terrorism of TF. This is consistent with Samoa’s context, as described above.

173. **From discussions with representatives of various FIs, it is evident that the banking sector in particular, with specific reference to the two foreign-owned domestic banks, has a high-level of awareness of the requirements related to UN Taliban/Al Qaida sanctions and is taking action to implement measures.** This is in response to their group/home supervisor obligations as well as the obligations in Samoa. Discussions with the TCSPs also revealed that they are aware of their obligations in relation to TF. As a matter of practice, the TCSPs check the names of the individuals and entities on any UN Taliban/Al Qaida sanctions lists received from the SFIU and report back the results of those checks. Other DNFbps do not appear to be aware of their obligations in this area. There has never been a report indicating the presence in Samoa of assets individuals and entities on this list. Implementation by other reporting entities appears limited. It is also unclear how Samoa will manage false positive cases within FIs and DNFbps.

174. **The SFIU has not conducted sufficient outreach to financial sector entities and DNFbps to raise awareness of TF risks and the need for mitigation, including the potential risk of assets related to the UN Taliban/Al Qaida sanctions being present in the Samoan economy.** This is particularly important noting that the offshore sector and in particular TCSPs and IBCs may be exposed to TF, without necessarily realising it.

175. **Samoa has never proposed a designation to the UN Sanctions Committees and does not have a specific mechanism for proposing individuals and entities to the UN.** However, given the context in Samoa (including a low risk of terrorism and terrorist financing), the lack of any designations by Samoa is not regarded as an effectiveness deficiency by the evaluation team. Despite the absence of a clear legislative mechanism for designation, the Foreign Ministry and law enforcement agencies are in a position to coordinate and collect the relevant information required to complete the pro-forma templates provided by the UN should the need arise.

176. **In relation to designations under UNSCR 1373, while there is a limited legal framework for domestic designations, none have been made.** Similar to the lack of designations submitted to the UN, the lack of domestic designations under UNSCR 1373 is reflective of the domestic context for terrorism and TF in Samoa. In addition, Samoa has never received a foreign request to give effect to another jurisdiction’s 1373 designation.

(b) Abuse of the non-profit sector

177. **Even though the risk to the small NPO sector with respect to TF appears to be very low (on the basis of the nature of the NPO sector in Samoa), there is insufficient outreach and oversight for AML/CFT purposes and the last targeted approach was undertaken in 2009 by the MLPA in collaboration with MCIL.** No agency is responsible for the monitoring and supervising of the NPO sector although the MCIL is the competent authority for receiving and investigating complaints against

NPOs. Transparency of NPO information has increased through the online registration process. However, it is noted that there are no specific AML/CFT requirements as part of the registration process (eg. to know your beneficiary NPOs).

178. **Samoa has not undertaken a domestic review of its NPO sector since the 2006 MER.** The 2012 and the draft 2014 NRA do not include an analysis of the NPO sector. NPOs are however generally the recipients of funds from overseas (through grants, aid and so forth) and rarely are funds transmitted overseas. Although TF risks in relation to the NPO sector are generally considered to be very low, an analysis of the sector, including the nature of NPOs and how they are funded, would enable Samoa to identify whether there are any vulnerabilities requiring a response.

(c) Terrorist assets seizure and confiscation

179. **The ability to freeze property without delay is provided for in the CT Act in relation to individuals and entities on the ‘UN Consolidated List’ and is limited to those individuals and entities on that list.** With regard to the property of an individual or entity designated by means of the domestic declaration mechanism, this is governed by the POCA (although as noted previously, it is unclear how the POCA would be applied in practice). An application for a restraining order (an order freezing any dealings with the property) may be made without notice but any final order requires either a conviction for a serious offence or a pending charge of a serious offence. This is contrary to the requirement to freeze without delay as it requires a conviction or a pending charge of a serious offence in respect of the individual or entity. The prohibition of dealings in Samoa is available regardless of the freezing mechanism.

180. The effectiveness of freezing and confiscating in the context of criminal investigations and prosecutions of TF is considered at IO.8.

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

181. There are some legislative frameworks and systems in place to prevent TF and to freeze the assets of terrorists. Samoa is able to immediately freeze the assets of individuals and entities on the Al Qaida and Taliban UN List without delay. Samoa can also, through the domestic designation mechanism, designate individuals and entities as terrorists under UNSCR 1373 if the need arises. The assets of those individuals and entities are able to be frozen, although this is not able to be done without delay. Samoa also has systems in place, such as the circulation of updates received from the UN to FIs and TCSPs, to ensure that the more vulnerable sectors are able to monitor their databases and meet TFS obligations.

Conclusion of Immediate Outcome 10

182. **Samoan authorities have taken some action to prevent terrorists from raising, moving and using funds, however, in principle, the effectiveness of targeted financial sanctions regime would be limited by the technical deficiencies which exist in the mechanisms contained in the CT Act.** The SFIU has taken limited steps to support effective implementation of freezing without delay by providing regular updates (UN Al Qaida and Taliban lists) to FIs and TCSPs to monitor the lists published by UN Sanctions Committees to ensure that they are aware of listings and de-listings as soon as they occur. No funds have ever been identified in the domestic or international sectors that have links to terrorism or TF. A concern exists in the NPO sector where even though the risk is low, the sector has had no supervision and engagement with the sector has been limited for CFT purposes.

183. **Taking into consideration the low level of risk, Samoa has a moderate level of effectiveness for Immediate Outcome 10.**

4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions)

184. **Samoa appears to have relatively limited exposure to proliferation financing in relation to both Iran and the Democratic People’s Republic of Korea, although it should be noted that the offshore sector, including IBCs, could be used to facilitate business or transactions with both jurisdictions.** There is no manufacturing industry in relation to defence materials in Samoa and no export of defence materials by Samoa to any country. No funds have ever been detected or frozen in Samoa in relation to proliferation. Samoa advises that it is not aware of any registered IBCs being exposed to at-risk sectors like oil or with any connections with Iran or DPRK.

185. **There does not appear to be any legal framework by which Samoa can implement targeted financial sanctions relating to the DPRK and Iran under UNSCRs 1718, 1737, 1803, 1874, and 1229 (‘proliferation resolutions’).** In terms of implementation and effectiveness, the Ministry of Foreign Affairs and Trade (MFAT) disseminates UN notices on the proliferation resolutions to the heads of the relevant Ministries and advises of the obligation to freeze the assets of listed individuals and entities. The SFIU promptly disseminates these notices to domestic FIs and DNFBPs (but not more widely) to check their databases. While the SFIU conducts limited on-site visits to check AML/CFT compliance, there does not appear to be any focus on obligations arising in relation to the proliferation resolutions. The need for more awareness is recognised by the SFIU.

186. **In the event that there were assets in Samoa, no legislative mechanism exists to enable the freezing of those assets without delay.** In the absence of any conviction or pending charges relating to TF in respect of an individual, the ability to freeze assets without delay is limited to the assets of individuals and entities on the UN Taliban/Al Qaida sanctions lists.

187. **While the offshore sector has some understanding around the obligations related to AML/CFT, there seems to be a limited understanding of mitigating proliferation risks.** It is not clear that TCSPs and offshore banks check their accounts and clients against UN designations associated with Iran and the DPRK. Government agencies also seem to have limited understanding of what proliferation is and what is required of both the government and reporting entities in terms of this.

Conclusion of Immediate Outcome 11

188. **While there is dissemination of the proliferation resolutions and there is some awareness of the individuals and entities designated under them, there is no legal mechanism to freeze any funds or assets in the event they are found in Samoa.** In addition the limited awareness of what proliferation is in both government agencies and reporting entities further diminishes the effectiveness within Samoa.

189. **Samoa has a low level of effectiveness for Immediate Outcome 11.**

4.6 Recommendations on Terrorist Financing and Financing of Proliferation

Recommendations on IO.9

190. Samoa should remedy the technical deficiencies in the TF offence.

191. Noting the low level of risk, Samoa should nonetheless develop an overarching strategy for managing terrorism and TF and take appropriate steps to improve the capacity of law enforcement agencies and other competent authorities (for example the SFIU and SIFA) to detect and investigate terrorism and terrorist financing, including through the offshore sector.

Recommendations on IO.10

192. Samoa should conduct outreach to financial sector entities and DNFBPs to raise awareness of TF risks and the need for mitigation, including the potential risk of assets related to the UN Taliban/Al Qaida sanctions being present in the Samoan economy, in particular the offshore sector.

193. Samoa should update its legislation to refer to the new UN resolutions/lists relating to Al-Qaida and the Taliban and include a mechanism to enable Samoa to propose individuals and entities for designation under UNSCR 1267 and 1988.

194. Samoa should implement a legal framework for TFS in which it clarifies in legislation how the forfeiture and restraining order mechanisms in the Proceeds of Crime Act 2007 are to be applied to individuals and entities declared under the CT Act 2014 to permit the freezing of assets without delay. If this cannot be demonstrated, a mechanism to permit such immediate freezing should be included within the CT Act.

195. Samoa should conduct an analysis of the NPO sector to identify and organisations that may be vulnerable to abuse.

196. Samoa should conduct more outreach to, develop updated guidance for, and provide for more oversight of the NPO sector, including a requirement for NPOs to know their beneficiary NPOs.

Recommendations on IO.11

197. Samoa should immediately put in place a legal mechanism by which it can implement the proliferation resolutions, in particular the implementation of targeted financial sanctions without delay.

198. Samoa should take measures to raise the awareness of proliferation financing and the ability to detect funds or other assets of designated persons and entities amongst government agencies and reporting entities.

5. PREVENTIVE MEASURES

Key Findings

- **Understanding of ML/TF risks and the effective implementation of preventive measures varies across and within sectors.** In general, the domestic banks demonstrate a better understanding of their risks and a capacity to mitigate them, though MTOs also demonstrate a reasonable understanding of their risks and how to mitigate them. In addition, banks and MTOs demonstrate a good level of effectiveness in performing their AML/CFT obligations.
- **Samoa has made significant improvements to its legal framework for preventive measures since its 2006 MER to better align with the 2003 FATF Recommendations, through the MLP Act 2007 and MLP Regulations 2009.** However, Samoa has not updated its legal regime and preventive guidelines since 2010 to bring them into compliance with the 2012 FATF Standards, or to address some outstanding deficiencies from the 2006 MER. Improvements are required to the legal framework and guidance to strengthen the implementation and effectiveness of preventive measures.
- **The banking sector is the primary gatekeeper of the domestic financial system in Samoa. The four domestic commercial banks – in particular the two foreign-owned banks – demonstrate a high level of understanding of their ML/TF risks and an awareness of their AML/CFT duties and responsibilities in mitigating risk, although STR reporting levels from the two local banks are low.** However, other non-bank FIs and the DNFBP sectors do not consistently display a similar level of understanding the ML/TF risks and awareness of AML/CFT obligations to mitigate those risks. Regular on-site supervision, adoption of robust AML/CFT training programs, issuance of additional supervisory guidelines and periodic consultations with industry would assist in improving this and mitigating risks.
- **Trust and company service providers (TCSPs) have a critical gatekeeper role in Samoa. While controls are being strengthened, significant concerns remain as to the extent to which TCSPs are aware of the ongoing activities of the IBCs which they create and can conduct meaningful ongoing due diligence on them.** TCSPs generally demonstrate a sound overall understanding of their risks and obligations, including in relation to beneficial ownership. Recent change to the legal framework for IBCs, including introducing obligations for TCSPs to have access to IBCs' financial information, which will improve TCSPs' ability to understand the nature and ownership and control structures of IBCs and to conduct ongoing due diligence, but further strengthening of requirements and effective implementation are required to detect and mitigate ML/TF risks.
- **MTOs, a higher risk area, have a reasonable level of awareness of ML/TF risks posed by customers and their transactions, and their obligations to identify and verify customer identity, as well as to obtain full originator and beneficiary information when processing inward and outward remittances.** The level of STR reporting is however lower than would be expected given the significance of the sector in Samoa.
- **Except for the banking sector, internal AML/CFT training does not appear to be adequate, regular or current.** The limited training is reliant on the supervisory authorities and often does not consider ML/TF risk assessment, which is central to a risk-based regime.
- **Other than in the two foreign-owned banks, the level of suspicious transaction reporting appears to be inadequate, especially in the non-banking sectors, which indicates an insufficient understanding of ML/TF risks.** Nearly all recent STRs concern suspected internet 'scams' and this is not consistent with the broader domestic and international ML/TF risks, particularly in the offshore sector.

5.1 Background and Context

(a) Financial Sector and DNFBPs

199. The domestic and international financial and DNFBP sectors in Samoa are summarised in the following table:

Table 5: Overview of financial and DNFBP sectors as at June 2014

	No. of institutions	Assets Size (SAT-Millions)
Domestic Financial Sector – Under CBS		
Commercial Banks	4	1,167.0
<i>Domestic commercial banks</i>	2	410.0
<i>Foreign-owned commercial banks</i>	2	757.1
Credit unions	3	4.0
Insurance companies	9	85.0
Money transfer operators	15	10.0
Foreign exchange dealers	1	0.2
Unit Trust of Samoa	1	78.8
Samoa Housing Corp.	1	45.7
Samoa National Provident Fund	1	514.3
Development Bank of Samoa	1	183.7
Lending services	8	30.4
DNFBPs – Under SFIU		
Casino	1	3.6
Real Estate Agents	8	Not available
Dealers in Precious Metals and Stones	3	0.6
Lawyers	18	Not available
Accountants	16	4.5
Car Dealers	8	Not available
International Financial Sector – Under SIFA		
International trusts	155	Not available
Trustee companies/TCSPs	9	3.5
International business companies	34,141	Not available
International banks	7	125.0
International insurance companies	4	Not available

200. Money transfer operators are also foreign exchange dealers. There is only one business with a foreign exchange dealer licence which does not have an MTO licence. Hence, this business can only exchange (buy and sell) foreign currencies but cannot remit/transfer funds. The total value and number of MTOs' transactions in 2014 were \$361m SAT (US\$144m) and 539,210 for financial inflows and \$147m SAT (US\$59m) and 32,078 for financial outflows.

Domestic financial sector

201. **Samoa has small domestic financial and DNFBP sectors which are dominated by the banking sector in terms of assets size. The banking sector is considered as higher risk due to its materiality as evidenced by its accounting for more than half of the financial sector.** Total assets of commercial banks account for around 58% percent of the assets of all domestic FIs, excluding the Central Bank. The commercial banking system is made up of two foreign (Australian)-owned banks and two locally owned banks. The two foreign-owned banks comprise approximately two-thirds of the domestic banking market. The four commercial banks all have head offices in Apia, with a total of four branches in Apia and 15 branches outside of Apia and across Samoa. All banks in Samoa are supervised by the Central Bank in accordance with minimum prudential standards and requirements in line with the Basle Committee standards.

202. **Samoa has no security sector or stock exchange. The vast majority of non-bank FIs, including insurance companies and credit unions, are very small.** Only two of the institutions, the National Provident Fund (NPF) and the Development Bank of Samoa (DBS), have important market shares in the financial sector. The NPF is the only pension fund in Samoa and participation is compulsory for all public and registered private sector entities. The DBS is fully owned by the Government with an objective of financing projects in selected priority sectors, like agriculture, fishing, and tourism industries through the provision of unit trusts. The Unit Trust of Samoa (UTOS) is a special initiative of the Government to provide an investment vehicle for Samoans.

203. **Samoa has a very small domestic insurance sector comprised of life and general insurers, and a few insurance brokers/agents.** The government-owned Samoa Life Assurance Company (SLAC) is the dominant and active player in the life insurance sector and offers life insurance primarily to Samoan residents, with few foreign policy holders. The life insurance sector was not considered in the 2012 NRA; however, it is being considered in the draft 2014 NRA, where the risk has been assessed as being at the medium level. The draft 2014 NRA notes the need for enhanced engagement with the life insurance sector by authorities.

204. **The remittance sector is a critical part of the Samoa's financial system, with personal remittance into Samoa from Samoan expatriates and emigrants living abroad constituting 26% of GDP.** The 2012 NRA identified the money transfer and remittance sector as high risk. Over recent years the numbers of MTO licenses issued by the Central Bank has gradually increased. Samoa has 15 MTOs, including both purely domestic and international operators; 10 have no branches outside of Apia. The largest MTO has 30 branches throughout Samoa. The Government's current approach supports formal regulated remittance channels and widespread coverage by licensed remitters while minimising transaction costs. Government agencies met during the on-site indicated that any business found to be conducting remittance is either licensed or shut down and that the informal remittance sector is very small or non-existent. As mentioned above (chapter 1), an area of concern to the authorities is that global and regional risk concerns have resulted in the two foreign banks reviewing the accounts of a number of MTOs. Samoan authorities are concerned about the potential implications of this development for AML/CFT controls (and, more broadly, for the economy).

Domestic DNFBP sector

205. **Other than the TCSP sector, there has been very little supervision or regulation of DNFBPs, although all DNFBPs (in FATF terms) are subject to the MLP Act.** The activities contained in Schedule 1 of the MLP Act, which lists all entities to which the Act applies, are very largely consistent with the FATF definitions of DNFBPs, however the thresholds for transactions in relation to: (i) casinos (\$10,000 SAT, or approximately US\$4,300), and (ii) dealers in precious metals and stones (\$50,000 SAT, or approximately US\$21,500) slightly exceed the thresholds of US\$3,000 and US\$15,000 respectively contained in the FATF standards.

206. **The Casino and Gambling Control Act 2010 allows for the licensing of casinos and other gambling activities in Samoa.** While the Gambling Control Authority (GCA) is responsible for the licensing and general supervision of casinos, the SFIU is responsible for monitoring compliance with AML/CFT requirements. The first casino opened in October 2014 and is licensed for foreign passport holders only. While casinos had not been assessed in either the 2012 NRA or draft 2014 NRA at the time of the on-site visit, from an international perspective this sector is considered high risk.

207. **There is only a small real estate market in Samoa and very few real estate agents serving as intermediaries in real estate transactions.** This sector is considered low risk by supervisory authorities and was not included in the 2012 NRA. Only 20% of all land in Samoa is under freehold title with the balance predominantly customarily owned.

208. **The market for gold and jewellery is very small and is considered low risk**, with only one significant dealer in precious metals operating in Samoa for the local market (predominantly low-value items). There is not a significant jewellery market to cater for tourists in Samoa.

209. **There are approximately 18 lawyers (in private law firms) operating in Samoa.** The Samoa Law Society coordinates activities relating to professional conduct of lawyers (barristers and solicitors) in Samoa, however lawyers are regulated by the SFIU for AML/CFT compliance. Lawyers are only subject to AML/CFT requirements when they assist in the planning or execution of certain financial transactions for their clients and act on behalf of or for a client in any financial or real estate transaction.

210. **There are approximately 190 registered accountants in Samoa, though only about 10% are in private practice** (and therefore likely to engage in activities captured by Schedule 1 of the MLP Act). AML/CFT requirements apply to accountants only when they provide investment advice or receive funds in the course of the accountant's business for deposit or investment purposes. The Samoa Institute of Accountants (SIA) is responsible for monitoring AML/CFT compliance among chartered accountants in Samoa.

International (offshore) sector

211. **Established in October 1988, the international financial services sector is legally separated from the onshore sector.** The Samoa International Finance Authority Act 2005 (SIFA Act) established the Samoa International Finance Authority (SIFA) as an independent Authority to monitor and supervise activities in the international financial services sector, including AML/CFT compliance pursuant to the MLP Act. SIFA is an overarching statutory body which oversees all international finance business (international banks and insurance, TCSPs, legal persons and arrangements etc). Other than some general AML/CFT supervisory powers granted under the MLP Act, the regulatory and supervisory powers of the SIFA are dispersed throughout the individual international financial services legislation.

212. International banks and international insurance companies are set up and licensed through the trustee companies. There are three classes of licences for international banks. These are:

- i. 'A' class licence, granted only to companies with an aggregate of capital issued and paid up in cash and unimpaired reserves of at least US\$10million. The holder of such licence shall transact international banking business through its business office in Samoa.
- ii. 'B' class licence (B1), granted to companies with an aggregate of capital issued and paid up in cash and unimpaired reserves of at least US\$2million. The holder can transact only such international banking business as may be specified in the licence through its business office in Samoa and only in the currencies specified therein.
- iii. 'B' class licence ('B2') granted to companies which have an aggregate of capital issued and paid up in cash or unimpaired reserves of at least US\$250,000. The holder can transact international banking business as may be specified in the licence through its business office in Samoa and only in the currency or currencies specified therein. It can only accept deposits from those persons or entities whose names are listed in the undertaking accompanying the licence application. It cannot solicit or accept deposits from the public nor can it allow any cheque facilities.

213. General restrictions applicable to all licensees include the following: (1) it must not transact any banking business other than in accordance with its licence and the International Banking Act 2005 (IB Act), and (2) it must not transact any banking business with any Samoan residents unless it obtains permission from the Minister of Finance to transact domestic banking business by, for and in respect of residents in Samoa. According to SIFA, the activities of the international banks consist mainly of accepting deposits from related companies and lending to or investing these funds in other related companies.

214. There are seven international banks licensed by SIFA. There are two banks with B2 licences and five banks with B1 licences. None of the international banks accept deposits from the general public.

The licences for the international banks are valid for only one year and maybe renewed by upon application to the Minister. All international banks are required to establish a physical presence in Samoa. Physical presence is defined in the IB Act as a place of business located at a fixed address, other than a post office box or electronic address, in Samoa and at which location the bank employs one or more individuals full time, maintains operations and banking related records and has two directors who are natural persons, one of which must be a resident director.

215. International insurance companies provide offshore insurance business from within Samoa and have captive insurance business and operations that are exclusively managed by the local trust companies.

216. **Trustee companies are primarily engaged in the formation, management or administration of international trusts and, in particular, international business companies (IBCs), which dominate the international sector.** Trustee companies provide services only to non-residents of Samoa. Most of the client relationships are established on the basis of referrals from the head office (of trustee companies located outside of Samoa) or third parties (mostly accountants and lawyers outside Samoa). Several trustee companies in Samoa form part of a larger or global structure with overseas operations in Hong Kong, Singapore and the Cook Islands, and these companies are also required to comply with their group's AML/CFT standards set by the head office.

(b) *Preventive Measures*

217. **After the 2006 MER, Samoa repealed its MLP Act 2000, replacing it with the MLP Act 2007, to address the various deficiencies in its legal framework,** including in relation to preventive measures. Samoa subsequently issued the MLP Regulations 2009 to fully implement the requirements under the MLP Act 2007, and issued the AML Guidelines in 2010 to provide additional AML/CFT guidance. The various preventive measures under the MLP Act and MLP Regulations incorporate major requirements related to customer identification, CDD, record keeping, STR obligations, and sanctions, but deficiencies, some of them significant, remain. Although the Guidelines are not considered to be 'legally enforceable means' under the FATF standards, they are generally well regarded and observed by FIs and DNFBPs as a good basis for compliance.

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

218. **The MLP Regulations set out the circumstances in which enhanced and simplified CDD apply for higher risk and lower risk customers respectively,** and the AML Guidelines provide further guidance on these issues. However, application of AML/CFT preventive measures on the basis of risk is still limited, especially for the non-banking sector and DNFBPs, and the MLP Regulations and Guidelines pre-date the 2012 NRA. The Samoan authorities have indicated that they intend to review and amend as required the MLP Act and MLP Regulations following completion of the 2014 NRA and adoption of the mutual evaluation report in 2015. One limited exemption has been granted to one TCSP under the section 3A of the MLP Act in relation to certain CDD obligations. This exemption was not granted on the basis of the results of the 2012 NRA, but was separately assessed by the SFIU after consultation with SIFA as being consistent with the TCSP's risks and obligations under the MLP Act and Regulations.

5.2 *Technical Compliance (R.9-23)*

Recommendation 9 – Financial institution secrecy laws

219. **Samoa is rated C with R.9.** All secrecy or confidentiality obligations are overridden by section 3 of the MLP Act 2007 with regard to compliance with AML/CFT requirements. In addition, supervisors have sufficient powers under their sector-specific legislation to overcome secrecy provisions in such legislation.

Recommendation 10 – Customer due diligence

220. **Samoa is rated PC with R.10.** Many of the CDD requirements are incorporated in the MLP Act 2007 and MLP Regulations 2009 and in the AML Guidelines (though as noted above the guidelines are not legally enforceable, but are well regarded by FIs and used as a basis of compliance). However, deficiencies include a lack of provisions/guidelines on risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification; absence of clear provisions and guidelines to apply CDD measures to existing customers on the basis of materiality and risk; no clear requirement to terminate a business relationship if the financial institution is unable to comply with the CDD requirements; and no specific provisions to prohibit financial institution from pursuing the CDD process if the process will tip-off the customer; the absence of a clear definition of the term ‘beneficial owner’ in the MLP Act or MLP Regulations consistent with the FATF Standards; and a requirement only to take ‘reasonable measures’ to identify the beneficial owner of an account.

Recommendation 11 – Record-keeping

221. **Samoa is rated C with R.11.** The MLP Act and Regulations meet the record-keeping and retention requirements under the FATF Recommendations, and also require that records be made available upon request to the SFIU for purposes of complying with the MLP Act.

Additional Measures for specific customers and activities

Recommendation 12 – Politically Exposed Persons - PEPs

222. **Samoa is rated PC with R.12.** The major deficiency is that the relevant obligations do not apply to domestic PEPs and international organisation PEPs. The 2010 AML Guidelines strongly encourage FIs to apply similar standards to domestic PEPs, but this requirement is not enforceable. In addition, there is no requirement for senior management to determine if an existing customer relationship with a person who becomes a PEP should be maintained.

Recommendation 13 – Correspondent banking

223. **Samoa is rated PC with R.13.** Financial institutions are required to have internal control measures to guard and prohibit them from establishing relationships with shell banks, however, this does not extend to requiring FIs to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks. There are no provisions explicitly requiring FIs to put in place control measures for cross-border correspondent banking relationships.

Recommendation 14 – Money or value transfer services

224. **Samoa is rated C with R.14.** Samoa has a strong legal framework for licensing and monitoring MVTS providers and their agents.

Recommendation 15 – New technologies

225. **Samoa is rated PC with R.15.** While there are no specific legal requirements for FIs to assess the ML/TF risks of new products or delivery channels and to adopt mitigating measures for identified risks, in practice the CBS and FIs have undertaken risk assessments of new products or delivery channels before they are introduced into the market and the CBS must endorse these new products or delivery channels based on the results of these assessments. There is however no similarly established practice in the offshore sector. The legislation will require amendment to ensure risk assessments are undertaken for all new products.

Recommendation 16 – Wire transfers

226. **Samoa is rated PC with R.16.** Samoa has a legal framework addressing a number of the requirements for wire transfers, but the major technical deficiency is that Samoa does not have Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

requirements on beneficiary information. Other technical deficiencies relate to the lack of measures required for beneficial FIs.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

227. **Samoa is rated PC with R.17.** The MLP Regulations allow for reliance on third parties or intermediaries for CDD, but ultimate responsibility for the implementation of CDD measures remains with the relying (Samoan) financial institution. However, there are no specific rules in place requiring that ML/TF risk be taken into account when determining in which countries the third party that meets the conditions can be based, and there are no specific rules or guidelines in place on the applicability of third party reliance involving FIs that are part of the same financial group.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

228. **Samoa is rated LC with R.18.** The only minor deficiency is that Samoa has no specific requirements regarding the implementation of group-wide AML/CFT programmes and on allowing the sharing of information within financial groups, although it is noted that no Samoan financial groups are operating overseas.

Recommendation 19 – Higher-risk countries

229. **Samoa is rated NC with R.19.** While there is a requirement under the MLP Act and Regulations regarding the application of enhanced CDD, there is no requirement for FIs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions from countries for which this is called for by the FATF and specific counter-measures for identified high risk countries. Domestic competent authorities in Samoa have no mechanism in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT system of other countries.

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transactions

230. **Samoa is rated LC with R.20.** Samoa's legal framework for reporting suspicious transactions largely meets the requirements of R.20, however limitations in the scope of ML and TF offences (noted under R.3 and R.5 respectively) have cascading effects for R.20.

Recommendation 21 – Tipping-off and confidentiality

231. **Samoa is rated C with R.21.** The MLP Act protects a financial institution, its officers, employees and agents from civil, criminal, administrative or disciplinary proceedings for reporting suspicious transactions in good faith or in compliance with directions from the FIU. In addition, the MLP Act prohibits the financial institution or the supervisory authority, its officers, employees or agents, auditor or any other person, from disclosing any information related to STR filed with the FIU.

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

232. **Samoa is rated PC with R.22.** The scope issue related to CDD, including ongoing CDD, regarding the threshold for transactions involving casinos and dealers in precious metals and stones is minor, but the deficiencies identified in R.10-12, 15 and 17 apply equally to DNFBPs. In addition, the ability of TCSPs to conduct meaningful ongoing due diligence of transactions undertaken by IBCs is currently limited.

Recommendation 23 – DNFBPs: Other measures

233. **Samoa is rated as PC with R.23.** All DNFBPs under the FATF definition are required to report suspicious transactions to the SFIU. The analysis in relation to R.18, R.19 and R.20 above applies equally to DNFBPs, subject to the minor threshold issues noted above. The deficiencies noted under R.18 and R.19 above also apply to DNFBPs. In addition, the ability of TCSPs to detect and report suspicious transactions undertaken by IBCs is currently limited.

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

(a) Understanding of ML/TF risks & AML/CFT obligations, and application of mitigating measures

Overview

234. **Samoa has recently improved its understanding of ML/TF risks through the preparation of its NRA in 2012 and work on revising the NRA initiated in 2014, but has not applied a fully risk-based approach to supervision and the application of mitigating measures.** The NRA was developed using subject matter experts and data collected from MLP Task Force members as well as the private sector. The sectors considered included commercial banks, insurance companies, MTOs, trustee companies, public accountants, moneylenders, credit unions, dealers in precious metals, lawyers, real estate agents, car dealers and non-profit organisations. However, no briefings or reports were provided to the private sector either in 2012 or 2014, contributing to reporting institutions' limited and variable understanding of their ML/TF risks.

235. **Domestic and foreign-owned commercial banks demonstrate a high level of understanding of their ML/TF risks, as well as an awareness of their duties and responsibilities to mitigate these risks.** MTOs also demonstrate a good level of understanding of their risks and obligations. However, other FIs and the DNFBP sectors do not consistently display a similar level of understanding of ML/TF risks and awareness of AML/CFT obligations due to the limited engagement of supervisory authorities and lack of sharing of the results of the 2012 NRA. Regular on-site supervision, adoption of robust AML/CFT training programs, issuance of additional supervisory guidelines and periodic consultations with the industry would assist in improving understanding of risks and in their mitigation.

236. **While TCSPs have a good general understanding of their 'inherent' ML/TF risks and their AML/CFT obligations, they need to develop a better understanding of the actual risks that exist in their sector.** The general risks posed by IBCs due to the nature of their products and customers are well understood, but the current lack of ongoing oversight by TCSPs of IBCs' day-to-day activities means that TCSPs' ability to identify and understand the extent and nature of the actual risks posed by IBCs (for example, the size, number and nature of transactions conducted by IBCs) is limited. The recent strengthening of obligations on IBCs to provide more detailed financing and banking information to TCSPs annually should, if properly implemented, assist TCSPs to better understand their ML/TF risks and to meet their AML/CFT obligations, in particular for ongoing CDD and reporting of STRs.

237. **Domestic Banking Sector. The four banks in the domestic banking sector demonstrate a high level of understanding of the ML/TF risks and, although implementation varies, have established generally sound AML/CFT compliance frameworks, resulting in a strong compliance culture.** The two foreign-owned banks in particular have a high level of understanding of risks and strong related frameworks. All four commercial banks have full-time compliance officers responsible for monitoring AML/CFT compliance on a bank-wide basis as required under the MLP Regulations. The evaluation team met all the compliance officers of the commercial banks; their AML/CFT compliance frameworks appeared to be robust, and all were aware of the inherent ML/TF risks posed to their respective banks, and also vigilant in complying with their AML/CFT obligations. Feedback from the Central Bank on the results of their on-site examinations supports the view that the domestic banks' understanding of their risks and application of mitigating measures, while not perfect, is generally sound.

238. **While the foreign-owned commercial banking institutions have implemented a risk-based approach to CDD (customer on-boarding and risk assessment), implementation is limited and variable in this area particularly for the two domestic banks that do not have sophisticated customer database and monitoring systems.** Application of simplified and enhanced due diligence for low and high risk customers does not appear to be fully consistent or adequate across all FIs due to an absence of comprehensive guidelines on customer risk profiling from supervisory authorities and FIs themselves.

239. **The two foreign-owned banks, being part of larger global financial groups, generally comply with both Samoan and home country AML/CFT requirements.** These banks have very robust AML/CFT training programs for their personnel, a comprehensive AML/CFT Compliance Manual and established policies on customer identification and risk categorisation of clients, CDD and EDD. These are all aligned with their group AML/CFT policies and procedures. The banking sector has reported the largest number of STRs (77 out of the total 95 STRs between 2011 and 2014), indicative not only of their materiality but also of their higher level of awareness on ML/TF risks and their understanding of their AML/CFT obligations. As noted below, one of the two foreign-owned banks decided to close some accounts of MTOs due to stringent AML/CFT requirements being imposed by the head office of the foreign-based bank and also due to global or regional risk concerns.

240. Independent and periodic internal audit testing is also being done by banks to assess the overall integrity of their AML/CFT frameworks which strengthens the implementation of preventative measures. Results of these internal audits are submitted to the SFIU pursuant to the requirement under the MLP Regulations.

241. While the domestic banking sector demonstrated the highest levels of understanding and awareness of ML/TF risk, as well as good AML/CFT compliance frameworks, further enhancements to these frameworks and training must be made to maintain and enhance current levels of understanding and awareness, particularly given the limited engagement to date by the CBS/SFIU due to limited supervisory resources.

242. **Money Value Transfer Services/MTOs. While the MTO sector is considered a high risk area, there is a reasonable level of awareness in the sector of ML/TF risks and AML/CFT obligations.** In particular, the larger international MTOs have a good understanding of the risks and have implemented reasonably robust measures to identify and verify customer identity, obtain originator and beneficiary information and scrutinise transactions. While some STRs are being submitted by MTOs, the level of reporting is lower than would be expected given the significance of the sector in Samoa.

243. **Most of the remittance agencies in Samoa have international affiliations, which facilitate stronger AML/CFT control systems and the application of group standards.** Additionally, since MTOs maintain accounts with domestic commercial banks, their accounts are also subject to further scrutiny by banks. The evaluation team was made aware by MTOs of an instance when one foreign-based bank closed some accounts of MTOs due to stringent AML/CFT requirements being imposed by the head office of the foreign-based bank and also due to global or regional risk concerns. This made MTOs fully aware of the possible consequences for MTOs if they have weak AML/CFT compliance frameworks or do not comply with their AML/CFT obligations.

244. **Domestic Insurance Sector. The CBS and SFIU have had very limited engagement with and have not provided any AML/CFT training to this sector, resulting in what appears to be a very low level of understanding of the ML/TF risks and the AML/CFT compliance framework.** The lack of engagement to date by the CBS/SFIU appears due primarily to limited resources and risk considerations. While it is understandable that supervisory resources have been deployed primarily to higher risk sectors, the Samoan authorities should schedule outreach to and supervision activity of the life insurance sector soon. As noted in relation to the banking and MTO sectors, feedback from both the supervised and the

supervised entities indicated that there was increased awareness and compliance after every AML/CFT inspection, so similar benefits could be expected in the insurance sector.

245. **International Financial Sector.** The international/offshore financial sector, which is comprised primarily of international banks, international insurance companies and IBCs, is regulated by SIFA. SIFA's inspections of international banks, insurance companies and TCSPs, while reasonably frequent, are not considered sufficiently comprehensive in scope and depth (see detailed analysis of IO.3 in chapter 6 of this report). SIFA has however noted an increasing level of understanding of ML/TF risks and improving levels of compliance with various AML/CFT requirements in this sector, although not at the levels seen in the domestic banking sector.

246. **Trustee companies and IBCs are considered high risk and supervised entities are generally vigilant in performing their AML/CFT obligations in implementing various preventive measures, including to obtain beneficial ownership information,** though there are concerns as to whether TCSPs are fully meeting the CDD obligations (particularly in relation to knowing their customer and ongoing diligence – see further discussion below). Despite a reasonable level of understanding of ML/TF risks by TCSPs, further training by SIFA and the SFIU on ML/TF risks and the mitigating measures required is required.

247. **The international banks and insurance companies with which the evaluation team met during the on-site visit considered their ML/TF risks generally to be low, given the restricted nature of their business and small number of well-known clients.** The international entities met by the evaluation team during the on-site appeared to have a good understanding of their ML/TF risks and the required preventive measures. While SIFA indicated that it has no major ML/TF concerns in relation to the international banks and insurance companies – and the last on-site examination for international banks in 2012 disclosed no major adverse findings – it understands that these entities can present a higher degree of risk, and an Australian tax matter which was the subject of an international request for information to Samoa involved the movement of funds through a Samoan international bank (albeit some years ago). As noted in chapter 6, however, the frequency and depth of on-site visits is insufficient.

248. **Other (non-bank) domestic financial institutions.** Other domestic financial entities, such as credit unions and lending entities, the Samoa National Provident Fund, the Samoa Housing Corporation, the Development Bank of Samoa, and the Unit Trust of Samoa, while not formally included in the 2012 NRA, are not considered to be high risk due to both the nature of their business and/or their small size. The low risk allied with significant limitations in resourcing has resulted in low priority and no engagement to date by the CBS/SFIU with these entities on AML/CFT issues but, as discussed in chapter 6, this situation needs to be rectified. The level of understanding and awareness of obligations under the MLP Act and MLP Regulations is therefore low or in some cases non-existent.

249. **Accountants and Auditors. Any awareness amongst accountants and auditors of their ML/TF risks and AML/CFT obligations is principally based on their own initiative and can be assumed to be low.** As outlined in the analysis of IO.3 in chapter 6, there has been no outreach to the accounting profession or the Samoa Institute of Accountants (SIA), the supervisory body for accountants, since the MLP Act was enacted.

250. **Real Estate Agents and Dealers in Precious Metals/Stone. Due to the lack of engagement by the SFIU, it can be assumed, regardless of their risk profile, that these sectors have very little understanding of their AML/CFT obligations.** The SFIU has not engaged with these small, low risk sectors and no AML/CFT inspections have ever been conducted. The small number of entities in these sectors (there are eight real estate agents and three dealers in precious metals and stones in Samoa) and the small volume of transactions, suggest that only limited supervision is required.

251. **Lawyers. While the evaluation team did not meet with the Law Society, the AGO asserts that lawyers should be aware of their obligations under the MLP Act 2007, however this could not**

be verified by the evaluation team; nor was it possible to determine whether lawyers accept their AML/CFT obligations. Since the enactment of the MLP Act and Regulations in 2007 and 2009, a complete package of AML/CFT documents (including the MLP Act, Regulations and Guidelines) was distributed to all existing law firms and the Law Society. A brochure was designed specifically for lawyers and was distributed, which summarises their responsibilities as a financial institution under the legislation. However, no supervision of the legal profession has been undertaken by the SFIU and the understanding of risks, by both the profession and the regulator is uncertain. Authorities believe that lawyers are aware of the risks associated with on-boarding clients or when offering financial advice to clients or when they are involved in handling accounts or opening/operating trust accounts on behalf of their clients, but it is not known whether lawyers are meeting their AML/CFT obligations.

252. **Casinos. In the absence of more formal engagement and supervision, it cannot be assumed that the current level of understanding of ML/TF risks and compliance with AML/CFT obligations is adequate.** The risk of ML/ TF in casinos was not assessed in the 2012 NRA (or, at the time of the on-site visit, the draft 2014 NRA), but based on the high ML/TF risks identified internationally, it is critical that the risks posed by the casino sector be considered and given priority. Since the local casino caters to foreign passport holders, this may pose an attractive laundering opportunity. The SFIU, which regulates the casino industry for ML/ TF, sent relevant paperwork to the casino prior to its opening but at the time of the on-site visit had not undertaken any face-to-face engagement with the casino operator. The management and running of the casino is by an international Philippines-based operator so they may have head office obligations in addition to those from Samoa. Management of the casino claimed it has trained its supervisors on AML/CFT requirements but no on-site supervision has been able to verify this.

253. In the four weeks of casino operations at time of the on-site visit, no STRs had been lodged and management of the casino advised that no instances had occurred that warranted the submission of an STR. However, informal feedback provided by GCA casino supervisors indicated that some potentially suspicious transactions may have taken place, which were not reported. While this information was not verified and may not involve ML, it reinforces the need for early on-site engagement and supervision by the SFIU.

(b) CDD (including enhanced/specific measures) and record keeping

General CDD obligations

254. **Samoa's legal framework for preventive measures is generally adequate, though some important gaps exist in relation to the primary CDD obligations required under R.10, as well as specific measures required under the FATF standards.** The technical deficiencies identified in relation to R.10 pose some effectiveness concerns, particularly in the international sector (for example, in relation to IBCs, delays in updating of beneficial ownership information and the limited ability of TCSPs to conduct of ongoing due diligence of IBCs). These deficiencies will undermine effectiveness and implementation of the CDD process and should be addressed through amendment of the MLP Act and/or MLP Regulations and the international sector legislation and by the provision of additional guidance by the CBS, SFIU and SIFA as appropriate.

255. **As outlined above, the foreign-owned banking institutions have implemented a risk-based approach to CDD but implementation is limited and variable for the two domestic banks and other non-banking FIs.** Application of simplified and enhanced due diligence for low and high risk customers does not appear to be consistent. The foreign-owned commercial banks apply a risk-based approach in the categorization of clients, including a formal risk classification of customers consistent with head office/parent company or group AML/CFT Standards and using their respective global computer systems. This is also being done by the two locally-owned commercial banks, but to a lesser extent due to limited technical resources. Other parts of the financial sector and DNFBPs other than TCSPs do not undertake a risk-based approach similar to the banking sector.

256. **Generally the domestic banking sector, and international sector FIs/entities supervised by SIFA, are aware of their CDD obligations, including the need to obtain information on the ultimate beneficial owners (including ownership and control),** although there are concerns about the maintenance of up-to-date beneficial ownership information by TCSPs. Based on results of on-site inspections/examinations conducted by the supervisors (CBS and SIFA), and supported by discussions held during the on-site visit by the evaluation team, the more highly regulated banking sector, MTOs and TCSPs display significant levels of compliance with the various CDD requirements. Customer identification is generally being undertaken at the beginning of business relationships, with satisfactory evidence of customer identity being obtained for both natural and legal persons. This includes obtaining valid ID and verifying the identity using independently sourced documents, data or information, and proper maintenance of identity records to comply with the five year retention for record-keeping requirements. Face-to-face contact with the customer or agent/representative is required and in practice takes place at the start of the business relationship. Additional documentation/verification is also being obtained for customers involving legal persons or arrangements, which includes obtaining information on beneficial owners and third parties involved to reasonably identify the beneficial owners. TCSPs understand the need to identify and verify the identity of the natural person who ultimately owns or controls the IBCs they are creating. While TCSPs do obtain the necessary beneficial ownership information from third-party introducers or direct from clients when creating IBCs, some delays can be encountered in obtaining copies of documentation relating to beneficial ownership information but in such instances the IBC is not created.

257. **CDD for occasional transactions.** There is a specific requirement under the MLP Act to undertake CDD for occasional or one-off transactions exceeding \$50,000 SAT (EUR16,000/US\$21,500), which is slightly higher than US\$/EUR 15,000 minimum designated threshold of the FATF. Likewise, CDD is undertaken when carrying out occasional transactions that are wire transfers where full originator and beneficiary information must be obtained to be able to process and pay-out the wire or remittance transactions. However, as highlighted under the analysis of R.16 (Wire Transfers), there is no legal requirement for FIs to maintain the beneficiary information with the transfer message for domestic and cross-border wire transfers, though in practice beneficiary information is obtained by banks and MTOs. As part of the CDD requirements, banks and MTOs generally monitor transactions with designated persons and entities subject to UN resolutions 1267 and 1373 which the SFIU disseminates upon receipt of said information from the Ministry of Foreign Affairs. No such funds have been identified in Samoa.

Beneficial ownership and ongoing monitoring

258. **Despite some technical deficiencies, the legal requirements on FIs to obtain beneficial ownership information are strong and are generally well understood by regulated entities.** During the on-site visit, banks, MTOs and trustee companies demonstrated a strong understanding of the requirements, and indicated that they are in practice able to identify and verify beneficial owners, bearing in mind the inherent risks of dealing with customers with more complex ownership structures. Despite the fact that the term ‘beneficial owner’ is not defined in the MLP Act or Regulations, and that FIs and DNFBPs are not, strictly speaking, required under the MLP Act and Regulations to inquire as to the source of funds and nature of the intended business when creating accounts (this is only required for the purposes of ongoing due diligence), in practice, applying the requirements of the MLP Act and regulation, FIs and DNFBPs (including TCSPs) are required to (and do) identify the true beneficial owner (in the FATF sense), verify their identity, establish their source of funds and the nature of their business, and run appropriate checks eg to determine whether they are a PEP, a criminal or some other high risk category of customer. As noted in the analysis of R.10 in the TC Annex, while the term ‘beneficial owner’ is not explicitly used in section 6 of the MLP Regulations (‘Customers who are legal persons’), section 6(2) of the MLP Regulations states that ‘financial institutions must take reasonable measures to understand and document the ownership and control structure of the customer. This includes identifying *the natural person who ultimately owns or controls a legal person, entity or arrangement* using reliable, independently sourced documents...’ [emphasis added]

259. **The extent of the legal obligations on (and the application of the FATF Standards to) TCSPs to identify beneficial owners and conduct ongoing diligence on IBCs' activities is an important issue in the context of Samoa's risk profile.** As outlined in the TC Annex (see analysis of R.10, R.22 and R.24) and discussed further in the analysis of IO.5 in chapter 7 below, in many cases the only role of a TCSP in relation to an IBC is to assist in its creation (and renewal, normally annually) and to provide a registered office for the IBC. Only for a relatively small proportion of IBCs does the local TCSP act as a corporate director or nominee shareholder and/or become involved in the creation and/or operation of a bank account as a signatory to that account, and the TCSP may not even be aware of the existence of such an account. In these circumstances, the evaluation team is of the view that:

- while the legal requirements need some strengthening in technical compliance terms (see analysis of R.10 in the TC Annex), on creation of an IBC, TCSPs are in practice required to identify and on a reasonable basis verify the identity of the beneficial owner of the IBC and, according to SIFA and on the basis of discussions with TCSPs during the on-site visit, this requirement is well understood and appears to be applied in practice. The great majority of business is from third-party introducers. In these circumstances, some Samoan TCSPs require copies of all supporting beneficial ownership documentation (not just the verified beneficial ownership information) from the introducer before they will create an IBC. Other TCSPs require only the verified beneficial ownership information together with a written undertaking that the supporting beneficial ownership documentation will be provided in a timely manner on request. In either case, however, the Samoan TCSP is provided with the beneficial ownership information as verified by the third-party introducer and takes additional steps to satisfy itself as to the identity of the beneficial owner (eg through checks of commercial databases and other public records). TCSPs are also required to determine the nature of the business of the beneficial owner, the source of wealth and funds, the expected nature of the relationship etc (see also paragraphs 363 and 364 below for detailed analysis of this issue);
- in terms of the application of the FATF Standards, although TCSPs are obliged to obtain and maintain beneficial ownership information on IBCs (under R.22 applying R.10 – in particular, criteria 10.3 to 10.6 – and R.24), under R.22 (applying criterion 10.7(a)), under the Standards TCSPs are not required to conduct ongoing monitoring on individual transactions in a business relationship between an IBC and another financial institution (almost certainly in another jurisdiction), to which the TCSP is not a party¹⁹. It is the bank or other financial institution where the IBC opens any account (as well as any introducers involved in that process) that has the primary obligation to conduct CDD (including ongoing monitoring) of that company's transactions;
- however, the wider question is whether TCSPs in Samoa know enough about the business of IBCs to fulfil their basic CDD obligations (both under the FATF Standards and under Samoan law). The fundamental questions are: (a) how does the Samoan TCSP fulfil its obligations to know who its customer (and beneficial owner) is on an ongoing basis and to scrutinise transactions undertaken throughout the course of its relationship with the IBC?, and (b) how can it fulfil its obligation to report suspicious activity? If the TCSP is servicing the IBC on an ongoing basis by providing a registered office and annual renewals, in the evaluation team's view it needs to be in receipt of sufficient information in order to make a value judgement about the company and whether it is operating in line with the TCSP's understanding of what its activities are supposed to be. This is fundamental to the CDD process (and to effectiveness under IO.4 and IO.5), and does involve a degree of monitoring, though perhaps not of individual transactions. The TCSP may well be the only regulated entity in a position to obtain information about the activities of the IBC as a whole; the IBC may have several bank accounts and each bank may be in a different country and see only a small part of the overall activity. Only the Samoan TCSP

¹⁹ Criterion 22.1(e) requires TCSPs to comply with the CDD requirements set out in R.10 'when they prepare for or carry out transactions for a client' concerning a range of specified activities, including acting as a formation agent of legal persons, acting as a director or secretary, or providing a registered office for a company etc.

can monitor the activities of the IBC as a whole. Moreover, the monitoring undertaken by a foreign bank will not result in information that will necessarily be available to the SFIU. The Samoan TCSP therefore needs to have a clear understanding of the nature of the IBC's business and its ownership and control structure (c.10.8 refers), who is operating the company's business and opening any banks accounts, etc. Such persons would potentially fall under the heading of a 'beneficial owner' (c.10.5 refers);

- in the minority of cases where the Samoan TCSP does act as a director and/or bank signatory, discussions with both the TCSPs met during the on-site and with the supervisor (SIFA) indicated that the CDD obligations, including for identifying the beneficial owner and for ongoing monitoring, were generally well understood and were being applied. The TCSPs appear to have a very good understanding of the need to obtain ultimate beneficial ownership information (normally through a third party introducer) and appear to be consistently doing so, both on creation of the IBC and through submission of annual returns by IBCs (which must include any changes in shareholders and/or beneficial ownership);
- however, for the majority of IBCs where the Samoan TCSP only creates/renews the IBC on an annual basis and offers a registered office, it is not clear that the TCSP has sufficient information on and contact with the IBC to have a clear understanding of who is operating the company's business and opening any banks accounts, and whether the IBC is operating in accordance with its original profile. Until recently, IBCs have not been required to provide the details of any bank accounts they may be operating either on creation or in annual returns;
- in response to such concerns, the Samoan authorities amended the International Companies Act (ICA) in April 2014 to enhance controls in this area. Section 113(1) of the ICA previously stated only that an IBC 'shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company'. Under the April 2014 amendments, IBCs are now required to keep accounting records to: (a) disclose the current financial position of the company; (b) enable the directors to check that any accounts prepared by the company under this Part comply with the requirements of this Act; (c) allow for the preparation of financial statements; and (d) disclose details of the following: (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangements.' These records are to be kept by the TCSP who provides the registered office for the IBC and those records may be held in Samoa or at the Principal's Office overseas. If the records are not kept with the TCSP then there must be a written undertaking stating that the records will be provided in a timely manner should it be required to be produced²⁰;
- these new requirements were due to take practical effect after the on-site visit. Most IBCs are required to be renewed on an annual basis and the renewal period is from 30 November of each year, so the new provisions will apply to all the great majority of existing IBCs following the completion of the annual renewal process in late 2014. IBCs which are renewed in late 2014 will be required to submit the required financial information if and when they seek renewal in November 2015. If effectively implemented, these amendments will significantly strengthen the ability of Samoan TCSPs to know their clients and, as appropriate, to submit STRs. Samoa is still in the process of determining exactly what TCSPs will be required to do to implement the new requirements.

²⁰ Samoa also advised that a further amendment to the ICA was passed in April 2015 which requires that these records be kept with the TCSP in Samoa, which further strengthens this new measure. This is an important addition because if the Samoan TCSP does not have the records, they cannot monitor them. As noted above, the TCSP provides the legal home of the company and has an overall responsibility to monitor the activities of that company.

260. Bearing in mind the above analysis, and to improve TCSPs' understanding of ML/TF risks and their ability to implement effective ongoing CDD and STR obligations, the evaluation team considers that it would be appropriate for Samoan TCSPs to:

- review the annual financial statements submitted by IBCs and to review a list of transactions undertaken by the IBC, together with a list of assets, so as to be able to confirm that the company is acting consistently with the profile that was built. This could be done annually rather than in real time, but it would enable a report to be filed if suspicious transactions were being undertaken; and
- satisfy themselves that any bank with whom an IBC has an account is, in practice, monitoring transactions in real time. It would make sense for the TCSP to satisfy itself that the IBC only has bank accounts with banks that meet the requirements in R 17.1(c) namely, that it is regulated, and supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11.

261. The team's recommendations are outlined in more detail at the end of this chapter.

Enhanced/specific CDD measures

Politically Exposed Persons (PEPs)

262. **The major gaps in the laws, including non-coverage of domestic PEPs and international organisation PEPs, and the absence of the requirements for FIs to apply some of the preventive measures on existing PEP customers, significantly undermine the effectiveness of the Samoan regime.** During the on-site visit, the banking sector, which has the most customers, indicated that they had no or very few foreign PEPs as customers. The two foreign-owned commercial banks generally demonstrated a high level of understanding of the preventive measures covering PEPs and apply a system of tagging them consistent with group AML requirements. Other parts of the domestic sector and the international financial sector, while aware of the preventive measures for foreign PEPs, have no similarly robust framework or systems. Government officials and domestic politicians in Samoa maintain accounts with domestic commercial banks and due to the small community, all are readily known and identified without a need for formal lists of PEPs. While these officials are not always formally identified as domestic PEPs, they were recognised by the banks as such. As a matter of practice, domestic banks and some MTOs have uploaded a list of PEPs (both foreign and domestic) on their systems. When a politician, diplomat or a senior government official conducts a transaction, the system sends an alert message to the Compliance Officer, who conducts enhanced CDD on the transaction. No STRs have been filed involving domestic PEPs.

Correspondent Banking and Wire Transfers

263. **The absence of legal requirements for FIs to put in place control measures for cross-border correspondent banking relationships, and the absence of CDD obligations with regard to payable-through accounts, have a negative impact on effective implementation of cross-border preventive measures, but this impact is reduced by the practices adopted and systems used by FIs.** Banks and MTOs are generally engaged in wire transfers, for both domestic and cross-border transfers. While Samoa has a legal framework addressing originator information requirements as set out in R.16, a technical deficiency was noted since Samoa does not have requirements on beneficiary information as required under R.16. However, in practice information on beneficiary information is generally obtained since the information is a mandatory requirement which must be attached to any wire transfer message using the SWIFT system which is generally used by the two foreign-owned commercial banks. For MTOs, beneficiary information is obtained since pay-outs cannot be made in the absence of such information.

New Technologies

264. **New technologies, products and services are very limited in Samoa.** During the on-site visit, CBS indicated that both it and FIs always assess new products and delivery channels proposed by FIs before approving its launch. An example was provided where this occurred when mobile phone banking was introduced by local FIs. A similar practice is not being followed in the offshore sector, although SIFA indicated its intention in future to consider AML/CFT issues whenever it introduces new legislation is regarding a new product or solution.

Record keeping

265. **Record-keeping requirements are generally being effectively implemented, with the five year retention requirements covering existing and closed accounts being respected by FIs.** Financial institutions are fully aware and have adequately implemented the various record-keeping requirements related to the customers' transactions, including retaining satisfactory evidence of customer's identity, records related to the transactions and other correspondences, whether the account is still active/existing or already closed, and reports submitted to the SFIU such as STRs. Compliance with record-keeping requirements is generally reviewed during AML/CFT on-site inspections by the CBS/SFIU and SIFA and although some weaknesses were noted, particularly on customer identification, these appeared to be one-off for which proper remedial actions were taken, rather than systemic problems. The SFIU indicated that it has no difficulty when requesting records and reports from FIs under the MLP Act.

(c) *Reporting Suspicious Transactions*

266. **Samoa's legal framework for reporting suspicious transactions under the MLP Act and MLP Regulations largely meets the requirements for R.20,** but the limitations in the scope of ML and TF offences noted under R.3 (some predicate offences for ML under the FATF standards not covered) and R.5 (TF offence does not criminalise the collection or provision of funds to individual terrorists, other than those specified under the CT Act) slightly limit the scope of the suspicious transaction reporting requirement and may have some impact on effectiveness. During the on-site visit, commercial banks advised that they have adequate account and transaction monitoring systems supported by a comprehensive AML Compliance Manual and are able to identify potentially suspicious transactions. In addition, there were no reported instances from the SFIU or FIs involving breaches of the prohibition on tipping off in the filing of STRs.

267. **Other than in the two foreign-owned banks, the level and range of suspicious transaction reporting appears to be inadequate, especially in the non-banking sectors.** Nearly all recent STRs concern suspected internet 'scams' and this is not consistent with the broader domestic ML risks. A total of 125 STRs were submitted during the period 2008 to September 2014. The bulk of STRs were submitted by banks (106), followed by MTOs (15) and trustee companies (3), with majority of STRs (particularly in the last three or four years) related to scams/frauds. While one would expect banks (particularly domestic banks) to submit more STRs than other entities, given their dominant role in the financial sector of Samoa, the level of reporting from the locally owned banks, NBFIs and DNFBP sectors (in particular the TCSP sector) is low and does not appear to be fully consistent with the risks.

Table 6: Suspicious transaction reports, 2008 to 2014

Year	No. of STRs	Reporting Entity
2014 (Jan - Sept.)	13	Banks (8); Trustee companies (2); MTOs (3)
2013	20	Banks (14); Lawyers (1); MTOs (5)
2012	45	Banks (42); MTOs (3)
2011	17	Banks (13); Trustee companies (1); MTOs (3)
2010	9	Banks (8); MTO (1)
2009	13	All from banks
2008	8	All from banks

268. **The SFIU believes that while the overall number of STRs is lower than would be expected given the overall level of risk, the quality of STRs has improved in recent years.** Banks and MTOs, which provide the bulk of STRs, are taking a more active role in questioning customers and obtaining further information before deciding whether to submit an STR. This partly explains the reduction in STRs submitted since 2012. However, even allowing for an improvement in the quality of STRs, the evaluation team notes that all the STRs in recent years have related to suspected internet ‘scams’/fraud.

269. **The banks generally appear to have effective internal AML training which enhances the reporting of STRs, though there is scope for further training in the locally owned banks.** The on-site examinations undertaken by the CBS/SFIU, while not as frequent as they should be (see analysis of IO.3 in chapter 6) have led to improvements in the number and quality of STRs as they allow the supervisors to highlight the reporting obligation and to improve the drafting and submission of STRs. On-site visits have resulted in increased numbers and improved quality of STRs since 2008 as evidenced by the majority of STRs coming from the banking sector (on-site supervision in 2009 and 2013) and MTOs (on-site supervision in 2009). The CBS/SFIU need to increase the frequency of on-site supervision, the use of off-site supervisory tools and to update and broaden the guidance provided on suspicious transaction reporting.

270. **The SFIU has conducted only limited outreach to reporting entities regarding their reporting obligations and the red flag indicators that would assist in guiding them on what is suspicious.** In addition, the Money Laundering Prevention Guidelines, though well regarded, were originally released in 2010 and need to be updated; this would further support the reporting of STRs. The updated guidelines will be able to reflect current risks (per the 2012 and 2014 NRAs), emerging typologies and trends, and provide practical guidance on how to complete an STR with specific references to different sectors where necessary. While Samoa has undertaken two NRAs, very little feedback has been provided to the reporting sectors so the understanding of the risks facing Samoa and each sector and how to mitigate these risks is limited.

(d) Internal controls

271. **The larger, more regulated FIs and DNFBPs, such banks, MTOs and TCSPs, have generally adopted appropriate internal control systems or programs against ML/TF consistent with the requirements under the MLP Act and MLP Regulations, as well as group AML/CFT standards for the foreign-owned entities.** Internal controls are subject to review during internal audits and inspections by supervisory authorities (CBS/SFIU and SIFA). Foreign-owned commercial banks and internationally-affiliated MTOs have robust internal controls that are aligned with their head office/parent company and are subject to periodic review by group internal audit and compliance units.

272. **While domestic FIs and DNFBPs are required to have internal control systems, their systems and controls are not as sophisticated.** This is partly due to limited resources, but also because of the nature of their customers and simple products and services they offer, particularly for smaller and non-complex FIs. When major weaknesses are noted by internal audits, these are generally given proper corrective actions in line with internal policies, and are usually reported to the Board and Senior Management, as well as supervisory authorities so that monitoring of remedial measures may be undertaken.

273. **The extent of internal controls within DNFBPs other than the TCSP sector appears to be low, but is difficult to assess given the lack of AML/CFT supervision of these entities.**

Conclusions on IO.4

274. Samoa introduced significant enhancements to its AML/CFT preventive measures following the 2006 MER with the issuance of the MLP Act 2007 and MLP Regulations 2009, and the AML Guidelines 2010, to better align with the then 2003 FATF standards. However, Samoa has not issued additional

preventive measures since 2009, to further strengthen the country's AML/CFT regime in response to its 2012 NRA, recent ML/TF typologies and to come into compliance with the 2012 FATF Recommendations.

275. Other than foreign-owned banks, the risk-based approach and application of CDD has not been fully adopted and implemented. The existing technical deficiencies limit and undermine the level of the effectiveness of the various preventive measures to some extent. In particular, the need for FIs to assess, understand and mitigate their risks at an institutional level is not clearly understood or applied and reporting entities generally do not have an adequate level of understanding of the various risks posed by customers and their transactions.

276. While the banking sector has a better understanding of the criminal threats of ML/TF in Samoa, in contrast, the level of understanding of ML/TF risks in the other financial sectors (insurance, credit unions) and in majority of the DNFBPs is generally weak and very limited, which can be attributed mainly to the very limited engagement by the supervisory authorities, due to manpower and technical resources (analysed in chapter 6 below), and the fact that the findings of the 2012 NRA have not been shared with the private sector also contributes to the low level of understanding of ML/TF risks and awareness in mitigating them.

277. Concerns exist over the quantity and quality of STRs, which are predominantly related to internet scams and do not reflect the full range of risks/predicate crimes. While some sectors have implemented AML/CFT measures, significant weaknesses exist regarding the implementation of key preventive measures such as beneficial ownership, PEPs, beneficiary information for wire transfers, correspondent banking and ongoing monitoring. The lack of additional/updated guidance, such as red flag indicators and information on recent ML/TF typologies, is also a contributory factor for the non-identification of potentially suspicious transactions.

278. Regarding the international sector, despite the absence of a clear definition of 'beneficial owner' under the MLP Act and Regulations, TCSPs are generally aware of and effective in obtaining and maintaining beneficial ownership information on IBCs, but sufficient information has not been obtained on many IBCs (for example, on the existence and operation of bank accounts by IBCs) for the TCSPs to effectively implement all of their CDD and STR obligations, and beneficial ownership information can be up to a year out of date if only updated annually.

279. **Samoa has moderate level of effectiveness for IO.4.**

5.4 Recommendations on Preventive Measures

280. Samoa should amend MLP Act and MLP Regulations to address the technical deficiencies identified in this report and TC Annex to align with the 2012 FATF Recommendations and 2013 FATF Methodology.

281. Samoa should issue additional, updated guidance related to customer identification, CDD (for FIs and DNFBPs), beneficial owners, beneficiary information, PEPs, correspondent banking, wire transfers, new technologies, reliance on third-parties, internal controls and foreign branches and subsidiaries, high risk countries, suspicious transaction reporting, as well as public advisories on an ongoing basis so that FIs may be made fully aware of recent ML/TF typologies that may be applicable to Samoa, as well as the results of the 2012 (and 2014) NRA.

282. As part of its enhanced application of the risk-based approach, Samoa should ensure that there is adequate assessment, understanding and mitigation of ML/TF risks, including appropriate mechanisms being put in place by FIs and DNFBPs to document and provide risks assessment information to the relevant supervisors.

283. On the basis of ML/TF risk assessments under the 2012 and 2014 NRAs, as well any separate internal risk assessments by FIs and DNFBPs, supervisors should ensure that preventive and other mitigating measures are adequately applied commensurate with the risks identified.

284. In relation to IBCs (including IBCs created prior to the April 2014 amendments to the ICA), Samoa should ensure that TCSPs are required to understand their ML/TF risks, have sufficient information, including in relation to the existence and operation of bank accounts, to enable them to 'know their customer' (including the beneficial owner of the IBC) and be able to undertake sufficient monitoring of their business relationships to meet their CDD, record-keeping, STR reporting and other AML/CFT obligations. These should include:

- a. A TCSP that incorporates an IBC, where the business is introduced by an intermediary and the business model is the normal one described above (with the TCSP providing only the registered office), should be required to regard the beneficial owner as the true customer for the purpose of the application of the MLP Act and Regulations and hence be required to identify and conduct full CDD (enhanced where the customer is high risk) on that beneficial owner;
- b. The TCSP should be required to ensure that an IBC maintains records of all transactions and assets (as is now the case in the Samoan IBC law) and that such records are equally available to the TCSP;
- c. The IBC should be required, on an annual basis, to file financial statements audited by an auditor approved by SIFA;
- d. The TCSP should be required to review the transactions and assets annually and regularly update the CDD information as part of its ongoing due diligence or whenever there is a suspicion of ML or TF;
- e. The TCSP should also be required to conduct periodic reviews of its customers and beneficial owners and this should include a review of publicly available information about them including that available on commercial databases;
- f. For the TCSP to be permitted to step back from real time monitoring of the transactions and activities of the IBC, it should satisfy itself that transactions are being conducted through a bank that is regulated, and supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11.

285. Samoa should take steps to increase the quality, quantity and breadth of STR reporting through collaborative efforts between supervisory authorities and FIs, raising the level of understanding of ML/TF risks, and AML/CFT awareness by conducting ongoing training programs, issuing periodic guidance to assist them in identifying red flags or potentially suspicious transactions, and regularly evaluating system of monitoring accounts and transactions and flagging of suspicious transactions of FIs.

6. SUPERVISION

Key Findings

- **There is a strong licensing (including licence renewal) framework for FIs.** There are fit and proper requirements in place to prevent criminals and their associates from operating within the financial and DNFBP sectors. These fit and proper measures do not however extend to beneficial owners. There are measures in place to prevent criminals and their associates from operating within the DNFBP sectors.
- **Samoa has designated relevant AML/CFT supervisors for the different sectors.** Supervisory powers of the CBS, SFIU and SIFA are limited in some areas. While no financial or criminal sanction has been applied to date for breaches of AML/CFT requirements, the CBS, SFIU and SIFA have, where necessary, revoked licences and issued directives for remedial action in cases of AML/CFT deficiencies.
- **Resources for AML/CFT supervision within the CBS and the SFIU are inadequate.** This has contributed to the low level of AML/CFT supervision. The supervisory resources in SIFA seem to be adequate, but the intensity and frequency of supervision needs to be increased. The role of the Samoa Institute of Accountants as a supervisor needs to be reviewed. Co-operation among supervisors has generally been good.
- **Risk-based supervision is undertaken by the supervisors to a limited extent based on understanding of risks gained from prudential supervision and from Samoa's two NRAs.** Other than the NRA, supervisors do not have mechanisms to regularly identify and assess the ML/TF risks of the FIs and sectors they supervise.
- **Samoa has made some efforts to supervise its FIs for compliance with AML/CFT requirements, however the frequency and intensity of these compliance inspections are considered inadequate.** Where they have been undertaken, supervisory actions have generally had a positive impact on the level of awareness and compliance in the banking and remittance sectors.
- **Except for the TCSP sector, there has been no AML/CFT supervision of the DNFBP sectors** (the casino, legal, accounting, precious metal/stones and real estate sectors).
- **Insufficient feedback is being provided to supervised entities.**

6.1 Background and Context

286. Responsibility for AML/CFT supervision in Samoa is determined by section 45 of the MLP Act, which sets out the obligations of supervisors, and schedule 1 of the MLP Regulations, which sets out the relevant supervisory authority for each type of 'financial institution' under the MLP Act. As noted previously, the very broad definition of 'financial institution' in the MLP Act covers, in FATF terms, both financial institutions and DNFBPs. The division of AML/CFT supervisory responsibilities is as follows:

- Central Bank of Samoa (CBS): responsible for AML/CFT supervision of any financial institution that it otherwise regulates or supervises (ie domestic banks, money changers, MTOs, insurance companies and brokers);
- Samoa International Finance Authority (SIFA): responsible for AML/CFT supervision of any financial institution that it otherwise regulates (ie international banks, international insurance companies and TCSPs);
- Samoa Institute of Accountants (SIA): responsible for AML/CFT supervision of accountants that it licenses; and
- Samoa FIU (SFIU): responsible for supervising "any other financial institution". Given the supervisory responsibilities of the CBS, SIFA and SIA, this means that in law the SFIU is the AML/CFT supervisor for the DNFBPs other than TCSPs and accountants, such as casinos, lawyers, dealers in precious metals/stones and real estate agents.

287. In practice, however, the distinction between the supervisory responsibilities of the CBS and the SFIU is somewhat artificial. Staff of the SFIU are also staff of the CBS, work in the same area of the CBS (the 'Financial Stability Group') as the prudential supervisory staff, and in practice 'wear two hats', being responsible both for AML/CFT supervision and FIU functions. Thus, the *Assistant Manager – Anti Money Laundering and Financial Intelligence Unit*, who runs the SFIU on a day-to-day basis, has conducted or otherwise participated in (with staff from the CBS's Supervision Department) all of the AML/CFT on-site examinations conducted by the CBS over the last four years.

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

Recommendation 26 – Regulation and supervision of financial institutions

288. **Samoa is rated PC with R.26. Samoa has designated the CBS and SIFA to be the AML/CFT supervisors for FIs.** Samoa has strong licensing requirements for FIs which largely meet the requirements of R.26. However, the definition of 'physical presence' for international banks falls short of the FATF requirements. Given the current size and scope of the international banking sector in Samoa, however, somewhat less weight is given to this technical deficiency. There are legal measures in place aimed at preventing criminals and their associates from holding controlling interest or holding management functions in an FI but these measures do not extend to beneficial owners. According to the CBS, banks and insurance companies are supervised in accordance with Core Principles; however the extent to which they are supervised with the Core Principles could not be assessed. Samoa was subject to a Financial Sector Assessment Program (FSAP) review by the IMF in 2014. At the date of the finalisation of this report, the FSAP report had not been published by the IMF. Thus the review team was not able to assess the extent or how well FIs are supervised. All other FIs are required under the MLP Act to be supervised for compliance with the AML/CFT requirements.

289. CBS to some extent determines its supervision priorities based on ML/TF risks of its supervised FIs. There were no indications that SIFA employs a risk-based approach to supervision of the international banks and insurance companies. Outside of the NRA process, neither CBS nor SIFA regularly or formally assess ML/TF risks of FIs as a basis to make decisions on supervision priorities.

Recommendation 27 – Powers of supervisors

290. **Samoa is rated PC with R.27.** CBS and SIFA have powers under the MLP Act to supervise compliance by FIs with AML/CFT requirements and to conduct on-site examinations of FIs for the purpose of assessing AML/CFT compliance. However CBS and SIFA do not have powers to compel the production of information for the purpose of assessing FIs' compliance with the MLP Act and to impose sanctions on their supervised entities for AML/CFT breaches.

Recommendation 28 – Regulation and supervision of DNFBPs

291. **Samoa is rated PC with R.28.** Authorities are designated under the MLP Act and regulations for the supervision of DNFBPs, but only TCSPs are actually subject to systems for monitoring their compliance with AML/CFT requirements. There are no guidelines or policies requiring that supervision of DNFBPs is performed on a risk-sensitive basis. While the legal framework for the AML/CFT regulation and supervision of casinos is generally adequate, no supervision of the recently established casino had taken place at the time of the on-site visit.

Recommendation 34 – Guidance and feedback

292. **Samoa is rated PC with R.34.** The 2010 Guidelines are well regarded by the financial sector, but the guidance has not been kept up to date and very little ongoing feedback between the government and the private sector takes place.

Recommendation 35 – Sanctions

293. **Samoa is rated PC with R.35.** Samoa relies largely on criminal sanctions to deal with natural or legal persons who fail to comply with the MLP Act. The range of sanctions available is not considered proportionate and dissuasive. The sanctions available for breaches of the AML/CFT requirements are applicable to FIs, DNFBPs and natural persons including directors and senior management.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

(a) Measures to prevent criminals and their associates from entering the market

294. **There is a strong licensing (including licence renewal) framework for FIs including international banks and insurance companies.** The CBS and SIFA undertake sound fit and proper tests, which include criminal background checks on shareholders, directors and controllers of proposed FIs. These fit and proper measures do not however extend to beneficial owners. Significant changes in ownership and management control of existing FIs are first vetted and endorsed by CBS and SIFA. There have been no cases where applications for a financial institution licence were rejected for failure to meet fit and proper requirements. For the seven international banks, there is a technical deficiency relating to the legal requirement for a physical and operational presence in Samoa. The law requires a physical office with at least one full time employee with banking and operational records and with two directors who are natural persons, one of whom must be a resident director. Despite this requirement, it is not clear that the presence of ‘meaningful mind and management’ of international banks is consistently demonstrated in all cases.

295. **There are effective measures in place to prevent criminals and their associates from operating within the DNFBP sectors.** In particular, casinos and TCSPs in Samoa are subject to comprehensive licensing requirements, which includes due diligence checks on key persons involved with the company. Authorities conducted police background checks and reference checks on applicants for casino licences and liaised with foreign counterparts during this due diligence process. Recently a licence for a casino was cancelled by the Gambling Control Authority (licensing authority) after a key person associated with the casino company was subsequently charged with criminal offences abroad. Lawyers and accountants must meet minimum requirements for admission and continuation as members in the Samoa Law Society and Samoa Institute of Accountants.

(b) Supervisors’ understanding of ML/TF Risks

296. **CBS has a general understanding of the level of ML/TF risks in the major financial sectors it supervises** (banks and remittance) based on its experience in prudential supervision of these sectors and also based on the 2012 and 2014 NRAs. In the past five years, CBS has in practice focussed its supervision efforts on a limited number of high risk sectors (banks and remittance). Similarly, SIFA has some awareness of the ML/TF risks of the international sector as a result of the NRA (2012 and 2014), however, outside of the NRA process, the CBS and SIFA do not have established processes to identify and maintain an on-going and more detailed understanding of the ML/TF risks between different sectors and individual institutions. The SFIU has some understanding of the ML/TF risks of some of the other DNFBP sectors (accountants, dealers in precious metals) based on the NRA. The SFIU also has some processes for assessing entities’ ML/TF risks. It is also noted that the 2014 NRA did not provide in-depth understanding of ML/TF risks for each institution in a particular sector as required by the FATF Standards. The NRA also did not assess the ML/TF risk in the casino, legal and real estate sectors.

(c) Risk-Based Supervision for Compliance with AML/CFT requirements.

297. **Supervisors rely exclusively on on-site compliance inspections to ensure that FIs and DNFBPs comply with the AML/CFT requirements.** There are no structured off-site inspections for compliance. Samoa underwent an FSAP review in 2014 (just prior to the mutual evaluation on-site visit).

The assessment team was not provided with a copy of the FSAP report to be able to assess the extent to which banks and insurance companies are supervised in accordance with the Core Principles.

Table 7: Number of on-site inspections with an AML/CFT component

Sector	2010	2011	2012	2013
Banks	2	0	0	4
Insurance Companies and Brokers	0	0	0	0
Money Transfer Operators	6	0	0	0
International Banks	0	0	8	0
International Insurance Companies	0	0	4	0
TCSPs	7	7	0	9
Other DNFBPs (lawyers; accountants; real estate agents)	0	0	0	0

298. **The frequency and intensity of the CBS’s on-site inspections of the banking and remittance sector for compliance with AML/CFT requirements are considered insufficient.** In 2010, the CBS conducted on-site AML/CFT compliance inspections of six MTOs and two locally owned banks. In 2013, all four domestic banks were subject to on-site AML/CFT compliance inspections. The two foreign-owned banks were examined for AML/CFT compliance for the first time in 2013. The compliance inspection visits of the banks were conducted over one week and involved two or three staff from CBS and the SFIU. The scope of the CBS on-site inspections in 2010 and 2013 included assessing banks’ compliance with requirements on CDD, monitoring of transactions, reporting of suspicious transactions, and training of staff and AML policies. While the scope of the on-sites covered key AML/CFT requirements, it appears that these requirements were not assessed comprehensively or in sufficient depth. The last on-site AML/CFT compliance inspection of the remittance sector was undertaken in 2010. Discussions with the MTOs indicated that these compliance inspection visits were brief in duration and limited in scope. There has been no AML/CFT inspection of the (small) life insurance sector.

299. **Supervision of the international banks and insurance companies by SIFA has been insufficient, and has not been based on ML/TF risks.** At the time of the ME on-site visit, the last AML/CFT compliance inspections conducted by SIFA of international banks and international insurance companies were in 2012. The compliance inspections focussed on assessing the entities’ record keeping and internal control policies. The scope and frequency of these on-site AML/CFT compliance inspections are considered insufficient - the on-site visits seemed only to have lasted half a day or less which does not appear sufficient to complete a thorough analysis of compliance.

300. **Supervision of the TCSPs for AML/CFT compliance has been more regular, but the depth of examination needs to be strengthened.** Except for 2012, SIFA has conducted on-site AML/CFT inspections of seven to nine of the nine TCSPs annually between 2010 and 2013, although no inspections have been conducted in 2014. The on-site inspection team consisted of three staff and on average lasted a couple of hours per visit. The SIFA inspection team reviewed internal AML/CFT policies and procedures, reviewed a random selection of client IBC files and interviewed TCSP staff during their visits. The scope of these inspections focussed on compliance with CDD and record keeping requirements (including beneficial ownership requirements), AML policies and procedures, staff training and reporting of suspicious transaction requirements. The depth of these on-site AML/CFT inspections of the TCSP is considered insufficient and needs to be further strengthened.

301. **There have been no AML/CFT compliance inspections of the legal, accounting, precious metals/stones and real estate sectors.** Based on the draft 2014 NRA, the ML/TF risks in the accounting sector is medium and for the precious metal sector low. The ML/TF risk in the legal and real estate sector has not been assessed by Samoa. The lack of AML/CFT supervision of these sectors is largely due to resource constraints within the SFIU which is the relevant AML/CFT supervisor. Of particular note is that SIA was not aware of its role of AML/CFT supervisor for accountants. Since the MLP Act 2007 was

enacted, the SFIU has not undertaken any outreach to or co-ordination with SIA to help it to implement its supervisory obligations, principally due to the serious resource constraints in the SFIU, which has seen it concentrate on areas of higher risk (the ML/TF risks associated with the accounting profession was assessed as low in the 2012 NRA). The SFIU suggested that a total of 19 accountants (out of 190 registered with SIA) that is, those engaged in private practice, are actually captured by AML/CFT obligations, which reduces but certainly does not eliminate the need for outreach to and supervision of this sector.

302. The casino recently commenced operations in October 2014 and at the date of the ME on-site visit (November 2014), there had been no compliance monitoring of the casino. The SFIU did however provide information on Samoa's AML/CFT requirements to the casino operator prior to its commencing operations. There were no indications from the SFIU of further plans to engage with the casino for the purpose of AML/CFT supervision. The casino owners and operators have experience in managing AML/CFT requirements for casinos internationally, though the extent of international practices implemented will only be able to be assessed during an on-site inspection.

303. There is a strong level of co-operation between the supervisors (CBS, SFIU and SIFA). The CBS's on-site AML/CFT compliance inspections are conducted jointly with the SFIU. As noted above, the AML supervision staff and the SFIU staff work in the same division within the CBS, and the assistant manager of the SFIU has in practice participated in all of the CBS's on-site AML/CFT examinations. The on-site AML/CFT compliance inspections undertaken by SIFA of the TCSPs in 2010 were conducted jointly with the SFIU. Co-operation allows for sharing of staff resources and expertise. SIFA also shares the findings from its AML/CFT inspections with SFIU and generally with the MLP Task Force. There also appeared to be good co-operation and exchange of information between the supervisors and other competent agencies such as the AGO regarding AML/CFT issues and due diligence of applicants for licences.

304. Resources for AML/CFT supervision within the CBS and the SFIU are significantly inadequate. The supervision department of the CBS is formally responsible for the AML/CFT supervision function. At the time of the ME on-site visit, the CBS supervision department had six (6) staff. These supervisory staff are however also responsible for prudential supervision tasks. Due to this staffing constraint, all CBS AML/CFT compliance inspections are conducted jointly with the SFIU and, as outlined in the assessment of IO.6 in chapter 3 of this report, this has had an effect on the SFIU's capacity to carry out its core FIU functions. The SFIU, with only three (3) full-time staff and a Director with a range of senior responsibilities (as an Assistant Governor in the CBS), does not have sufficient staff to undertake AML/CFT supervision of the DNFBP sectors (including the new casino) in addition to its core FIU tasks and participation in AML/CFT supervision of FIs. There are plans to further expand the staffing resources of the SFIU, which will include staff responsible for AML/CFT supervision tasks. Once this occurs, the CBS intends to delegate its AML/CFT supervision responsibilities to the new AML Supervision Unit, which will be set up within the expanded AML/SFIU Department. At the date of the ME on-site visit, however, this AML Supervision Unit had not been established. As noted in the analysis of IO.6, even with a further expansion of staffing, it will be important for the Assistant Governor/Director of the SFIU to ensure that the resources of the AML/FIU Department are sufficient overall for it to effectively meet both its core FIU functions as well as its expanded supervisory functions.

305. SIFA appears to be adequately staffed and resourced to carry out its AML/CFT supervisory functions, even if the scope and depth of examinations are increased as recommended in this report. SIFA has a total of 46 staff, including nine staff working in the supervision department.

306. SIA, which is the designated AML/CFT supervisor for accountants, was not aware of its supervisory obligations under the MLP Act and does not have the expertise or the manpower to supervise its members for compliance with the MLP Act.

(d) Remedial actions and sanctions for non-compliance with AML/CFT requirements

307. **Sanctions against FIs and DNFBPs for breaches of AML/CFT requirements have been minimal. This is attributed to the low level of compliance inspections undertaken by the relevant supervisors.** Samoa did provide some examples of how the supervisors have cancelled licences of FIs for serious and/or persistent breaches of regulatory requirements. In 2006, SIFA cancelled the licence of a TCSP for repeated breaches of the Trustee Companies Act and MLP Act. The TCSP failed to comply with mandatory filing requirements under the Trustee Companies Act and requirements on customer diligence under the MLP Act. SIFA indicated that its action had a positive impact on levels of compliance generally amongst TCSPs. CBS cancelled the licence of an MTO for breaches of requirements under the Exchange Control Regulations. The administrative sanction applied in this case is considered effective and dissuasive.

308. **No criminal sanction (as provided under the MLP Act) has been applied to date for breaches of AML/CFT requirements.** In the absence of any criminal sanctions applied for AML/CFT breaches, it is not possible to assess whether these sanctions are dissuasive.

309. **Where necessary, the supervisors have directed FIs to take remedial action on AML/CFT deficiencies.** The reports prepared after the on-site AML/CFT compliance inspections have been the primary means through which CBS and SIFA have directed FIs (including TCSPs) to take remedial action for non-compliance with AML/CFT requirements.

310. **Following the on-site inspections of the banks (2013), CBS/SFIU issued on-site reports which highlighted findings of breaches with the MLP Act and directed the banks to take remedial actions to address these breaches.** SIFA also issued similar reports following its on-site inspections of the international banks and international insurance companies (2012). Timelines were given to the FIs to implement these remedial action recommended by the supervisors and these are monitored off-site by the supervisors.

311. **On a case-by-case basis, the SFIU has also issued directives to FIs (banks and MTOs) for remedial action relating to delay in submitting suspicious transaction reports, using its powers under section 10 of the MLP Act.** These were quickly rectified by the concerned FIs.

(e) Impact of supervisory actions on compliance

312. **According to feedback from both the CBS and the supervised entities, the CBS's supervisory actions have generally had a positive impact on the level of awareness and compliance in the banking and remittance sectors.** The AML/CFT compliance inspections undertaken by CBS/SFIU in 2013 have helped to raise the awareness and the general level of compliance by the banks with the MLP Act. Banks appeared to have been receptive to the 2013 on-site findings of the CBS/SFIU and indicated during interviews with the evaluation team that, as a result of the on-site inspections by CBS/SFIU, they had improved the quality and frequency of their internal AML/CFT training for staff, revised and improved their CDD processes (by revising account opening forms) and revised their internal AML/CFT policies to better reflect the requirements of the MLP Act. The CBS/SFIU indicated that while the MTOs' levels of understanding of and compliance with AML/CFT requirements are improving, there is room for further improvement, including in the area of suspicious transaction reporting (for example, some STRs were detected during the supervisors' inspection of some MTOs' files), though the rate of STR reporting by MTOs has improved since 2010.

313. **SIFA's more regular on-site visits to the TCSP sector have improved the level of understanding of and compliance with AML/CFT requirements by the TCSPs.** TCSPs met during the on-site visit generally had a very good understanding of their AML/CFT obligations. However, the level of STR reporting remains low from this sector, due to the business model used by most TCSPs in relation to the IBCs that they create. It is hoped that the level of STR reporting will increase following the recent introduction of more stringent requirements for IBCs to maintain and make available to TCSPs financial records concerning their operations.

314. **Active supervision of the casino, legal, real estate, precious metal/stones and accounting sectors for AML/CFT compliance has not commenced, thus supervisory impact in these sectors is low.** It is very difficult to gauge the levels of compliance in these sectors in the absence of any AML/CFT supervision.

(f) *Promoting a clear understanding of ML/TF risks and AML/CFT obligations and ML/TF risks*

315. **There has been some guidance provided to promote entities' understanding of their AML/CFT obligations.** A guideline issued by the MLP Authority in 2010 has been credited by FIs and DNFBPs for helping them to understand the AML/CFT requirements and to draft their internal AML/CFT policies and processes. Since 2010, however, there have been no further guidelines issued to covered entities.

316. **The SFIU has organised some training for banks, MTOs and accountants on risk assessment and the AML/CFT requirements.** All the supervisors were viewed by the FIs as approachable and helpful in providing AML/CFT-related advice as and when needed. However, there appears to be no regular engagement between the CBS/SFIU and FIs and DNFBPs except as and when requested by an individual entity. FIs in particular indicated that there is a strong need for more guidance and regular interaction with the supervisors especially the CBS/SFIU to further increase their understanding of their obligations under the MLP Act and to raise awareness of ML/TF risks and emerging trends.

317. **While FIs and DNFBPs contributed to the two NRAs, they have not been provided with feedback on the results of the NRA.**

Overall conclusions on Immediate Outcome 3:

318. **Samoa has a strong licensing (including licence renewal) framework for FIs.** There are adequate fit and proper measures in place to prevent criminals and their associates from operating within FIs and the DNFBP sectors. However, these fit and proper measures do not extend to beneficial owners.

319. **Supervision of covered entities for AML/CFT compliance is not adequately based on ML/TF risk.** CBS, SIFA and SFIU have some understanding of the ML/TF risks of the various sectors, however, the extent and frequency of compliance supervision undertaken to date indicates that decisions on supervision are not sufficiently driven by ML/TF risks.

320. **Samoa has made some efforts to supervise its FIs and DNFBPs (in particular TCSPs) for compliance with AML/CFT requirements, but these efforts need to be increased.** Supervisors solely rely on on-site inspections to ensure that entities comply with the AML/CFT requirements. The frequency, depth and scope of the on-site inspections undertaken to date are considered insufficient. Supervision of the insurance sector and DNFBP sectors other than TCSPs has not commenced. The impact of supervisory action is limited to sectors subject to compliance inspections (banks, remittance, TCSPs).

321. **Generally there is strong co-operation between supervisors, but supervisory resources need to be increased.** There is a significant lack of supervisory resources in CBS, SFIU and SIA. This lack of supervisory resources contributes significantly to the insufficient supervision of FIs and most DNFBP sectors. While the supervisors have issued guidelines and ongoing advice on the AML/CFT obligations, there is a need to further improve in this area by updating the guidelines and in particular to raise awareness of ML/TF risks and trends, and to provide more feedback to supervised entities.

322. **Overall, Samoa has achieved a low level of effectiveness for Immediate Outcome 3.**

6.4 Recommendations on Supervision

323. Resources of the CBS and SFIU to undertake AML/CFT supervision responsibilities should be strengthened to enable them to effectively fulfil their supervisory roles under the MLP Act. The role of the SIA to supervise its members for compliance with the MLP Act should be reviewed in view of its apparent current lack of capacity to undertake this role.

324. Supervision of FIs and DNFBPs should be based on ML/TF risk. The CBS and SIFA should adopt processes to enable them to maintain an ongoing and more comprehensive understanding of the ML/TF risks of each financial sector and financial institution within a sector. This understanding of ML/TF risk should determine their decisions on AML/CFT supervision priorities.

325. The CBS and SIFA should strengthen the frequency and intensity of on-site inspections of key sectors such as the banking, remittance and international financial sectors.

326. Supervision of the DNFBP sectors should commence on the basis of ML/TF risk. Due to the inherent high risk nature of casino operations, SFIU should prioritise the supervision of the casino sector. SFIU should explore with GCA on how it can coordinate to ensure the effective supervision of the casino operator.

327. Samoan supervisors should make increased use of off-site supervisory tools, as part of a risk-based approach, to monitor compliance with AML/CFT obligations by FIs and DNFBPs and, in due course, consider the conduct of thematic reviews of compliance to enhance the risk-based approach.

328. Supervisors and the SFIU should increase their engagement with FIs and DNFBPs to promote a better understanding of the AML/CFT obligations and ML/TF risks and trends facing Samoa. Authorities may consider regular industry forums/meetings and further sector specific or general guidelines on key requirements that may still be unclear to the entities.

329. Samoa should address the technical deficiencies in the laws relating to supervision measures (R.26, R.27, R.35). In particular Samoa should:

- i. Strengthen the powers of CBS and SIFA to include the powers to (a) compel the production of information for the purpose of assessing compliance with the MLP Act, and (b) to impose sanctions on their supervised entities for breaches of the AML/CFT requirements.
- ii. Broaden the range of sanctions available for AML/CFT breaches to include an appropriate range of administrative sanctions which can be applied by the relevant supervisors, CBS, SIFA and SFIU.
- iii. Revise the definition of ‘physical presence’ in the laws as it relates to international banks to require that this be the ‘meaningful mind and management’ of the bank.

7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

- **Samoa has assessed the broad vulnerabilities associated with international (though not domestic) legal persons and arrangements as part of the NRA process, and has a reasonable general understanding of how IBCs in particular can be misused for ML/TF.** While there is little evidence that it has occurred (there have been very few foreign requests for information relating to IBCs and no ML prosecutions involving Samoan IBCs), there is a risk that criminals misuse legal persons and arrangements, in particular in the international sector, to launder or to hide criminal proceeds, and that this may not be being detected.
- Due to the limited day-to-day involvement of most Samoan TCSPs in the operation of the great majority of IBCs created in Samoa, **the Samoan TCSPs' ability to detect and report suspicious activity is limited, which inhibits the authorities' ability to identify and understand the vulnerabilities and the extent to which legal persons are being misused for ML/TF.** However, recent strengthening of record-keeping requirements for IBCs relating to financial information will, if effectively implemented, significantly strengthen Samoa's ability to identify, assess and understand the vulnerabilities of IBCs and whether, and the extent to which, IBCs are, in fact, being misused for ML/TF.
- **Basic information for international legal persons and arrangements is publicly available; however, beneficial ownership information for international legal persons or arrangements is not readily available to the public except with the consent of the client.** A range of confidentiality/secretcy provisions apply to both domestic and international entities, however, all secrecy or confidentiality obligations are overridden by section 3 of the MLP Act 2007 and relevant provisions in other legislation and, in practice, both SIFA and the SFIU are able to obtain beneficial ownership information from TCSPs in a reasonably timely manner.
- **Samoa TCSPs seem to have a very good understanding of the requirement to obtain beneficial ownership information in relation to legal persons and arrangements, and the requirements are generally well observed on creation of IBCs.** This information is not always up to date, but is updated at least annually.
- **Monitoring of TCSPs needs to be expanded to ensure that measures, including new measures, to prevent the misuse of legal persons are strengthened and effectively enforced.** While on-site visits are undertaken to most TCSPs in most years, and examinations check for compliance by TCSPs with beneficial ownership requirements, visits tend to be short (2 – 3 hours) and only to look at a small sample.
- **Samoa generally has the ability to cooperate and respond to international requests for basic and beneficial ownership information** relating to both domestic and offshore legal persons and arrangements, and has done so in practice.
- **Samoa has a reasonable system of registers on the basic legal ownership and control information for domestic legal persons, which assists in preventing their misuse for ML/TF.** Basic information on domestic legal persons is publicly available; however, information on domestic legal arrangement is not collected centrally, other than for charitable trusts. The ultimate beneficial ownership information for domestic legal persons is also not centrally collected and there are only limited sanctions for breaches of requirements.

7.1 Background and Context

330. **Samoa law allows for the creation of both domestic and international (offshore) legal persons and arrangements.** The domestic sector is relatively small. The international sector has steadily expanded since the 2006 MER and is very significant in comparison with the domestic sector, but Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

is still relatively small in global terms. In terms of materiality and ML/TF risk in the context of Samoa, international legal persons and arrangements are far more significant and are given much greater weight in this analysis.

(a) *Overview of domestic legal persons*

331. The types of domestic legal persons that can be established or created in Samoa are as follows:

- Public companies: created under the Companies Act 2001
- Private companies: created under the Companies Act 2001
- Incorporated societies: created under the Incorporated Societies Ordinance 1952
- Cooperative societies: created under the Cooperative Societies Ordinance 1952
- Charitable trust boards: created under the Charitable Trusts Act 1965

332. The total number of these legal persons for the period 2012 – 2014 is as follows:

Table 8: Types and numbers of domestic legal persons

	2012	2013	2014
Public company	0	0	0
Private company	108	104	119
Incorporated society	16	12	18
Cooperative society	8	9	1
Charitable trust board	14	19	12

333. **The Ministry of Commerce, Industry and Labour (MCIL) is responsible for monitoring all domestic legal persons for compliance with the requirements of the Companies Act 2001.** The Registrar of Companies is part of the MCIL. The MCIL maintains a central online E-Registry that provides the institutional framework to capture basic information for the different types of domestic legal persons. As set out below, and in the TC Annex, little information is available on the relative significance of each of the various types of domestic legal persons within Samoa’s economy generally as some are in practice yet to be brought fully under the AML/CFT framework of Samoa. However, from discussions with authorities during the on-site visit, it is apparent that all domestic companies are private, family-run companies with simple structures. Incorporated societies are non-profit organisations such as sporting bodies which require a membership of not less than 15 persons associated for any lawful purpose but not for pecuniary gains. Cooperative societies are organisations formed within the villages of Samoa to promote farming or similar development type projects. Charitable trusts are formed predominantly for charitable purposes such as for religious or educational purposes.

334. An analysis of the types of domestic legal persons operating in Samoa can be found in 2006 MER (pages 87 – 89 refer). The Companies Act 2001 came into force after the 2006 evaluation, and updated the previous Companies Act 1955, but does not materially change the analysis.

(b) *Overview of domestic legal arrangements*

335. **Trusts are a feature of the Samoan legal system, and are governed by a mix of the principles of equity and statute law.** The types of legal arrangements that can be established, created or recognised in Samoa are as follows:

- trusts (including express, implied and other forms of trusts) formed under the principles of equity prior to the passage of the Trusts Act 2014;
- trusts formed under the Trusts Act 2014. This includes domestic trusts, foreign trusts (a trust created under the law of another country) and ‘foreign benefitting trusts’, which

replaced what were previously known as ‘international trusts’ (see discussion below under international legal arrangements);

- charitable trusts formed under the Charitable Trusts Act 1965; and
- unit trusts formed under the Unit Trust Act 2008.

336. **As with many other common law jurisdictions, Samoa does not have a system of central registration of most domestic trusts and Samoan authorities are not able to determine how many domestic (or foreign) trusts operate in Samoa.** However, charitable and unit trusts are registered centrally and the total number of these entities that is registered is as follows:

Table 9: Types and numbers of domestic legal arrangements

	December 2012	December 2013	December 2014
Charitable trusts	14	19	12
Unit trusts holders			
• Total assets	\$39.4m	\$71.5m	\$83.8m
• Number of units in the trust	3,433,014	3,004,966	3,384,745
• Value per unit	\$1.21	\$1.44	\$1.50

337. **Charitable trusts are created and registered manually with MCIL and are predominantly owned by religious and non-profit organisations.** An application for the registration of a charitable trust or for the Board of Trustees has to be lodged with the Registrar of Companies and signed by at least five people of the trust or by a majority of the Board of Trustees including a statutory declaration made by the chairman of the Board of Trustees and copy of the Rules, Constitution or Deed of Trust as required under section 10 of the Charitable Trust Act 1965. Due to the lack of information on the number of domestic legal arrangements created in Samoa, it is unclear if charitable trust are the most widely used type of legal arrangements in Samoa.

338. **Unit trusts are registered with the Unit Trust of Samoa (UTOS) an initiative of the Government of Samoa** to provide an investment vehicle for ordinary Samoan’s under the Unit Trust Act 2008. The Trust is an opportunity for small investors to access a range of investments while at the same time spreading risk and leaving the management of their savings in the hands of experts. It is also a part of the Government’s policy of partially privatizing some state-owned enterprises and promoting wider participation by residents in the future development of Samoa.

(c) *International context for legal persons and arrangements*

339. **Samoa is a centre for the establishment and creation of international legal persons and legal arrangements through a Samoan trustee company (TSCP), of which there are nine licensed to operate by the Samoa International Finance Authority (SIFA).** The types of international legal persons and arrangements that can be established or created in Samoa are as follows²¹:

- international business companies (IBCs);
- international partnerships;
- international segregated fund companies; and
- international trusts/foreign benefitting trusts.

²¹ Samoa’s legislation also allows for the creation of international banks, mutual funds and insurance companies, however as financial institutions they are analysed as appropriate under IO.3 and IO.4 above.

340. The number of international legal persons and arrangements established or created for the period of 2012 – 2014 are as follows:

Table 10: Types and numbers of international legal persons and arrangements

	2012	2013	2014 ²²
International business companies			
• Created	4,103	5,648	5,493
• Deregistered/not renewed	2,869	3,051	3,276
• Total active as at 31 December	32,019	34,830	34,141
International partnerships	0	0	0
International segregated funds	4	7	4
International trusts	154	155	155

International business companies (IBCs)

341. **IBCs are by far the most widely used type of legal persons in Samoa’s international sector and according to the authorities are created primarily for asset holding/protection purposes and for the purpose of obtaining tax privileges and exemptions under Samoan law.** IBCs must be created through a Samoan TCSP. Most IBCs are created on the basis of introduced (third party) business, in many cases by intermediaries which are affiliated with the Samoan TCSP in some way (sometimes being the parent company). Most of these introducers (other TCSPs, legal and accounting firms etc) are in Hong Kong, Singapore and Chinese Taipei and are therefore regulated/supervised there; many clients are from China or these other jurisdictions. An IBC may be registered for one, five, 10 or 15 years. The annual fee for registering an IBC in Samoa is US\$300, with discounts provided for IBCs which are registered for longer periods. Most IBCs are registered for one year and most are renewed annually, otherwise they lapse and are deregistered/struck-off. Approximately 4,000 to 5,000 IBC are created each year, with an average of nett increase of 2,000 to 3,000 IBCs per year allow for de-registrations due to non-payment/non-renewal of their annual fee.

342. **SIFA, as Registrar of International (Business) Companies, maintains a central registry that contains summary information for all international legal persons established or created by Samoan TCSPs (name of company, TCSP responsible for its creation).** As discussed below, SIFA does not itself hold beneficial ownership information on IBCs; this information is obtained and maintained by the TCSPs.

International legal arrangements (international/foreign/foreign benefitting trusts)

343. **Foreign trusts** (ie trusts created under the law of another country) are recognised in the Trusts Act 2014. Foreign trusts may hold assets in Samoa, but according to public and private sector entities met by the evaluation team during the on-site visit, this is not common. For example, there are few bank accounts held in the name of foreign trusts.

344. **International trusts** (ie trusts created under Samoa’s former offshore trust legislation) were until April 2014 formed and regulated under the International Trusts Act 1988. As of April 2014, there were 155 international trusts registered with the Registrar of International Trusts (which is part of SIFA). These international trusts are domiciled in Asia including Hong Kong, China and Singapore primarily for asset protection and tax advantage benefits.

²² Figure as at 30 September 2014.

345. **In April 2014, both the Trustee Act 1975 and the International Trusts Act 1988 were repealed and replaced by the Trusts Act 2014.** Under the Trusts Act 2014, at its commencement: (a) any international trust registered under the International Trusts Act 1988 continues for a period of 12 months (that is, until April 2015) as if it was a foreign trust under the Trusts Act despite the repeal of the International Trusts Act 1988; and (b) any existing trust created under the Trustee Act 1975, continues as if created under the Trusts Act 2014. Any existing registered international trust must, within 12 months from the commencement of this Act, comply with the requirements of a trust under the Trusts Act 2014.

346. **There is no legal requirement in the Trusts Act 2014 that a foreign (or domestic) trust must be established through a service provider or legal practitioner.** Nor is there any requirement for foreign trusts to be registered with a central authority. However, a ‘foreign benefiting trust’ under section 2 of the Trust Act 2014 is defined as one where a (Samoan) trustee company is trustee and which is neither created by a citizen of or a tax resident of Samoa and which has no Samoan citizens or Samoan tax residents as beneficiaries. Unlike a ‘foreign trust’, a ‘foreign benefitting trust’ obtains tax advantages/exemptions under the Income Tax Act 2012 (similar to those previously enjoyed by international trusts under the International Trusts Act 1988). The Samoan authorities hope that TCSPs will continue to be involved in the creation and operation of foreign trusts (and therefore subject to the requirements of the MLP Act and Regulations in relation to such trusts), although this is not a requirement of the new legislation, other than for foreign benefitting trusts. As noted above, under the MLP Act trust or corporate service providers, trustee company businesses, and lawyers assisting in the planning or execution of transactions for their clients relating to the creation, operation or management of trusts, companies or similar structures are defined as ‘financial institutions’ under the MLP Act. Therefore, trustees of express trusts are subject to the CDD requirements of the MLP Act and MLP Regulations. At the time of the on-site visit, no new trusts had been established or created under the Trust Act 2014.

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

Recommendation 24 – Transparency and beneficial ownership of legal persons

347. **Samoa is rated PC with R.24.** Samoa has an online E-Registry system for domestic legal persons where a proponent of a company completes the required registration form and submits it online to MCIL to review for completeness before final processing and payment of the registration fee. The E-Registry is accessible to the public and captures basic information on the immediate company ownership and control structure, however, MCIL does not hold information of the ultimate beneficial owner.

348. **SIFA maintains the name and other basic information on all international legal persons on its register, which is accessible to the public (though not online).** Due to confidentiality provisions in the International Companies Act, however, only the existence of an IBC can be confirmed to a member of the public by SIFA. Samoan TCSPs maintain beneficial ownership information on IBCs and either hold, or can obtain from a third party introducer upon request, the beneficial ownership documentation. Beneficial ownership information can only be released to the public with the consent of the client, but SIFA as the regulator and the SFIU can obtain or have access to all information held by a TCSP operating as a ‘financial institution’ in Samoa without the consent of the client. The beneficial ownership information held by TCSPs may not always be as accurate and up-to-date as possible, as IBCs are only required to advise of changes to beneficial ownership on an annual basis as part of the company renewal process.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

349. **Samoa is rated PC with R.25.** Samoa partially meets most of the criteria, on the basis that entities involved in the creation and operation of domestic and international trusts falling within the definition of ‘financial institution’ under the MLP Act are captured by its CDD and other obligations. Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

However, the repealing of the International Trusts Act 1988 by the Trusts Act 2014 has removed the additional measures applied by that Act, including the maintenance by SIFA of a register of international trusts. SIFA as the regulator and the SFIU are provided with powers under the MLP Act to obtain access to all information held by a TCSP or other person captured as a 'financial institution' in Samoa without the consent of the client. Except for charitable trusts, which are registered with MCIL, no information is held centrally on any domestic trust that is created or operating in Samoa.

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

(a) *Risk and Transparency – legal persons and arrangements*

350. **Information on the process for the creation and operation of the types of legal persons and arrangements that may be established in Samoa, in the international sector, is widely available and in the domestic sector except for legal arrangements.** This information can be obtained from the MCIL (for domestic legal persons and charitable trusts) and SIFA (for international persons and arrangements).

351. **Samoa has not fully identified and assessed the actual vulnerabilities and risks of ML/TF through international legal persons and arrangements created and registered in the country.** As outlined above (in the analysis of IO.4), international legal persons or arrangements are generally not subject to ongoing monitoring by Samoan TCSPs. It is also unknown by Samoan authorities to what extent the activities of those IBCs and trusts domiciled in Asia including Hong Kong, China, Singapore and Chinese Taipei are subject to monitoring and supervision by a financial institution or competent authority abroad. The lack of risk-based supervision and sufficiently comprehensive regular on-site examination of the international sector increases the risk and vulnerabilities of the sector to misuse for ML and TF.

352. **However, the competent authorities do have a reasonable general understanding of the inherent risks in the offshore sector as identified and reflected in the 2012 NRA and the draft 2014 NRA,** though the domestic legal persons and arrangements did not form part of the 2012 NRA. The 2012 NRA clearly acknowledges the inherent risks posed by the offshore sector, as well as outlining the steps being taken to mitigate the risks. While the international trust and banking sectors are small by comparison to the IBC sector, it is not clear whether the risks arising from international trusts and international banks have been assessed.

353. **The fact that there have been a number of foreign requests for information received by competent authorities (under both the MACMA, informally and through tax information exchange requests) suggests that international legal persons and arrangements created in Samoa may be being used in foreign jurisdictions as a vehicle to launder or to hide proceeds from foreign predicate crimes.** However the extent of any such misuse is unclear, and none of the requests has resulted in any prosecutions involving Samoan IBCs (noting one civil case is before the Australian courts). While the competent authorities (AGO, SFIU and SIFA) have responded promptly to requests from international counterparts, it appears that local law enforcement authorities have limited capacity and ability to detect, respond to and effectively investigate any ML matters associated with foreign predicate offending involving legal persons or arrangements registered in Samoa that might arise. The Police have not undertaken any investigation into an IBC or trust, however, the Police have the ability to apply to the Court for a search warrant to obtain any information relating to an IBC or trust from a TCSP. All relevant secrecy provisions provided under any Act can be overridden by a search warrant approved by the Court.

354. **In summary, the authorities have a reasonable overall understanding of the extent to which IBCs can be misused for ML/TF, but their understanding of whether and how they are being misused is less well developed, due to lack of ongoing monitoring of the activities of most IBCs.** It is hoped that the recent and possible future amendments to the International Companies Act, which require IBCs to submit additional accounting and banking information on an annual basis to TCSPs, will provide

the basis for a significantly enhanced ability of TCSPs to detect whether an IBC is being misused for ML/TF purposes, and to submit STRs as appropriate (see analysis and recommendations under IO.4 above). This in turn will enhance the ability of SIFA, as the supervisor of the TCSPs, and the SFIU to identify and understand the risks deriving from the offshore sector. At a more holistic level, it is recommended in the analysis of IO.1 in chapter 2 above that Samoa consider the use of both qualitative and quantitative data on the risks facing Samoa and the operation of AML/CFT measures, including collecting data on the value of assets owned by IBCs registered in Samoa (regardless of the location of the assets), the value of transactions going through the Samoan IBCs, and the nature of IBC activities (eg asset holding, trading in specific sectors etc). If this recommendation is accepted, analysis of the data collected should assist the authorities to better understand the overall risks posed by IBCs.

(b) Measures to prevent misuse of legal persons and arrangements

355. As outlined above and in the TC Annex, Samoa has introduced a number of measures under the MLP Act and the relevant international legislation aimed at preventing the misuse of legal persons and arrangements, though further strengthening of the legal regime, which has already commenced, is required. In terms of ensuring access to beneficial ownership information, Samoa relies on the mechanism permitted under criterion 24.6(c) of the Methodology and, in particular, using existing information obtained by FIs and/or DNFBS (in this case, TCSPs) in accordance with Recommendations 10 and 22. Despite some technical deficiencies, requirements to obtain and maintain accurate basic and beneficial ownership requirements are generally in place. Based on the relatively limited experience in responding to foreign requests and on-site examinations of TCSPs, beneficial ownership information has in fact been obtained quickly from Samoan TCSPs, and full beneficial ownership documentation has been obtained in a timely manner (either from the Samoan TCSP or on request from the third-party introducer if held by them), though there is potential for some delays depending on the nature of the documents requested and the jurisdiction in which the documentation is held.

356. Samoa has also introduced important legislative amendments to prohibit the issuance of bearer shares or share warrants to a bearer under section 39 of the International Companies Act 1988 as amended by the International Companies Amendment Act 2014. All companies operating with bearer shares prior to 27 January 2014 shall continue for a period of 12 months and thereafter shall cease and must be converted to a share register unless an application to extend the transitional period is lodged with the Registrar of International Companies. The total number of IBCs operating with bearer shares is unknown; however, no IBC submitted an application seeking an extension after January 2015. Sections 46 and 113 of the International Companies Act were also amended in April 2014 to require an international partnership, limited partnership and international company to keep accounting records. These recent amendments strengthen the existing measures in relation to the offshore sector. Samoa had already in 2008 amended the International Companies Act to immobilise bearer shares and bearer share warrants, which were required to be physically lodged with the TCSP providing the registered office for the company.

357. Samoan TCSPs demonstrate a good understanding of the AML/CFT requirements under the MLP Act, including the need to obtain beneficial ownership information. The evaluation team met with the several of the TCSPs operating in Samoa and they were able to demonstrate their understanding of beneficial ownership information requirements, including the need to identify and verify the identity of the natural person(s) behind the creation of the IBC. This involves completing of standard forms which require information on the nature of the IBC's business, source of funds, names of directors, the secretary and any other office holders, and the ultimate beneficial owner. The identity of these persons is verified through obtaining certified copies of passports and at least one other document (eg utility bills, identity), which are translated if necessary and copies of which are normally held by the introducer. Although the legal requirement for providing information on the nature of the IBC's business and source of funds is stated as being part of the on-going due diligence process (rather than the initial CDD process), in practice, the information is provided by the IBC to the TCSP at the point of creation since it forms part of the registration process.

358. **The CDD processes the TCSPs have put in place to help prevent the misuse of legal persons and arrangements are tested through the on-site examinations undertaken by SIFA which have generally found good levels of compliance (though, as noted above, the depth of these examinations needs to be increased).** This is supplemented by the awareness training delivered to the sector by the SFIU and SIFA. Some Samoan TCSPs require copies of all supporting beneficial ownership documentation (not just the verified beneficial ownership information) from the introducer before they will create an IBC. Other TCSPs require only the verified beneficial ownership information together with a written undertaking that the supporting beneficial ownership documentation will be provided in a timely manner on request. In either case involving introduced business, the Samoan TCSP is provided with the beneficial ownership information as verified by the third-party introducer and take additional steps to satisfy themselves as to the identity of the beneficial owner and the source of their funds (eg through checks of commercial databases and other public records). TCSPs met during the on-site also expressed confidence that they had, or would be able to obtain, access to accurate beneficial ownership information from their clients in a timely manner. No TCSP indicated that it had experienced problems in practice with obtaining beneficial ownership information from clients or introducers when requested. Nor did any TCSP express concerns regarding the accuracy of the beneficial ownership information. Part of this confidence is attributed to the fact that the TCSPs tend to know their clients or in the case of introduced business, vet the introducer before any business is conducted. Some TCSPs advised that they do not accept direct business and require a business referral from an existing client. The evaluation team notes, however, that it is not likely that a Samoan TCSP would express concerns in relation to their ability to obtain accurate beneficial ownership information/documentation in a timely manner. A particular difficulty would arise if an important client was seeking to frustrate an investigation and the foreign introducer may, in some instances, consider that its relationship with that client was more important than compliance with Samoan requirements.

359. It is noted that there is a drafting error in point 19 in Schedule 1 to the MLP Act, which lists the types of FIs captured under the MLP Act. At point 19 of the schedule, reference is made to the Trustee Companies Act 1987, rather than the Trustee Companies Act 1988. This could in theory limit the legal powers of the responsible competent authorities to apply the AML/CFT obligations on trusts created by a TCSP. On a strict legal interpretation, the error in making reference to the incorrect year of the Trustee Companies Act disqualifies all trustee companies operating in Samoa from being a ‘financial institution’ under the MLP Act. Despite this, the trustee companies and the competent authorities in Samoa continue to work in partnership to comply with the requirements of the MLP Act. In practice, customer due diligence and beneficial ownership information are collected and maintained by the TCSPs including information on introducers or intermediaries that are introducing business to them.

(c) *Legal persons and arrangements – access to basic and beneficial ownership*

Basic information

Domestic legal persons and arrangements

360. **Competent authorities and the general public can have access to the basic information held on any domestic legal person created and operating in Samoa through the E-Registry maintained by MCIL.** Company details are maintained on-line through the E-Registry website. Registered companies are required to file an Annual Return every year, which is done via the E-Registry website. Reminders are sent to all registered companies twice a month and eighty-five percent (85%) of the total registered companies file their annual returns in 2014. The remaining 15% were struck off by voluntary dissolution as there is no legal requirements to allow MCIL to struck off a company for failure to submit the annual return. The share information can be viewed via the online registry but this includes only immediate shareholder information.

361. **In relation to domestic legal arrangements, other than where a trust is created by a ‘financial institution’ as defined in the MLP Act, there is no specific requirement to ensure that information regarding a trust be kept accurate and as up-to-date as possible and on a timely basis,**

and such information is not publicly available. However, where a trust is created by a financial institution under the MLP Act (which includes a lawyer or an accountant), or operates a bank account with a financial institution in Samoa, section 6(4) of the MLP Regulations 2009 requires the financial institution to identify and verify the settlors, trustees, and beneficiaries of the trust or similar arrangement, whose vested interest is more than 10% of the value of trust. In these circumstances, the SFIU can obtain access to the basic information for domestic trusts. Law enforcement agencies such as the Police can also obtain access to basic information relating to a domestic trust by executing a search warrant to obtain the information.

362. Basic information for domestic trusts is not centrally collected and therefore is not monitored to ensure that it is kept up to date.

International legal persons and arrangements

363. **The general public can obtain access to the summary of information held by SIFA on any international legal person and arrangements.** Due to confidentiality provisions in the International Companies Act, only limited information relating to an IBC can be provided to the public. On request, the Registrar (SIFA) can confirm to a member of the public the existence of an IBC and its registered office including a contact person, without needing the consent of the client (IBC). However, further basic information (eg list of directors) cannot be released without the consent of the client. The general public will not be able to have access to any basic information on a foreign trust if it is not registered with SIFA.

364. **Competent authorities can obtain access to basic information on international legal persons and arrangements.** The SFIU and SIFA have powers under both the MLP Act and, for SIFA, under the relevant international sector legislation to obtain basic information. The SFIU may also be able to obtain access to basic information on international trusts or IBCs from a domestic financial institution if the trust/IBC operates a bank account with a bank in Samoa, though this is rare. Law enforcement agencies such as the Police can also obtain access to basic information on foreign trusts and IBCs directly from TCSPs through the use of formal channels by executing a search warrant obtained from the Court to obtain the information which can override any secrecy or confidentiality provisions provided in any offshore related legislation.

365. **Basic information for international legal persons and arrangements is updated by TCSPs** either during the renewal process or when and as provided by the requirements of the International Companies Act and the International Trusts Act respectively, and is reviewed either during a scheduled ML/TF on-site examination or annually by SIFA. Samoan IBCs are not legally required to file an annual report apart from maintain accounting records required pursuant to the April 2014 amendment made to the International Companies Act 1988 (see paragraph 374 (iii) below). However, except for foreign benefiting trusts or new foreign trusts that will be created under the Trusts Act 2014 by a financial institution under the MLP Act, the requirement to ensure that basic information is kept up to date cannot be enforced.

Beneficial ownership information

Domestic legal persons and arrangements

366. **Beneficial ownership information for domestic legal persons and arrangements is not collected and maintained by MCIL but is maintained and kept by the law firm/accountant that created the legal person** (if applicable) and by a bank if the legal person or arrangement operates a bank account in Samoa. The SFIU can obtain access to the beneficial ownership information from a financial institution if it involves matters under the MLP Act or the commission of a serious offence, ML offence or TF offence.

367. **Using a search warrant (served on either the legal person/arrangement, the person creating the legal person/accountant or a financial institution holding a bank account for the legal person/arrangement), the Police can obtain direct access to beneficial ownership information**

relating to domestic legal persons and arrangements that are the subject of an investigation. More broadly, the police and TCU indicated that they have had challenges getting access to BO information. Both appeared unaware of how to access BO information and were not aware that the SFIU might be able to assist under the MLP Act as a means of gathering additional intelligence (for example, being able to make inquiries on behalf of law enforcement in relation to any bank accounts held by a domestic person or arrangement).

International legal persons and arrangements

368. **As noted above, while SIFA holds a summary of basic information on all IBCs, it is the TCSPs which hold full basic information and beneficial ownership information, and hold or can obtain copies of BO supporting documentation from third-party introducers.** As noted in the TC Annex (Recommendations 24 and 25) and the analysis of IO.4 in chapter 5 above, the MLP Act includes reasonably strong technical requirements regarding the obtaining of beneficial ownership information relating to IBCs which are generally well observed by TCSPs. In summary:

- i. TCSPs are captured as ‘financial institutions’ under the MLP Act when they create legal persons or arrangements, including IBCs and international/foreign trusts. The MLP Act requires Samoan TCSPs to identify and verify the identity of the ultimate beneficial owner (natural person) behind an IBC, as well as the directors; though there are some technical deficiencies in the requirements, these do not have a significant impact on effectiveness.
- ii. In many cases, IBC registration and renewal is the only function performed/service offered by a Samoan TCSP in relation to an IBC. While they require CDD information (see below) on creation and renewal of IBCs, including information about the purpose of the company, source of funds etc, once an IBC is created in most cases the TCSP will have no involvement in the day-to-day operation of the IBC. Only for a relatively small proportion of IBCs does a local TCSP act as a corporate director, nominee shareholder or secretary and/or become involved in the creation and/or operation of an (overseas) bank account.
- iii. The Samoan authorities amended the International Companies Act (ICA) in April 2014 to enhance controls in this area. IBCs are now required to keep accounting records to: (a) disclose the current financial position of the company; (b) enable the directors to check that any accounts prepared by the company comply with the requirements of the ICA; (c) allow for the preparation of financial statements; and (d) disclose details of the following: (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangements.’ As most IBCs are required to be renewed on an annual basis and the renewal period is from 30 November of each year, the new provisions will apply to all the great majority of existing IBCs following the completion of the annual renewal process in late 2014.

369. **In terms of its currency, beneficial ownership information is typically updated annually during the registration renewal process, though it may be updated on an ad hoc basis during the year.** In relation to ad hoc changes in beneficial ownership, under the ICA, an IBC must notify the Registrar (SIFA) within one month of changes in its name, constitution, memorandum, capital (or number of registered members if it does not have a capital), directors or registered office or in the powers of any local resident director. While any changes to the beneficial ownership information are not legally required, in practice beneficial ownership information is updated as part of the annual renewal process. This is the stage at which TCSPs generally become aware of changes in beneficial ownership. Therefore, there may be some delay in the updating of beneficial ownership information but SIFA if and when required can request beneficial ownership information at any time, and this information has always been submitted in a timely manner.

370. **Competent authorities can generally obtain access to beneficial information in a timely manner, although police need to obtain a search warrant or to channel requests for information through either the SFIU or SIFA.** A range of confidentiality/secretcy provisions apply to both domestic and international entities (for example, section 31 Trustee Companies Act 1988; section 27 International

Trusts Act 1988; section 39 International Partnership and Limited Partnership Act 1988; section 227 International Companies Act 1988). However, all secrecy or confidentiality obligations are overridden by section 3 of the MLP Act 2007 for the purposes of that Act, and there are other powers available to the supervisor (SIFA) in the relevant offshore legislation to obtain information in appropriate circumstances (see analysis of R.9 and R.24 in the TC Annex).

(d) Monitoring and Sanctions

371. **Monitoring of domestic legal persons and arrangements by the MCIL is very limited, and only occurs during the annual renewal process.** Domestic companies can and have been deregistered for non-compliance with the requirements of the Companies Act 2001 such as failure to file annual returns on time. Automated reminders are sent out to companies on the first day of the month and on the 20th day of the month. The lack of a central registration process and monitoring of legal arrangements (trusts) by a competent authority under the Trust Act 2014, other than those created by a ‘financial institution’ under the MLP Act (schedule 1, Section 2), makes it difficult to monitor whether measures to prevent those legal arrangements from being misused for ML/TF purposes are being implemented.

372. **Monitoring of international legal persons and arrangements takes place indirectly and to a limited through SIFA’s on-site examination process of TCSPs.** There is a basic verification or checking process conducted by the authorities of the beneficial ownership information at the time of registration as SIFA requires identification documents from the IBCs for registration of IBCs to occur. For IBCs, the primary way for authorities to be confident that basic and beneficial ownership information is in fact being obtained by TCSPs in accordance with the requirements of the MLP Act and the relevant offshore legislation (and is therefore adequate, accurate and current) is through its on-site examination program. Where key information is found to be inadequate during the course of an on-site examination, SIFA can demand further information or documentation from the TCSP or the introducer. The response time for the information/documentation requested can vary from case to case. Recent experience indicated that responses to requests have been provided in a timely manner, however, where copies of beneficial ownership documentation must be obtained from the introducer there is potential for delays of up to a few weeks depending on the nature of the request and the jurisdiction from which the documentation is being requested.

373. **However, resource challenges have contributed to the inconsistent examination of the sector by SIFA.** As noted in chapter 6 above, Samoan authorities have increased AML/CFT supervision of TCSPs in recent times to help to minimise the misuse of legal persons and arrangements for ML/TF purposes, but while this is welcome, the scope and depth of these examinations is insufficient. Beneficial ownership information is checked at these on-site visits but in relation to IBCs, SIFA is reliant on the TCSP holding accurate beneficial ownership information.

374. **There has been no enforcement action taken against any TCSP since 2006,** when a licence was revoked for non-compliance with the legislation. The sanctions for a criminal breach under sections 340 to 343 of the International Companies Act 1988 relating to fraudulent type activities by an international company are considered effective, proportionate and dissuasive. While section 197 provides the Registrar the power to strike an international company off the register for non-compliance with the payment of its annual fee or failing to comply with instructions from the Registrar of Companies or the Minister, it does not provide any other enforcement actions including criminal, civil or administrative sanctions. The Trusts Act 2014 also does not provide effective, proportionate and dissuasive sanctions for matters of non-compliance with the relevant legislation. Section 71 of the Trusts Act 2014 provides that the remedies available to a court for breach of trust by a trustee include suspension, removal, denial of compensation and any other relief. There are no criminal, civil or other administrative sanctions or penalties in the Act.

(e) International Co-operation

375. **Samoa generally has the ability to cooperate and respond to international requests for basic and beneficial ownership information relating to both domestic and offshore legal persons and arrangements.** This information can be shared in certain circumstances, that is, where the confidentiality provisions contained in the relevant international sector legislation are overridden by other legislation (eg the MLP Act, the MACMA and/or tax information exchange legislation). SIFA has also assisted in providing beneficial ownership information pursuant to tax information exchange agreements (TIEAs), for which the Ministry of Revenue is the competent authority. Samoa was not able to provide formal international co-operation to one request from Greece for beneficial ownership information relating to an IBC (described in chapter 8). Although the information was protected by statutory confidential provisions of Samoa, competent authorities can have access and share the information to a foreign jurisdiction if the request meets the requirements in MACMA (in that it relates to a criminal matter). The particular request from Greece did not meet that requirement and Samoa was therefore unable to render assistance to the request.

376. **The SFIU and SIFA have generally been able to assist the AGO in obtain information and responding to foreign requests in a timely manner.** Apart from the TCU, other competent authorities (Police) have not been exposed to this process due to the lack of understanding of the role, powers and functions of the SFIU and SIFA. The following case is provided as an example:

Box 6: International co-operation regarding an IBC

In 2013, a request was received from the United Kingdom Central Authority Judicial Co-operation Unit for full beneficial ownership information and documentation relating to an international company created by a trustee company operating in Samoa. The information was to assist with an ML investigation in Britain. The request was received by the Ministry of Foreign Affairs and Trade and subsequently submitted to the Attorney General's Office, which coordinated a response together with the SFIU and SIFA. The request was processed and information was sought and obtained from the relevant sources (SIFA and the relevant TCSP). A response was prepared and submitted to MFAT for onward submission to the UK. No feedback was received.

Conclusions on IO.5

377. **While the risks associated with the offshore sector are generally understood and acknowledged as being inherently high by the authorities, Samoa has not comprehensively identified the ML/TF risks and vulnerabilities associated with its international (offshore) legal persons and arrangements.** The limited information available to TCSPs and through them to competent authorities regarding the operations of the majority of the IBCs provides potential risk for a legal person or legal arrangement to be misused to hold or conceal criminal proceeds generated abroad. Recent amendments to the International Companies Act to require IBCs to submit more detailed financial information annually provide a good basis for significant improvement in this important area, but this will require the TCSPs who receive this new information to analyse it, understand it, and flag any concerns regarding possible criminal activity through IBCs by the submission of STRs.

378. **Samoa has a reasonable domestic company registry system that captures basic information on legal person ownership and control, however, similar mechanisms are not in place for domestic legal arrangements other than charitable trusts.** The limited monitoring and oversight by competent authorities of domestic legal persons and arrangements increases the level of risk from misuse for ML/TF purposes.

379. **In relation to offshore entities, competent authorities have been able to readily access significant beneficial ownership information (for example for entities that were either subject to an on-site examination by SIFA or to a foreign request) when it is held in-country by the relevant TCSP,** however experience also indicates that (i) this information may not always be up to date, and (ii) while access to full beneficial ownership documentation does occur in a timely manner when it is held by third party introducers, potentially the beneficial ownership information could take several weeks to be

provided dependent on the type of information requested and the jurisdiction. This delay could hinder the effective investigation of ML through international entities.

380. **Samoa generally has the ability to cooperate and respond to requests whether domestic or foreign within the requirements of MACMA and other relevant legislation.**

381. **Finally, there is no information on the degree to which domestic, foreign and/or international/foreign benefitting trusts are being misused for ML/TF purposes.** With the new process of creating trusts under the Trusts Act 2014, which moves away from the central registration of international (now ‘foreign benefitting’ trusts), competent authorities may not be aware of the creation of trusts and, where they are, could potentially face delays in obtaining access to beneficial ownership documentation in a timely manner. This risk is reduced somewhat for foreign benefitting trusts (which must be created by a Samoan TCSP) or where a trust is otherwise created by a ‘financial institution’ (which includes, TCSPs, lawyers and accountants) under the MLP Act.

382. **Samoa has a moderate level of effectiveness for IO.5.**

7.4 Recommendations on Legal Persons and Arrangements

383. Samoa should:

- a) adequately assess the vulnerabilities and risks of ML/TF through foreign legal persons and arrangements;
- b) enhance the accuracy and timeliness of beneficial ownership information held by TCSPs for IBCs by:
 - i. revising the IC Act to require change of beneficial ownership to be recorded within one month of occurring;
 - ii. effectively applying the new financial information requirements under the IC Act to ensure that TCSPs understand who is the person who ultimately owns or controls the IBC;
 - iii. effectively enforcing existing provisions under the MLP Regulations requiring beneficial ownership documentation either held by a Samoan TCSP or from a third party to be provided ‘without delay’, including by undertaking periodic tests on selected customer files to ensure that copies of beneficial ownership documentation held by a third party introducer can be supplied in a timely manner.
- c) consider obtaining and maintaining beneficial ownership information for all domestic legal persons created and registered online with MCIL;
- d) consider identifying or developing a process to collect and maintain basic and beneficial ownership information on all domestic legal arrangements created in Samoa;
- e) consider requiring domestic trusts, as far as practicable or appropriate, to be created by a lawyer or other entity captured as a ‘financial institution’ under the MLP Act;
- f) amend section 91 of the International Companies Act 1988 to include ‘beneficial ownership’ or ‘shareholder’ information on the Register together with the director and secretary’s information;
- g) amend the Companies Act 2001 to allow MCIL to strike off a company for failing to submit an annual report and for other non-compliance under the Act;
- h) enhance the registry systems in MCIL and SIFA to allow on-going monitoring and enforcing company law requirements through inspections and/or off-site monitoring;
- i) review sanctions available in both domestic and offshore legislation to ensure that they are effective, proportionate and dissuasive;
- j) amend the ‘Trustee Companies 1987’ to ‘Trustee Companies Act 1988’ in article 19 of Schedule 1; Section 2 of the MLP Act.

8. INTERNATIONAL CO-OPERATION

Key Findings

- **Samoa provides a wide range of international co-operation including mutual legal assistance and other forms of co-operation in a timely and efficient manner.** All foreign requests are treated as urgent and most requests are dealt with between 1-2 months (and more quickly in urgent cases).
- **Requests for extradition are rare.** Although Samoa has a legal mechanism to extradite, there is an absence of extradition treaties and only ten countries have been designated as extradition countries. However, Samoa reports only one request in 2012 from New Zealand which was successfully carried out. Rather than the extradition process, Samoa tends to use powers under its Immigration Act to deport nationals back to their own countries. This can be initiated as a result of a request from another country
- **Samoa has initiated few formal international requests for assistance,** but as its capacity to investigate predicate crimes and associated ML (both through the offshore and domestically) increases, Samoa is expected and encouraged to make increased use of international co-operation, particularly in relation to higher risk sectors (eg TCSPs, MTOs). Similarly, as AML/CFT supervisory efforts are strengthened, international co-operation with respect to supervisory issues should improve.
- **Samoaan authorities have excellent relationships with their regional counterparts** and share information as a matter of routine. **Samoa has been able in most instances to share beneficial ownership information on request,** despite the absence of publicly available information on beneficial ownership of legal persons and issues as to accuracy of such information.

8.1 Background and Context

384. International co-operation is important in the Samoan context given its relative isolation, generally limited capacity and resources, the relatively large number of Samoans living overseas and the fact that Samoa's 2012 National Risk Assessment (NRA) identified the international (offshore) sector, money transfer operators and the cross-border movement of cash as areas of higher risk.

385. Formal requests for assistance, including extradition requests, are managed and coordinated by the AGO. The SFIU is a member of the Egmont Group and the Association of FIUs in the Pacific and the SFIU has been sharing and receiving assistance from Australian police, FIU PNG, Vanuatu, Cook Islands, New Zealand and Fiji.

8.2 Technical Compliance (R.36-40)

Recommendation 36 – International instruments

386. **Samoa is rated PC with R.36.** Samoa has acceded to the Vienna, TF and Palermo Conventions and has implemented many of the relevant articles, though some gaps remain. Samoa has not acceded to or fully implemented the Merida Conventions.

Recommendation 37 - Mutual legal assistance

387. **Samoa is rated LC with R.37.** Samoa has a robust legal framework for the provision of mutual legal assistance (MLA), with only relatively minor technical deficiencies. The AGO acts as the Central Authority and oversees all incoming and outgoing requests. Although Samoa has a dual criminality requirement in respect of requests relating to both coercive and non-coercive actions, Samoa has in practice provided assistance by locating witnesses and obtaining witness statements in the absence of the dual criminality requirement.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

388. **Samoa is rated LC with R.38.** Samoa has a robust legal framework for identifying, freezing, seizing and confiscating terrorist assets in response to a request from a foreign country. The only deficiency is the legal requirement for a conviction before assets may be confiscated, although this may be overcome in practice.

Recommendation 39 – Extradition

389. **Samoa is rated LC with R.39.** Samoa has an adequate legal framework in place for extradition. However, there continues to be an absence of both designations (other than the ten designated Pacific countries) and extradition treaties which restricts the number of countries from or to which a person can be extradited. Samoa responds to requests by utilising its immigration laws to deport people. A person can be declared to be a prohibited immigrant under Part VI of the Immigration Act 2004 enabling deportation.

Recommendation 40 – Other forms of international co-operation

390. **Samoa is rated LC with R.40.** Samoa's legislation has a number of mechanisms to allow for a range of information exchange with foreign authorities. However, there is no general provision enabling competent authorities to conduct inquiries on behalf of foreign counterparts and to exchange information that would be obtainable if the inquiry were a domestic enquiry. While the SFIU can enter into agreements to exchange information with non-counterparts, it is not clear whether other competent authorities in Samoa have similar powers to exchange information with non-counterparts.

8.3 Effectiveness: Immediate Outcome 2 (International Co-operation)

(a) Providing and requesting mutual legal assistance

391. **Samoa provides constructive and timely information and assistance when requested by other countries. All formal requests are dealt with on an urgent basis and the processes for the execution of requests are clear.** Formal requests for assistance, including MLA and extradition requests, are managed and coordinated by the AGO. This is done using a manual case management system overseen by the Assistant Attorney General of the Criminal Division as part of the general workload of the Criminal Division, and is working well. The AGO assesses what the requesting country is seeking, and then contacts and liaises with the relevant authorities (SFIU, Samoa Police, TCU, SIFA, Ministry of Foreign Affairs etc) to investigate and obtain pertinent information. Although until recently there was no computerised database or register, given the relatively low number of requests received per year, Samoa was able to provide information on the number, nature, and outcome of the formal requests it receives. The AGO has recently begun to collect additional data on MLA requests and has set up a MLA database that records MLA requests by country and year. Resources in the AGO are adequate to handle the number of requests made and received by Samoa, and other agencies respond promptly to MLA requests. Although Samoa has received little feedback from requesting countries, the quality of assistance provided by Samoa has not been raised as an issue by requesting countries.

392. **Samoa's willingness to cooperate internationally is demonstrated by the fact that it is party to a significant number of agreements that contain commitments regarding MLA,** such as the Commonwealth Scheme for Mutual Assistance in Criminal Matters (Harare Scheme), tax information exchange agreements, and United Nations Convention against Transnational Organised Crime (UNTOC). The enactment of the MACMA in 2007 gives effect to many of the international commitments relating to MLA. While there is an absence of bilateral or multilateral treaties in this area, this is not unusual. The ability to negotiate and conclude treaties with other countries is time consuming and requires significant resourcing as well as a commitment from the other country which may not view the conclusion of a treaty with a small remote jurisdiction as a priority. This has not, however, affected Samoa's willingness and

ability to request and receive assistance from other countries. Samoa has, for extradition purposes, designated ten countries in the Pacific region as extradition countries.

393. **While the level of requests received and made by Samoa is not high, this is to be expected in a jurisdiction where the main crimes tend to be at the lower end of the criminal spectrum** eg. assault, low level fraud and drug offending. This is consistent with Samoa’s risk profile, which notes that Samoa is relatively free from organised crime, the absence of evidence of Samoa being used as a drug trans-shipment point and Samoa’s small domestic financial system.

394. **Records and advice show assistance relating to the following requests: extradition, location of suspects and victims and providing information (including information on persons of interest, available beneficial ownership information, financial intelligence, supervisory, and law enforcement information).** Although no record is kept of timelines for processing requests, Samoa reports that generally most requests are dealt with between 1-2 months. Samoan authorities indicated that they will if necessary seek to clarify any issues with the requesting country if required, and that no conflicts of jurisdiction had occurred to date. The following are tables of formal MLA requests to and from Samoa between 2011 and September 2014 (including extradition) and the outcomes of those requests:

Table 11: Mutual legal assistance and extradition requests from other countries, 2011 – 2014

	COUNTRY REQUESTING ASSISTANCE	ASSISTANCE SOUGHT	OUTCOME
1	American Samoa (2012)	American Samoa authorities required witnesses who were residing in Samoa to attend a Court hearing in American Samoa.	Samoa’s AGO and Ministry of Police worked together to locate the witnesses and have them returned to American Samoa for the purposes of giving evidence.
2	Tonga (2012)	Tongan deportee arrested in American Samoa required to transit through Samoa to Tonga.	Samoa’s AGO and Ministry of Police and Immigration Department assisted with the transit arrangements and undertook the assistance without any issues.
3	Greece (2012)	Greece sought information regarding beneficial owners of an international company.	The information was protected by statutory confidentiality provisions of the International Companies Act. The request did not fit any of the categories which would allow disclosure of details under a mutual assistance request and in particular did not appear to relate to a criminal matter. The requesting authorities were advised that Samoa were unable to render assistance under the MACMA in this case on the basis of the request received (see further discussion below).
4	Portugal (2012)	Portugal sought assistance with locating a suspect and serving documents.	Samoa was able to locate the suspect and serve documents. However, Samoa issued a letter to the requesting authorities that their request was not clear on the request for assistance. The location of the suspect and service of documents was the extent of this assistance.
5	New Zealand (2012)	New Zealand sought extradition of a defendant in criminal proceedings	Samoa assisted with the extradition of the defendant back to New Zealand to stand trial.
6	American Samoa (2012)	Investigation into persons of interest use of identification documents to travel to Samoa and evade criminal proceedings	AGO with Ministry of Police and Immigration investigated how the persons of interest obtained identification documents. AGO provided assistance to the American Samoan authorities who travelled to Samoa to conduct their investigations.
7	Australia (2013)	Australian authorities	AGO assisted by providing requested documents and

	COUNTRY REQUESTING ASSISTANCE	ASSISTANCE SOUGHT	OUTCOME
		sought information regarding a person of interest.	affidavits in relation to the identity of the person of interest.
8	United States (2013)	Mutual legal assistance request for information regarding money laundering.	Investigations into persons of interest and their financial dealings. A credible link was discovered between persons of interest and money laundering. That information was disclosed to the US authorities.
9	Australia (2013)	Request for information regarding persons of interest in internet banking scam.	Pro-active in forwarding the relevant information to the Australian Federal Police (AFP) regarding ML action.
10	Britain (2013)	Request for information concerning a company set up under a trust in Samoa.	Investigations into companies and persons of interest. Advice was sent to the UK Central Authority Judicial Co-operation Unit, regarding the specific information requested.
11	China (2014)	Request information on a company set up under a trust in Samoa	Investigations into companies and persons of interest. Advice sent to Embassy of China regarding the specific information requested.
12	United States (2014)	Request information of persons of interest in a fraud investigation and company records	Information sent to FBI in the United States regarding the specific information requested.

Table 12: Mutual legal assistance requests by Samoa, 2011 – 2014

	COUNTRY REQUESTED ASSISTANCE	ASSISTANCE SOUGHT	OUTCOME
1	American Samoa (2011)	Samoa sought assistance from American Samoa to bring back a victim of a sexual assault, who had left the jurisdiction before trial, to reside in American Samoa.	The American Samoan authorities assisted with locating the victim, and arranging for her to be brought to Samoa.
2	Tonga (2014)	Requested assistance from Tonga to obtain a legal document from the national records (birth certificate)	An original document was received by Samoa's AGO.

395. **It is noted that only one request over the period has been denied (refer Table 11, item 3, requesting country Greece).** This request was a MLA request for information relating to the beneficial owners of a Samoan IBC. The information requested was protected by a Samoan statutory confidentiality provision, which could only be overridden by MACMA if the request related to a criminal matter (which includes both criminal investigations and criminal proceedings). The request did not relate to a criminal matter and it was not clear what was actually being requested. Furthermore, the request asked Samoan authorities to interrogate the person concerned. This was not possible under domestic law. Greece was advised that the request as submitted was declined but Samoa invited Greece to provide further information in support of its request; this did not occur.

396. **As noted under the analysis of IO.8 above, Samoa is able to provide assistance to foreign States in relation to the enforcement of foreign confiscation orders and restraining orders.** Samoa is also able to request assistance from foreign states to enforce orders made under MACMA. However, no requests have to date been made and accordingly it is not possible to determine the effectiveness of the law. The repatriation and asset sharing measures are also in place but have not been called into use.

397. **In the absence of extradition treaties or where the requesting country is not one of the ten designated countries under the Extradition Act 1974, Samoa uses Part VI of the Immigration Act**

2004 to declare persons as prohibited immigrants and deport them back to the requesting country. Samoa advises that it has deported nationals from China, the Netherlands and Nigeria.

(b) *Providing and requesting other forms of international co-operation*

398. **Samoa regularly seeks informal assistance from other countries, particularly Australia and New Zealand.** Such requests are made as required and Samoa reports that its requests are generally dealt with promptly and efficiently. Samoa was not able to provide comprehensive data on the countries from which informal assistance was requested, or the number, type and outcome of requests made to foreign countries relating to predicate offences for ML. However the following examples were provided:

Box 7: Informal international co-operation with Australia and New Zealand

Mr S – this defendant was prosecuted for fraud. The defendant was an acting CEO in a Government institution in which he corruptly used his position to steal money from the Government of Samoa. There were many issues with this case, including the fact that, as the case arose some years after the first offence, the paper trail of evidence had been disposed of. Furthermore, many of the witnesses had left Samoa to reside overseas. The AGO informally sought the assistance of the New Zealand and Australian Governments to locate witnesses and obtain witness statements. These statements were then submitted as evidence at trial. The New Zealand and Australian Police became the liaisons between Samoa AGO and the witnesses. The co-ordination of this case was a success resulting in the prosecution of the defendant.

Box 8: Informal international co-operation with New Zealand

Mr A – the defendant was an employee of the Government corporation, investigated for fraud against his employer. The defendant escaped the jurisdiction on a Samoan passport, and went to New Zealand on a visa. The Samoa AGO sought the assistance of the New Zealand Police to locate the defendant. The New Zealand Police put the defendant under surveillance over a two-year period as the defendant was elusive to the Police. The New Zealand Police were able to arrest him and he was deported as an over stayer. The defendant was successfully prosecuted and is awaiting sentencing before the Supreme Court of Samoa.

399. **All operational agencies (the SFIU, Police, TCU, Revenue, Immigration and Customs) have established some form of relationship – bilateral, multilateral or both – with their overseas counterparts in the Pacific region.** Informal information sharing occurs on a regular basis amongst those agencies. The AGO shares information with other AGOs and Police spontaneously via email. The nature of information shared on this informal basis can range from access to case law to assisting with the location of a person of interest. The Samoa Police regularly work with the New Zealand and Australian Police and the TCU shares and receives information through Interpol and PTCCC on a daily basis. SIFA, in its supervisory role, exchanges information with its foreign counterparts. Through its competent authority the Ministry of Revenue, Samoa is also required to exchange and provide information under the United States' Foreign Account Tax Compliance Act (FATCA) regime. Steps have been taken to commence negotiations with the United States for an Inter-governmental Agreement between Samoa and the US Internal Revenue Service (IRS). This will enable FIs to exchange the relevant information through the Ministry of Revenue to the IRS.

400. **Samoa has not itself made any requests for ML/TF purposes.** This reflects the lack of ML/TF investigations by Samoa. It is to be expected that the level of formal and informal requests initiated by Samoa in relation to possible predicate crimes and associated ML will increase as Samoa increases its capacity to detect, investigate and prosecute such crimes, both in relation to the offshore sector and in relation to domestic crimes.

401. **The ability to share information informally is enhanced by Samoa's membership of various regional bodies** eg. the Oceania Customs Organisation (a Pacific regional customs body based in Fiji), Pacific Transnational Crime Network, the Pacific Immigration Directors Conference and the Association of Financial Supervisors of the Pacific Countries (AFSPC). SIFA is a member of a variety of Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

organisations, including the Group of International Finance Centre Supervisors (GIFCS), Group of International Insurance Centre Supervisors (GIICS), International Tax Planning Association (ITPA), Corporate Registers Forum (CRF), International Conference of Banking Supervisors (ICBS), and the Peer Review Group, Sub-Group of the OECD Global Forum (PRG). In addition, the provisions of various tax information exchange agreements permit the sharing of information with foreign counterparts in appropriate circumstances. Membership of these organisations enables SIFA to connect with peer regulators to seek assistance on an informal basis regarding supervisory and regulatory issues.

402. **FIU to FIU cooperation also occurs.** The SFIU is a member of the Association of FIUs in the Pacific and has provided assistance to and received it from FIUs in PNG, Vanuatu, Cook Islands, New Zealand and Fiji. Through its membership of the Egmont Group (since 2011), the SFIU can request information from other FIUs that are members of the Egmont Group through the Egmont secure web account, and this occurred for the first time in 2014. Information is also exchanged with non-counterparts. This is increasing as relationships develop. The SFIU regularly works with the New Zealand and Australian Police. A recent workshop held by the Australian Federal Police on AML/CFT issues has also enhanced the working relationship between Samoa and Australia.

Box 9: Co-operation through the Egmont Group

Case #1: Possession of narcotics – In August 2014, the SFIU (on behalf of the Attorney General’s Office) requested from Country X’s FIU information in relation to a Samoan couple who fled to Country X while under investigation for possession of narcotics. Country X’s FIU provided a report in November 2014 and SFIU acknowledged the report. The SFIU distributed the report to relevant local agencies (as authorised by Country X’s FIU) for information and to assist with their investigations. The case is still pending.

Case #2: Suspected structuring of funds – In August 2014, the SFIU made a request to Country A’s FIU regarding a local doctor who had been transferring funds (via internet banking) from his account in Country A to his SAT account. The doctor is suspected of structuring funds in order to avoid the \$10,000 threshold. SFIU received a report in October 2014 from Country A FIU, which highlights that the doctor has an internet banking system limit of \$10,000. SFIU acknowledged Country A’s assistance.

403. **MOUs are also used to enable and enhance information co-operation.** The Central Bank has signed a multilateral MOU with the Australian Prudential Regulatory Authority on supervision matters including information sharing on AML issues for banks. This is very relevant in Samoa’s context, given the two foreign-owned (and largest) commercial banks are Australian. It is noted however that APRA is not the AML/CFT regulator in Australia, but rather AUSTRAC (Australia’s joint FIU and AML/CTF regulator). AUSTRAC could share AML/CFT information relevant to Samoa through APRA, but APRA would not hold this information directly. Samoa does not have an exchange instrument in place with AUSTRAC. The Central Bank also has a close working relationship with the Reserve Bank of Fiji, and is a member of the Association of Supervisors. **Samoa is proactive in seeking informal assistance and willingly provides assistance on request.** There are operational measures in place to ensure that appropriate safeguards are applied (eg. there is secure communication of information through the Egmont Group website and through Interpol).

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

404. **It is not known exactly how many MLA requests or other types of international co-operation relate to requests for basic or beneficial ownership information on legal persons or arrangements, however examples provided by Samoa show that it is occurring in practice.** SIFA, as the offshore regulator, maintains the name and other basic information on all international persons on its register (although this register is not on-line). This information can be shared in certain circumstances, that is, where the confidentiality provisions contained in the relevant international sector legislation are overridden by relevant clauses in that legislation or in other legislation (eg the MLP Act, the MACMA and/or tax information exchange legislation). SIFA has assisted in providing beneficial ownership

information pursuant to the TIEAs (for which the Ministry of Revenue is the competent authority). In 2014, Samoa received six TIEA requests (three requests from Australia, one request each from New Zealand, Norway, and Switzerland). The information sought was provided in five of these cases. One request from the Australian Taxation Office is subject to litigation and is still on-going. SIFA has also facilitated requests for information relating to the Samoan IBCs received by the AGO. Given the risks discussed in this report, SIFA is encouraged to strengthen its relationships with regulators in countries where the majority of beneficial owners of IBCs and where the most significant introducing TCSPs are located (eg China, Hong Kong, Singapore and Chinese Taipei).

405. **In respect of IBCs, subject to the issues identified in the analysis of IO.4 and IO.5 above, beneficial ownership information and documentation is held and maintained by TCSPs** (or, where the supporting documentation is held by the third party introducer can be made available from on request) or accessed with the consent of the TCSP's client. Although this information is not publicly available, the SIFA and the SFIU have the necessary legal powers under the International Companies Act, the Trust Act and the MLP Act to obtain access to this information for AML/CFT purposes. Any MLA request must, in the absence of consent, relate to a criminal matter under the MACMA. As outlined above, while the beneficial ownership information held by TCSPs may be up to a year out of date, Samoa has in practice been able to successfully provide information relating to beneficial ownership in all cases except one (the request from Greece outlined above). The following are some details of requests and Samoa's response:

Table 13: Requests Received By FIU

Requested Agency	Date of Request	Summary of Request	Action Taken by FIU	Response Date and Information Collected
AGO	11/12/12	Information on two IBCs relating to suspicions of fraud	11/01/13 –requested SIFA and TCSP to provide documentation on and information related to the companies including documentation on beneficiaries and beneficial ownership.	15/01/13 – SIFA provided <ul style="list-style-type: none"> - confirmation of registered office (trustee) of the two companies; - Memo & Articles of the company; and - Required documentation and information related to setting up international business companies (e.g. Notice of registered office, etc.). <p>05/02/13 – management staff of the FIU inspected the records of the companies at the trustee office and made copies of such records.</p> <p>15/02/13 - FIU disseminated the report to the AGO together with relevant attachments. The AGO sent the report, which included information on beneficial ownership, to the requesting authority.</p>
AGO	25/03/2013	Requested information Company D and its sole director Mr A. related to charge against director in Australia for conspiracy to defraud	03/04/13 – requested TCSP to provide documentation on and information related to the companies including documentation on beneficiaries and beneficial	08/05/13 – the trustee provided all documentation and information as requested. 16/5/13 – FIU disseminated the report to the AGO together with relevant

Requested Agency	Date of Request	Summary of Request	Action Taken by FIU	Response Date and Information Collected
		(tax) and ML	ownership	attachments. The AGO sent the report, which included information on beneficial ownership sent to the requesting authority.
AGO	15/11/13	Request for information on Company P and Mr G being investigated in UK for ML.	04/12/13 – requested SIFA and TCSP to provide documentation on and information related to the companies including documentation on beneficiaries and beneficial ownership	10/12/13 – SIFA provided: <ul style="list-style-type: none"> - The name of the registered office of company P; - Memo & Articles of the company; and - Notice of situation of registered office. 17/12/13 – the trustee provided all documentation and information as requested. 23/12/13 - FIU disseminated the report to the AGO together with relevant attachments. The AGO sent the report, which included information on beneficial ownership sent to the requesting authority.

406. **Beneficial ownership information for domestic companies is maintained and kept by the law firms that created the company and by a bank where the legal person or arrangement operates a bank account in Samoa.** It is noted that the vast majority of domestic companies are small family companies with simple corporate structures and it is relatively easy to trace ownership of these companies. An E-register exists for domestic companies and captures basic ownership information. This information is accessible to both the competent authorities and the public and can easily be shared.

Overall conclusions on IO.2

407. **Samoa demonstrates many of the characteristics of an effective system of international co-operation, and only moderate improvements are required, particularly in relation to the use made by Samoa of international co-operation to support its own investigations.** Samoa demonstrates a willingness to provide international assistance and has made significant commitments as a party to a number of international agreements relating to mutual assistance. Although a small jurisdiction with resource challenges, it is clear that the AGO, as the central authority for MLA requests, treats all MLA requests as urgent and deals with them accordingly. The average time taken to respond to international requests of 1 – 2 months (and more quickly in urgent cases) is admirable given delays often experienced in this area internationally. The case management system employed by the AGO works very well and the AGO is to be commended for its efforts. Samoa deals with a range of requests including extradition, locations of suspects and victims and requests for information relating to persons of interest, beneficial ownership information, financial intelligence, supervision and law enforcement.

408. **All law enforcement agencies and other competent authorities have generally well established and good working relationships with their main international counterparts.** Information sharing, both formal and informal, occurs on a regular basis. These relationships continue to be built on and are enhanced by Samoa's active involvement in regional bodies. Samoa has initiated few formal international requests for assistance, but as its capacity to investigate predicate crimes and associated ML

(both through the offshore and domestically) increases, Samoa is expected and encouraged to make increased use of international co-operation, particularly in relation to higher risk sectors (eg TCSPs, MTOs). Similarly, as AML/CFT supervisory efforts are strengthened, international co-operation with respect to supervisory issues should strengthen.

409. **Samoa has been able to share beneficial ownership in relation to IBCs despite some challenges around the accessibility of this information.** It is noted that only one request has been refused as the criterion for disclosure under the MACMA was not met as the matter did not relate to a criminal matter. On refusing the request, Samoa however advised the requesting country the reason for the refusal and invited it to resubmit. This is illustrative of Samoa's willingness to cooperate internationally.

410. **Samoa has made strong efforts to cooperate constructively and promptly when requested to do so and has a substantial level of effectiveness for Immediate Outcome 2.**

8.4 Recommendations on International Co-operation

411. In addition to recording the name of the requesting country and number of MLA requests per year, Samoa's new MLA database should also capture data on all incoming and outgoing mutual legal assistance and extradition requests including:

- (i) the number of requests;
- (ii) the nature of requests;
- (iii) whether requests were granted or refused;
- (iv) the type of crime to which the requests relates; and
- (v) how much time was required to respond to requests.

412. Samoa's competent authorities should both seek from and provide feedback to their international counterparts regarding the usefulness of the information requested or provided.

413. Samoa should, as appropriate, make increased use of formal and informal co-operation in support of both its AML/CFT supervision and its investigations of ML and associated predicate offences. In particular:

- (i) The CBS and/or SFIU should strengthen its working relationship with the AML/CFT regulator in Australia (AUSTRAC) as Samoa does not currently have an exchange instrument in place with AUSTRAC;
- (ii) SIFA is should strengthen its working relationships with the relevant competent authorities in countries where the majority of beneficial owners of IBCs and where the most significant introducing TCSPs are located.

TECHNICAL COMPLIANCE ANNEX

1. INTRODUCTION

1. This annex provides detailed analysis of the level of compliance of Samoa with the FATF 40 Recommendations. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the mutual evaluation report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous mutual evaluation in 2006. This report is available from www.apgml.org²³.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

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

3. This Recommendation was added in the 2012 revision of the FATF Recommendations and, therefore, was not assessed during Samoa's second mutual evaluation in 2006.

4. *Criterion 1.1* – Samoa conducted its first National Risk Assessment (NRA) in 2012 (the 2012 NRA). The 2012 NRA was approved by the Money Laundering Prevention Task Force (MLP Task Force) in November 2013 and is used as the basis for Samoa's assessment of its AML/CFT risks. The 2012 NRA is currently being revised; a draft copy of the 2014 NRA was provided to the assessment team during the on site visit, but it is yet to be finalised or approved by the MLP Task Force. Therefore, this analysis is based on the findings of the 2012 NRA (although some reference is made to the draft 2014 NRA and it is noted that the findings of the draft 2014 NRA largely confirm those of the 2012 NRA).

5. The 2012 NRA is principally based on an analysis of money laundering (ML)/terrorist financing (TF) indicators or typologies (e.g. particular types of transactions and/or channels for ML) and their impact. It identifies the offshore sector (in particular international business companies, or IBCs), money transfer operators (MTOs) and the cross-border movement of cash as areas of higher risk, as well as highlighting the importance of the banking sector due to its materiality.

6. The 2012 NRA does not however fully identify and assess the ML/TF risks for Samoa. The NRA itself notes that it is an initial 'generic' risk assessment and that further iterations of the NRA will use more specific risk assessment tools. The 2012 NRA does not consider in any depth the types or volume of threats associated with predicate offences, nor does it draw to any real extent on the risks identified by law enforcement or the private sector concerning underlying predicate offences²⁴. It is also not clear from the 2012 NRA how the relative importance of the threats and of the potential consequences or impact were assessed, other than it was based on 'consequence statements definitions within the context of the money laundering environment'.

7. *Criterion 1.2* – The Office of the Attorney General (AGO) in conjunction with the Samoa Financial Intelligence Unit (SFIU) co-led development of the 2012 NRA with technical assistance provided by the New Zealand FIU. Members of the MLP Task Force contributed to the formulation of the NRA by providing statistics, case studies and identifying their risks and measures to counter those

²³ <http://www.apgml.org/includes/handlers/get-document.ashx?d=866e80e0-42b2-484a-990b-0d61b3dfb19b>.

²⁴ This is also true of the draft 2014 NRA, which includes only limited information on predicate offences. It is also noted that the draft 2014 NRA does not assess the risks from the casino sector – the first casino commenced operations in October 2014 – but the authorities indicated that they are conscious of and intend to address the potential risks posed by the casino sector in the final version of the revised NRA.

risks. Discussions were also held with key players in the financial system such as banks and MTOs and were focused on their knowledge and obligations under the AML/CFT legislation.

8. *Criterion 1.3* – The NRA was completed in late 2012 and, as noted above, is currently undergoing a further review/update. The authorities have indicated that they intend to update their NRA every two to three years

9. *Criterion 1.4* – The 2012 NRA has been provided to all law enforcement agencies and key authorities and ministries. While general feedback has been provided to some private sector entities on the results of the NRA (in particular, those in sectors identified as higher risk), the NRA (or a public version thereof) has not been provided to financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs).

10. *Criterion 1.5* – While some initial steps have been taken since the 2012 NRA, Samoa has not yet implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF. The 2012 NRA discusses what *could* or *should* be done to mitigate some of the higher domestic risks identified (e.g. in relation to MTOs and cross-border movement of cash), and some preliminary steps have been taken to strengthen controls/compliance in these areas. For example, additional measures have recently been introduced in the offshore sector to mitigate risks, including amendments in April 2014 to the International Companies Act 1988 to abolish bearer shares and to require accounts to be kept for IBCs, as well as an increase in compliance staff in the Samoa International Finance Authority (SIFA). Samoan authorities indicated that they intend to review the allocation of resources and implementing measures more broadly following the completion and adoption of the 2014 NRA.

11. *Criterion 1.6* – Section 3A of the Money Laundering Prevention Act 2007 (MLP Act) states that all trustee companies providing offshore financial services in Samoa under any law that is administered by SIFA, may be exempted from any obligation arising under the MLP Act, in accordance with Guidelines issued to that effect by the Money Laundering Prevention Authority (MLPA). While, in practice, only one limited exemption has been granted (to one TCSP in relation to certain customer due diligence obligations), it has not been demonstrated that this potentially very broad exemption under section 3A of the MLP Act was included on the basis of a proven low risk for the offshore sector. In fact, on the contrary, the 2012 NRA notes the ‘inherent’ risks associated with the offshore sector.

12. *Criterion 1.7* – There is a generic requirement in section 14 of the MLP Regulations 2009 for FIs to perform additional customer due diligence (CDD) measures for categories of customers, business relationships or transactions with a higher risk of ML. Politically exposed persons are specified as being higher risk customers, and the 2010 AML/CFT Guidelines specify what factors FIs should take into account when determining whether customers are of a higher risk. While these generic requirements pre-date the 2012 NRA, they do in fact cover some customer types or characteristics identified as higher risk in the NRA, for example non face-to-face customers, non-resident customers and customers which are legal persons or arrangements. The Samoan authorities indicated that they intend to review and amend as required the MLP Act and MLP Regulations following completion of the 2014 NRA and adoption of the mutual evaluation report in 2015.

13. *Criterion 1.8* – While section 15 of the MLP Regulations allows for simplified CDD for certain customers where ML/TF risk is low, this has not been tied to the findings of the 2012 NRA. Under the regulations, an FI should ensure that it fully understands the nature of the relationship and any transactions, and should have in place procedures to monitor developments in those jurisdictions in cases where it decides to apply simplified CDD. As noted above, however, the MLP Regulations pre-date the NRA.

14. *Criterion 1.9* – The authorities designated under the MLP Regulations to regulate and supervise AML/CFT compliance are the Central Bank of Samoa (CBS, responsible for supervising domestic banks; money changers, MTOs, insurance companies and intermediaries); SIFA (responsible for supervising Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

international banks, international insurance companies and TCSPs) and the SFIU (for any other financial institution/DNFBP). While the analysis below at R.26 and R.28 indicates that the supervisors generally have adequate powers of inspection, monitoring of AML/CFT compliance has not fully extended to requirements on FIs and DNFBPs to assess risk and implement measures for risk mitigation.

15. *Criterion 1.10* – FIs/DNFBPs are required under sub-section 17(1) of the MLP Regulations to adopt and implement effective programmes against ML/TF, including: (a) written procedures, policies, systems, and controls to deter and prevent ML and TF; and (b) written internal procedures, policies, systems controls and compliance management arrangements. Sub-section 17(2) states that these programmes ‘must have regard to the risk of money laundering and financing of terrorism, the size and nature of business, and the types of products and services offered by the financial institution’. Sub-section 17(3) states that FIs ‘must have a system in place to identify customers whose activities pose a lower or higher risk of ML’ (but not TF). These obligations imply that FIs must at least identify and assess the risks, though there is no explicit obligation to understand the risks or to document their risk assessments and to keep them up to date. There is however an obligation in sections 12 and 13 of the MLP Regulations to conduct ongoing due diligence and monitoring of customers, and to create and maintain a customer profile. Therefore, the requirement to keep risk assessments updated is partially and implicitly met. There is also no explicit requirement to proactively provide risk assessment information to the competent authorities, although the supervisors’ powers to examine, enforce compliance would allow this information to be provided on request.

16. *Criterion 1.11* – As noted under criterion 1.10, FIs/DNFBPs are required under section 17 of the MLP Regulations to adopt and implement effective programmes against ML/TF which must have regard to ML/TF risk, the size and nature of business, and the types of products and services offered. Section 31 of the MLP Act requires FIs to appoint a compliance officer to ensure compliance with the requirements of the MLP Act, and section 19 of the MLP Regulations requires the compliance officer to be at a senior level. Section 20 of the MLP Regulations requires the auditor of an FI to conduct independent testing of compliance with the procedures, policies and controls required under Part IV of the MLP Regulations (which includes the risk-related programmes contemplated under section 17 of the MLP Regulations). Although this is not a direct and specific requirement to have policies and procedures to manage and mitigate risk, it is an indirect and more generic obligation to have procedures that will enable the requirements of the MLP Act to be met, which include a number of risk-based obligations, and which must be approved by senior management. However since the risk-based obligations are not fully in line with the Standards, some deficiencies remain (including that sub-section 17(3) of the MLP Regulations refers only to ML, and not TF).

17. *Criterion 1.12* – As noted under criterion 1.9, simplified measures are only allowed if lower risks have been identified and in the absence of any suspicion of ML or TF. However, not all the requirements of criteria 1.9 to 1.11 have been met.

Weighting and conclusion

18. Samoa is to be commended on the development of its first NRA in 2012, for making significant progress in completing the 2014 NRA, and for its intention to review its NRA every two/three years to ensure that it remains current. The 2012 NRA generally identifies areas of higher risk, but there are some important gaps in the process of developing and identifying threats/vulnerabilities/risks. Samoa has not yet implemented a comprehensive, risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF on the basis of assessed risks, and has not sufficiently shared the results of the NRA with the private sector. **Recommendation 1 is rated PC.**

Recommendation 2: National cooperation and coordination

19. Samoa was rated PC with former R.31. The 2006 MER noted that the legislative regime explicitly provided measures for co-operation and coordination among the relevant competent authorities at both the national and international levels. However, in practice there were significant gaps in national

cooperation and coordination for AML/CFT, including that a number of key operational agencies were not involved in coordination structures. This resulted in relatively weak cooperation and inadequate sharing of information.

20. *Criterion 2.1* – Samoa has indicated that the MLPA is responsible for developing and issuing AML/CFT policies, and that these policies are in the form of the MLP Regulations 2009 and MLP Guidelines 2010. However, the MLP Regulations and Guidelines do not fully constitute ‘national AML/CFT policies’ in the normally understood meaning of these terms (that is, setting goals, strategies, priorities etc). The Guidelines do include some general policy statements/assumptions, but they only apply to the financial sector. While the MLPA contributed to the development of the 2012 NRA, the limited use to date of the risk assessment to inform strategic decisions or the development of policies (abolishing bearer shares due to high risk is one positive example) indicates that policies are not yet fully informed by risk. AML/CFT legislation and regulations have not yet been reviewed against the updated FATF Recommendations or in light of the findings of the NRA, though the need for such updates is recognised by the Samoan authorities. It appears that the MLPA does not undertake a regular policy review function.

21. *Criterion 2.2* – As noted above, Samoa states that the MLPA is responsible for coordinating national AML/CFT policies. In addition, the MLP Task Force established under section 5 of the MLP Act is the advisory body to the MLPA which aims to strengthen the level of cooperation among competent authorities in implementing AML/CFT regime. However, under section 4 the MLP Act, the primary statutory role of the MLPA is quite narrow (that is, to supervise FIs). The MLP Task Force has a much broader legislative remit, though section 5 of the MLP Act does not specifically give the MLP Task Force responsibility for national AML/CFT policies.

22. *Criterion 2.3* – The MLP Task Force is coordinated by the CBS and the SFIU and meets quarterly. Issues discussed at Task Force meetings include updates by the SFIU on APG reports and outcomes of APG Annual Meetings, and proposed workshops and visits, while other Task Force members provide updates from their ministries. Other recent outcomes include the establishment and operation of the Confiscation Assets Fund and the appointment of the Governor as the Administrator of property forfeited, as well as preparations for the 2014-15 mutual evaluation. The possibility of secondments between agencies and monthly meetings to discuss outstanding suspicious transaction matters has been raised, but nothing has eventuated to date. To further strengthen cooperation, MOUs have been signed between the MLPA/SFIU and a number of key agencies. Generally, however, the MLP Task Force does not regularly address policy issues and has limited discussion regarding joint activities across government, and it is not clear that adequate domestic coordination occurs at an operational or policy level.

23. *Criterion 2.4* – Samoa has not established co-operation/co-ordination mechanisms in relation to combatting the financing of weapons of mass destruction.

Weighting and conclusion

24. Samoa has taken some important steps to improve national cooperation and coordination, but is yet to develop a national AML/CFT policy informed by ML/TF risks. There are some significant gaps in national co-operation and national co-ordination, in particular at the operational level and in relation to proliferation financing issues. **Recommendation 2 is rated PC.**

Recommendation 33 – Statistics

25. Samoa was rated PC with former R.32. The 2006 MER noted that statistics related to on-site inspections were limited and that comprehensive statistics on the number of ML investigations undertaken were not given.

26. *Criterion 33.1* – Section 7(1)(k) of the MLP Act requires the SFIU to compile statistics and records, disseminate information within Samoa or elsewhere and make recommendations arising out of any information received. The SFIU has records of STRs reported by FIs, STRs disseminated to police for investigation, property confiscated to the State and requests assisted/made by the SFIU and the AGO. No ML/TF cases have been investigated or prosecuted which explains the lack of any such statistics. Samoa also maintains statistics in relation to mutual legal assistance, proceeds of crime matters and on-site supervision; some statistics regarding informal cooperation are kept, but not comprehensively. Other statistics relevant to the ‘effectiveness and efficiency’ of Samoa’s AML/CFT systems (including, for example, predicate crime statistics and statistics relating to informal international cooperation) are generally maintained.

Weighting and conclusion

27. Samoa maintains comprehensive statistics in relation to STRs, proceeds of crime, predicate crimes and mutual legal assistance, and captures some but not all information regarding informal international cooperation. **Recommendation 33 is rated LC.**

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 - Money laundering offence

28. Samoa was rated PC with former R.1. Samoa’s ML offence was at the time of the 2006 MER set out in the Money Laundering Prevention Act 2000. Predicate offences for ML were determined using a five year threshold (ie offences punishable by a maximum of more than five years’ imprisonment). The MER concluded that the five year threshold was too high and meant that predicate offences for ML did not cover all the designated categories of offences. Samoa was rated LC with former R.2. The MER concluded that while Samoan law addressed the essential criteria of R.2, effectiveness had been weakened by a lack of capacity amongst law enforcement authorities to investigate financial crimes.

29. ML is now criminalised under section 11 of the Proceeds of Crime Act 2007 (the POCA). Despite the threshold for ML predicate offences having been lowered to 12 months under the POCA, the APG’s 2014 ME Progress Report found that there are still some gaps in Samoa’s coverage of designated categories of predicate offences and concerns re effectiveness, and concluded that compliance could not be considered to be at a level equivalent to LC.

30. *Criterion 3.1* – Samoa’s ML offence in section 11 of the POCA is based on the Vienna and Palermo Conventions. The types of property covered are wide but it is unclear whether the definition covers documents evidencing title to, or an interest in, an asset as required by the Conventions.

31. *Criterion 3.2* – As set out in more detail in the table at Attachment A, Samoa does not have full coverage of all 21 FATF-designated categories of predicate offences. There is no offence with respect to piracy (robbery or violence at sea) and there is insufficient coverage of tax offences; Samoa has not provided information on the more serious tax offences such as tax evasion. Some weight is given to this deficiency given the possible misuse of tax exemptions associated with Samoa’s offshore centre. There are also a number of offences that, while they exist, do not meet the 12 month threshold requirement for being a serious offence (e.g. offences of smuggling, illicit trafficking in stolen and other goods, counterfeiting and piracy of products).

32. *Criterion 3.3* – As noted above, Samoa uses a threshold approach. In order to be a predicate offence for ML, the offence needs to fall within the definition of a ‘serious offence’, which is defined in section 2 of the POCA by reference to ‘unlawful activity’. ‘Unlawful activity’ is defined as an act or omission that constitutes an offence punishable for a maximum period of not less than 12 months.

33. *Criterion 3.4* – The definition of ‘property’ is largely in line with the definition in the Conventions except that it does not appear to cover legal documents or instruments that evidence title to,

or an interest in, property. The ML offence does not have any restrictions relating to the value of property covered and covers property regardless of whether it is derived directly or indirectly from the proceeds of crime.

34. *Criterion 3.5* – Property can be proceeds of crime even if no-one has been convicted of the predicate offence (sections 6(3) and 11(4) POCA).

35. *Criterion 3.6* – The predicate offence for ML is one that is a ‘serious offence’. The definition of serious offence includes offences that occur in another State if the act or omission constituting that offence would have been a predicate offence in Samoa (section 2 POCA).

36. *Criterion 3.7* – The ML offence applies to any person. There is no requirement in the ML offence that the predicate offence giving rise to the proceeds of crime must be committed by a person other than the person charged.

37. *Criterion 3.8* – Section 11(2) of the POCA provides that the intentional element can be inferred from objective factual circumstances.

38. *Criterion 3.9* – For a natural person, the maximum penalty for the ML offence is 1,000 penalty units (ie \$100,000 Samoan tala – SAT, or approximately US\$40,000) or imprisonment for a period not exceeding seven years or more (section 13 POCA). While the maximum penalty could be considered to be dissuasive, it is disproportionately low when compared to the maximum penalties (10 – 14 years) for some other serious offences contained in the recently revised Crimes Act 2013. The lower maximum penalty for ML was cited by authorities as a factor in the absence of ML investigations/prosecutions in Samoa.

39. *Criterion 3.10* – While ‘person’ (as defined in section 2 of the POCA) includes ‘an entity, natural or juridical, including amongst others, a corporation, partnership, trust or estate’, there are no separate criminal, civil or administrative sanctions for the legal person itself (as opposed to its director, manager, etc). However, under section 12 of the POCA, the director, manager, secretary or other similar officer of a legal person (body of persons, whether corporate or unincorporated) can be convicted of a ML offence (if he or she is unable to adduce evidence of lack of knowledge). In such cases, the criminal penalties for a natural person apply. It is noted that the penalty of imprisonment would not apply to a legal person and that the maximum available fine (\$100,000 SAT) cannot be considered to be dissuasive.

40. *Criterion 3.11* – The ancillary offences for the ML offence are provided for in section 11(3) of the POCA.

Weighting and conclusion

41. While the ML offence is mostly compliant with the international standards and most of the criteria are met, several of the 21 designated categories of offences, are not predicate offences for ML or are not sufficiently covered, including tax offences. In addition, the maximum penalty for ML for a natural person is not proportionate and the maximum penalty for a legal person is not dissuasive. **Recommendation 3 is rated PC.**

Recommendation 4 - Confiscation and provisional measures

42. Samoa was rated NC with former R.3. At the time of the 2006 MER, Samoa had drafted but not enacted a Proceeds of Crime Bill to introduce a general freezing and confiscation regime. There were specific freezing and forfeiture measures for the proceeds of ML and TF, financing of terrorist acts and for predicate offences involving narcotics or the use of a firearm, but no general freezing and forfeiture regime for other predicate offences.

43. Samoa has made significant progress since the 2006 MER. Confiscation (referred to as forfeiture) is now provided for in Part III of the POCA 2007. The confiscation provisions (forfeiture orders and pecuniary penalty orders) apply if a person is convicted of a serious offence. The ML offence, most predicate offences and TF offences are all serious offences. However, as noted under R.1 above, there are some gaps in the coverage of ML predicate offences. The APG's 2011 ME Progress Report found that 'welcome and significant progress has been made through enactment of the POCA, and with the initial use of the POCA, it would appear that the level of compliance with R.3 is currently at a level equivalent to a LC.'

44. *Criterion 4.1* – The type of property that can be confiscated is 'tainted property', which includes both proceeds and instruments of crime. The definition of 'proceeds of crime' includes income, capital or other economic gain (section 6(1)(b) POCA) as well as money that is laundered (section 6(1)(a)). 'Instrument' is defined to include property that is used in, or in connection with the commission of a serious offence or is intended to be used in, or in connection with the commission of a serious offence (section 2 definition of instrument paragraph (a) and (b)). So long as the property is 'tainted property', it may be confiscated even if held by a third party (although there is protection for third party interests (sections 15 and 21)). Section 24 enables the Court to make an order for payment of an amount equal to the value of the property instead of the forfeiture of the property in certain circumstances. However, not all ML predicate offences fall within the definition of a serious offence and accordingly property and proceeds relating to these offences cannot be made subject to a forfeiture order.

45. *Criterion 4.2* – A range of provisional measures is available under the POCA. Part IV of the POCA sets out extensive powers in relation to facilitating investigations and preserving property. Under section 74 of the POCA, an authorised officer of an enforcement agency may file an *ex parte* petition to the Judge for a monitoring order for asset tracing purposes, and production orders may be sought under section 66 of the POCA. Powers of seizure are available under section 38 of the POCA. Powers to restrain property *ex parte* are available under sections 46 to 57 of the POCA. Property may be restrained on the basis of reasonable grounds or conviction of a serious offence, or where the property is 'tainted property'.

46. Under section 26 of the POCA, a Court may, before making a forfeiture order or a pecuniary penalty order, set aside or make void, any conveyance or transfer of money or property or interest therein that occurred in circumstances that give rise to a reasonable inference that the money, property or interest was transferred for the purpose of avoiding the forfeiture or pecuniary penalty order, unless the transfer was for valuable consideration to a third party acting in good faith and without notice. Relevant powers are also available under the MLP Act and the Police Powers Act 2007. Under section 7(q) of the MLP Act, the SFIU has the ability to obtain further information on the parties or transactions referred to in reports made under sections 13, 23 and 24 of the MLP Act. Under the Police Powers Act, a Judge may grant a surveillance warrant to police. There is also provision for the management and forfeiture of property of terrorists and terrorist organisation under the CT Act. Under section 39, the Prime Minister may direct the Administrator to take control of property; section 45 applies the provisions of POC Act in relation to terrorist property and there are general powers allowing for the controlled delivery of property and detention of goods suspected to be terrorist property (sections 46 and 48).

47. *Criterion 4.3* – Section 21 of the POCA covers the protection of third parties who claim an interest in relation to property that is the subject of a forfeiture order. Under section 47 of the POCA, before making a restraining order, the Court shall require reasonable written notice to be given to and may hear a person who, in the opinion of the Court, may have an interest in the property. Under section 51(3) of the POCA, a person who has an interest in property against which a restraining order is made may apply to the Court for a variation of the order to exclude specified property from the order.

48. *Criterion 4.4* – The POCA includes mechanisms for the management and disposal of property frozen, seized or confiscated. Section 39 sets out responsibility for seized property, and section 43 covers retention of seized property if a restraining order made and disposal of property forfeited is dealt with under section 20(4)(b). In addition, sections 34 to 36 of the MLP Act provide for the establishment of the

Confiscated Assets Fund as a special purpose account for the purposes of the Public Finance Management Act 2001. The Governor of the Central Bank has been appointed as Administrator of the Confiscated Assets Fund, the current balance of which is approximately \$2,000 SAT, being proceeds of crime assets auctioned by the MLPA.

Weighting and conclusion

49. Samoa has a sound legal framework for the tracing, freezing and conviction-based confiscation of proceeds of crime and instruments of crime. The POCA contains an extensive array of powers to support seizure and confiscation. There remains a technical deficiency with respect to the ML predicate offences, as not all 21 FATF categories of predicate offence are covered. **Recommendation 4 is rated LC.**

Operational and Law Enforcement

Recommendation 29 - Financial intelligence units

50. Samoa was rated PC with former R.26 in the 2006 MER. Deficiencies included a need for greater cooperation with law enforcement agencies, low and declining levels of STRs, and a lack of disseminations to investigative agencies due to concerns of competent authorities regarding the capacity of investigative agencies to handle such investigations. R.26 was subject to analysis in the follow-up process. The 2013 ME Progress Report noted that there was evidence of continued progress in the operation of the SFIU, including an increase in the rate of receipt and dissemination to law enforcement of STRs and concluded that compliance with R.26 could be considered to be at a level essentially equivalent to LC.

51. *Criterion 29.1* – The SFIU is established under section 6 of the MLP Act. The SFIU has been established within the Central Bank of Samoa (CBS). Functions and powers of the SFIU are set out in Part II of the MLP Act. In particular, section 7 of the MLP Act gives the SFIU a wide range of powers, including to receive and analyse reports and other information relating to a serious offence, an ML or a TF offence.

52. *Criterion 29.2* – Section 7 of the MLP Act does not specifically state that the SFIU will serve as the central agency for the receipt of disclosures by reporting entities (financial institutions). However, sections 23 and 24 of the MLP Act require an FI (which is defined in section 2 of the MLP Act and Schedule 1 to that Act to include DNFBPs), a supervisory authority or auditor to report suspicious transactions to the SFIU as soon as practicable after forming that suspicion, but no later than two working days. The SFIU therefore serves as the central agency for receipt of such information.

53. In terms of other information, the regulation of foreign exchange transactions is administered by the CBS under the Exchange Control Regulations 1999 and in accordance with the powers delegated to it under the Central Bank of Samoa Act 1984. FIs (mainly banks and MTOs) are required to submit to the CBS capital inflows (CI) reports of \$30,000 SAT and over (which are passed on to the SFIU) and Balance of Payment (BoP) reports which record every foreign payment and receipt made/received by FIs. These reports can be obtained by the SFIU when required. Furthermore, FIs are required to seek approval from the CBS prior to processing specific transactions including but not limited to the following: repatriation of capital and income; offshore investments; insurance payments and emigration allowances. Over the past five years, approximately 50 CI reports have been generated each year. The SFIU is working on a Cash Transaction Form to consolidate in one form the information required in other CBS forms such as the CI report and BoP forms.

54. *Criterion 29.3* – In relation to criterion 29.3(a), under section 7(1)(q) of the MLP Act the SFIU may obtain further information on parties or transactions referred to in a report made under sections 13 (border currency report) and 23/24 (suspicious transaction reports) of the MLP Act. In relation to criterion 29.3(b), section 7(1)(b) of the MLP Act empowers the SFIU to collect information that it considers relevant to serious offences, ML or TF and that is publicly available, including commercially Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

available databases or information that is collected or maintained and information that is stored in databases maintained by the government. Under section 7(1)(d), the SFIU may request information from any law enforcement agency, government agency or supervisory agency for the purposes of performing its functions under the Act.

55. *Criterion 29.4* – Sub-criterion 29.4(a) – The SFIU has the legal authority to conduct operational and strategic analysis. The SFIU is authorised under section 7(1)(c) to ‘analyse and assess all reports and information’. Under section 7(1)(o), the FIU ‘may conduct research into trends and developments in the areas of money laundering; and the financing of terrorism and improved ways of detecting and preventing and deterring money laundering and the financing of terrorism’. In practice, the SFIU analyses and assesses all STRs and other relevant information provided by institutions and authorities as well as information received from foreign counterparts. If suspicious activity is indicated, further investigation and analysis is undertaken prior to the report being forwarded to the investigating agency (i.e. Ministry of Police/Transnational Crime Unit). Sub-criterion 29.4(b) – Due to resource constraints, the SFIU has not yet performed any strategic analysis.

56. *Criterion 29.5* – Under section 7(1)(g) of the MLP Act, based on its analysis and assessment and where it has reasonable grounds to suspect that the transaction is suspicious, the SFIU may disseminate the report and any information derived from such report to the appropriate law enforcement and supervisory authorities. While the legislative basis for the SFIU to disseminate information *on request* by a competent authority is not clear, it is provided for in MOUs between the SFIU and various law enforcement agencies and has happened in practice. Disseminated information is secured by placing the file in a sealed envelope, addressing it as confidential to the Commissioner/Acting Commissioner of Police, and hand delivering it to the Office of the Commissioner.

57. *Criterion 29.6* – Under section 44 of the MLP Act, an employee or agent of the SFIU is prohibited from disclosing any information or matter which has been obtained in the performance of their duties or the exercise of their functions under the MLP Act, except for the purpose of performing duties or exercising functions under the Act or when lawfully required to do so by any court or for the following purposes: (a) the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or (b) the enforcing of the Prevention and Suppression of Terrorism Act 2002²⁵ or the POCA. While Samoa has no specific security clearance mechanism, every CBS staff member (including SFIU staff) is required to sign a declaration of secrecy after joining the CBS. Regarding the safekeeping of records, all documents, reports and information received by the SFIU are securely stored in the SFIU office. Only SFIU staff have access to this room. The SFIU has its own database (an Excel spreadsheet) which is password protected. Reports (e.g. STRs, BCRs, CIs) received by the SFIU are entered in the database by SFIU staff. The physical and IT security appears to be limited however as access to office space does not appear to be strictly controlled which suggests that the password protected Excel spreadsheet and secure room are the only physical security and IT security arrangements in place.

58. *Criterion 29.7* – The SFIU is located within the CBS, and its staff follow the rules and regulations set by the CBS for all staff, but the SFIU is governed by its own Act (the MLP Act) and functions. The Minister of Finance has appointed the Governor of the CBS under section 4 of the MLP Act as the Money Laundering Prevention Authority (MLPA). Sections 6(1) and (2) of the MLP Act state that the SFIU shall be established by the MLPA and shall consist of: (a) a Director appointed by the Authority, on such terms as it may determine; and (b) such other persons as may be appointed by the Authority. Sections 6(3) and (4) of the MLP Act give the Director of the SFIU the power to exercise all powers and functions of the SFIU. The Director of the SFIU oversees the operations of the SFIU and reports directly to the Governor, both functionally as the Head of the MLPA, as well as administratively as a department of the CBS. The SFIU manages its own affairs and business, makes its own decisions and recommendations to the Director and Governor for approval. The SFIU budget is provided by the CBS, and is confirmed on

²⁵ It is noted that this reference needs to be updated to refer to the Counter Terrorism Act 2014.

an annual basis, prior to the start of the financial year. While resources for the SFIU have not always been fully adequate for the SFIU to perform all of its functions (for example, to conduct strategic analysis – see c. 29.4 above), the Director of the SFIU has sufficient autonomy in the deployment of the SFIU’s resources on a day-to-day basis free from any undue influence or interference.

59. There has in practice been some confusion of roles between the MLPA, CBS (in particular the Governor as both head of the MLPA and of the CBS) and the SFIU. Despite the clear authority given to the Director of the SFIU under sub-section 6(3) of the MLP Act to exercise all the powers and functions of the SFIU, the authorities indicated that every decision/recommendation made by the SFIU has to refer to the Governor of the CBS through the Director for final consideration. In addition, while the SFIU has the power under section 7(1)(e) of the MLP Act to enter directly into domestic MOUs itself, in practice, the Governor has signed all the SFIU’s domestic MOUs with relevant agencies ‘as the Head of the MLPA, including the SFIU’. It was explained to the evaluation team that, having been established by the MLPA under section 6(1) of the MLP Act, and with the MLPA having been responsible for the appointment of its staff under section 6(2), the SFIU was seen as being ‘part of’ the MLPA. In practice, therefore, the dissemination or the sharing of information, or making of requests for information from the private sector, have required the approval of the Head of the MLPA or the Governor of the Central Bank, although the Director of the SFIU had the delegation to make such requests if either is not available. In practice, no such request has been refused by the Head of the MLPA/Governor. During the on-site visit, however, the Samoan authorities agreed with the evaluation team that the Director of the SFIU does in fact have the power to exercise all the functions of the SFIU without approval by the Governor/Head of the MLPA, and does so on a day-to-day basis. On balance, the team was satisfied that, in practice, the operational independence of the SFIU has not been compromised.

60. *Criterion 29.8* – Samoa became a member of the Egmont Group in July 2011.

Weighting and conclusion

61. The SFIU is established under the MLP Act 2007 within the CBS and meets or largely meets nearly all of the technical requirements under the standards. The main area of technical deficiency relates to the absence of strategic analysis. Despite there being some confusion over the respective roles and functions of the SFIU, MLPA and the CBS, in practice the evaluation team was satisfied that the SFIU is generally operationally independent and autonomous. **Recommendation 29 is rated LC.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

62. Samoa was rated PC with former R.27. At the time of the 2006 MER, the MLP Act (2000) had given the Samoa Police the authority to investigate ML offences, but in practice there had been no referrals for investigation in view of concerns regarding capacity to handle the intricacies of such investigations. Proper investigation of ML offences was being impeded by a weak process of dissemination and investigation of STRs and poor information sharing, and there was also some confusion in practice as to which agency has responsibility for ensuring the proper investigation of ML cases. The Transnational Crime Unit (TCU) had been designated to investigate ML and TF cases with a transnational element, but investigations into cases of foreign ML had been limited to providing assistance to foreign law enforcement agencies. There had also been no investigations into TF offences.

63. *Criterion 30.1* – A number of agencies have responsibility for investigating ML, TF and other predicate offences:

- the Samoan Police Service is the designated authority responsible for investigating ML and TF offences. The Commissioner of Police is a member of the MLP Task Force and an MOU has been signed between the SFIU and Police. The Criminal Investigation Division (CID) of the police investigates domestic cases and commercial crime, including ML. STRs analysed by the SFIU are disseminated directly to Police for further investigation;
- the Samoa Transnational Crime Unit (TCU) is responsible for supporting investigations of ML

and TF cases that include a transnational element. The TCU was established in 2002 to provide investigative and operational intelligence to tackle transnational crime including drug trafficking, ML and terrorism. The TCU is a multi-disciplinary unit within the Ministry of the Prime Minister and Cabinet, and is made up of specialist officers from the Police Service, Ministry of Revenue (which includes Customs) and Immigration Department. Investigative powers of the Unit only arise from the powers held by the seconded staff working within the TCU.

64. The CID has primary carriage of all investigations (including tax and revenue offences). Where appropriate, the TCU provides intelligence and analytical support to these investigations. The TCU acts as the sole liaison unit with its international policing partners through the Pacific Transnational Crime Network (PTCN)/Pacific Transnational Crime Coordination Centre (PTCCC) and INTERPOL and can carry out investigations on a directive from the TCU Board of Management. In practice, given that police officers seconded to the TCU retain their police powers, the TCU may conduct an initial investigation but will then refer the matter to the CID for further investigation. Both Police and TCU are members of the MLP Task Force. Other members of the Task Force can assist Police/TCU with their investigations.

65. The Attorney-General is both the chief prosecutor and chief legal adviser of Samoa, and is a member of the TCU Management Committee and the MLP Task Force. The Attorney General's Office (AGO) has signed an MOU with the SFIU to strengthen information sharing and coordination between the two agencies. The AGO has a coordinating role for investigations, however the AGO has not had a prosecution file referred to it for ML or TF offences.

66. The SFIU does not have any responsibility for directly investigating ML or TF offences, but has a role in supporting law enforcement agencies designated to investigate ML. The SFIU also has a role to advise the Minister and the Attorney General with regard to any matter relating to ML.

67. Samoa Customs is also involved in investigating ML and related predicate offences in cooperation with other enforcement agencies through its participation in the TCU. Customs is also a member of the MLP Task Force and has an MOU with the SFIU. Customs works closely with other government and international enforcement agencies to detect and deter unlawful movement of goods and people across the border.

68. The Samoan Immigration Department contributes to ML/TF investigations through its participation in the MLP Task Force and the TCU and is particularly concerned with predicate offences such as human trafficking. The Immigration Department maintains the Border Management System database which contains information on the movement of people into and out of Samoa. This information is accessible to the TCU.

69. *Criterion 30.2* – Law enforcement investigators of predicate offences (that is in the Samoa Police Service and the TCU) have the authority to pursue the investigation of any related ML/TF offences through parallel financial investigations. In practice, however, this has not yet occurred, although some financial investigations related to proceeds of crime have been conducted.

70. *Criterion 30.3* – ‘Authorized officers’, who are appointed by the Attorney General under section 37 of the POCA, can apply to the court for search warrants to search premises for tainted property or evidential materials. The authorised officer is any person and/or ministry appointed by the Attorney-General in writing for the purposes of the POCA. Samoa Police are the usual applicants in restraining orders. However, the Police and AGO work together in ensuring the legality of the tracing, freezing and seizures of property.

71. *Criterion 30.4* – A number of non-law enforcement bodies have responsibility for financial investigations and several Ministries and Authorities have within their mandates anti-corruption responsibilities. The Office of the Ombudsman was established under the Ombudsman Act 1988 (since repealed and replaced by the Ombudsman Act 2013) and its role is to provide the functions, duties and powers to promote good governance in public administration. The Audit Office of Samoa is appointed

under the Samoa Constitution to audit the Treasury Fund; the accounts of all Ministries and offices of executive government; the public accounts, public bodies and local authorities; and other public funds or accounts as may be established. Neither the Ombudsman nor the Audit Office is authorised to pursue the investigation of any related ML/TF offences but both would, in practice, be able to refer such an investigation to the Samoa Police or to the AGO.

72. *Criterion 30.5* – Other than the Office of the Ombudsman, which is authorised to investigate complaints against public sector entities, including the police, there is no formal anti-corruption agency in Samoa, with the Police playing an integral role in investigating corruption under the Crimes Act 2013. The police or other designated authorities would undertake any relevant ML/TF investigations under the POC and MLP Acts.

Weighting and conclusion

73. Samoa meets all five criteria and **Recommendation 30 is rated C.**

Recommendation 31 - Powers of law enforcement and investigative authorities

74. Samoa was rated PC with former R.28. The 2006 MER noted that the MLP Act [2000] did not provide wide powers to investigative authorities to obtain documents and information for use in the investigation and prosecution of ML and underlying predicate offences, though planned amendments to that Act and the Proceeds of Crime Bill, when passed, would include powers for enforcement agencies.

75. *Criterion 31.1* – Competent authorities are able to obtain necessary documents and information for use in investigations of ML, TF and associated predicate offences, as follows:

- production of records held by FIs, DNFBPs and other natural or legal persons: relevant powers are contained in sections 66 to 73 of the POCA, sections 10 and 12 of the MLP Act, sections 9(2) and 11 of the Financial Institutions (FI) Act 1996, Part IV and section 62 and of the Insurance Act 2007, section 43 of the Ombudsman Act 2013, sections 27 and 28 of the Tax Administration Act 2012, and sections 111 and 112 of the Customs Act 2014;
- search: relevant powers are contained in sections 30 to 35 of the Police Powers Act, sections 37 to 45, 72 and 73 of the POCA, section 11 of the FI Act, section 63 of the Insurance Act 2007, section 48 of the Ombudsman Act 2013, sections 170 and 197 of the Customs Act 2014, section 83 of Criminal Procedure Act 1972, section 27 of the Tax Administration Act 2012; the Arms Ordinance and the Narcotics Act;
- witness statements: sections 26 and 28 of the Criminal Procedure Act 1972 and sections 159 and 161 of the Customs Act 2014 set out relevant powers relevant to the taking of witness statements;
- seizure: relevant powers are contained in sections 66 to 68, and 70 of the POCA, sections 26 and 28 of Criminal Procedure Act 1972, and sections 172 and 190 of the Customs Act 2014.

76. *Criterion 31.2* – Sections 3 to 5 and 7 of Police Powers Act authorise undercover operations. Sections 3 to 12 of the Police Powers Act authorise the intercepting of communications, while accessing computer systems is provided by sections 7(1)(b) and 12 of the MLP Act, section 5 of Police Powers Act and sections 66 and 67 of POC Act. These powers can be used in the investigation of all serious offences (ie offences punishable by imprisonment for a maximum period of not less than 12 months). Samoa has the power under the Counter Terrorism Act 2014 to undertake controlled deliveries of property as an investigative technique in relation to terrorism offences, but not otherwise (ie not for ML or other associated predicate offences).

77. *Criterion 31.3* – As noted under criterion 31.1, there are a number of mechanisms under which the police, the SFIU and other competent authorities can identify whether natural or legal persons hold or control accounts, without prior notification to the owner of the account. Sections 66 and 67 of the POCA

allow an authorised officer of an enforcement agency to apply *ex parte* to a Judge in chambers for a production order against the person suspected of having possession or control of documents if the authorised officer has reasonable grounds for suspecting that a person has possession or control of property tracking documents. The time taken to respond to such requests varies but is generally reasonably timely. In addition, and more broadly, under section 7(1)(j) of the MLP Act the SFIU ‘may instruct any FI to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation anticipated by the FIU, notwithstanding that such FI has not made a suspicious transaction report in relation to such matter.’ Police were however unaware of this power and have not in practice called upon it.

78. *Criterion 31.4* – While the legislative basis for investigative agencies to request the SFIU to disseminate information authority is not clear, it is provided for in MOUs between the SFIU and various law enforcement agencies and has happened in practice.

Weighting and conclusion

79. Investigative authorities generally have all the powers that they require to investigate ML, TF and associated predicate offences. However, there is no broad power to undertake controlled deliveries (other than for offences under the Counter Terrorism Act) and other minor deficiencies. **Recommendation 31 is rated LC.**

Recommendation 32 – Cash Couriers

80. Samoa was rated PC with former SR.IX. At the time of the 2006 MER, Samoa had established a border cash declaration system pursuant to the MLP Act 2000. Under that Act, any person who left or entered Samoa with more than \$10,000 SAT (approximately \$US3,600 at the time), or its equivalent in foreign currency, in cash or bearer negotiable instruments (BNI), without first having reported it to the Money Laundering Authority, committed an offence liable to a fine not exceeding \$10,000 SAT or to imprisonment for a term not exceeding five years, or to both. This provision was supplemented by section 15 of the Exchange Control Regulations 1999. Samoa has made progress since the 2006 MER through passage of the MLP Act 2007. It is also noted that the cross-border movement of cash is considered an area of higher risk by the Samoa authorities.

81. *Criterion 32.1* – Section 13 of the MLP Act 2007 requires the declaration of all physical cross-border transportation of currency and BNI above \$20,000 SAT (approximately US\$8,600) in Samoan currency or equivalent foreign currency. In addition, under the Exchange Control Regulations 1999, commercial banks are required to report to the Central Bank all inward individual foreign exchange transaction receipts over \$30,000 SAT (US\$12,900). While the Exchange Control Regulations 1999 (section 4(3)) cover money sent by post, Samoa’s declaration system under the MLP Act does not extend to mail and only extends to cash/BNI on the person or in the person’s luggage, rather than to cargo more generally.

82. *Criterion 32.2* – Under section 13 of the MLP Act, any traveller about to leave or enter Samoa with \$20,000 SAT or such other amount as may be prescribed, in cash or BNI (in Samoan currency or equivalent foreign currency) must declare this fact. In practice, all travellers into and out of Samoa must indicate on Immigration arrival and departure cards whether they are carrying more than \$20,000 SAT (the form does not mention BNI), or the equivalent in foreign currency. If such an indication is given, the person must then complete a Border Currency Report (BCR) Form, which records details about the person and the funds.

83. *Criterion 32.3* is not applicable as Samoa has adopted a declaration system, not a disclosure system.

84. *Criterion 32.4* – Upon discovery of a false declaration or failure to declare, Customs and Immigration officials and police officers have broad powers to search the person and to seize the currency

or BNI (section 13 MLP Act; section 6 Immigration Act 2004; Police Powers Act 2007; and section 190 Customs Act 2014). There is however no explicit provision in the MLP Act that gives the competent authority the authority to request and obtain further information from the carrier with regard to the origin of the currency or BNI, and their intended use upon discovery of a false declaration or disclosure of currency or BNI or a failure to declare

85. *Criterion 32.5* – Under section 13(1) of the MLP Act, a person who leaves or enters Samoa with more than \$20,000 SAT, or such other amount as may be prescribed, in cash or BNI (in Samoan currency or equivalent foreign currency) without first having reported the fact to the FIU, commits an offence and is liable on conviction to a fine not exceeding 100 penalty units (\$10,000 SAT) or to imprisonment for a term not exceeding five years, or to both. This provision is supplemented by section 15 of the Exchange Control Regulations 1999 which imposes a penalty on the making of any false or misleading statement or any material omission with regard to the restrictions on the taking or sending of money, bills of exchange or securities from Samoa. The penalty extends to any individual (two months' imprisonment or a fine not exceeding 20 penalty units or \$2,000 SAT) or body corporate (a fine not exceeding 100 penalty units - \$10,000 SAT). In addition, section 5 of the Immigration Act 2004 requires a person who is about to enter or who has entered Samoa or who is about to depart from Samoa to complete a declaration in a form approved by the Minister. Any person who refuses or fails to do so or completes and delivers a declaration which is in any respect false or misleading or incomplete commits an offence and is liable to a fine up to a maximum of 100 penalty units (\$10,000 SAT).

86. *Criterion 32.6* – Samoa Customs is responsible for monitoring compliance with the reporting obligations at the border, including assisting persons to complete the BCR form. Under sub-section 13(7) of the MLP Act, an authorised officer (which includes a Customs officer) who has seized cash or BNI under sub-section 13(6) shall report such seizure to the SFIU. Sub-section 13(8) of the MLP Act authorises the SFIU to transmit BCR information to Customs and the Central Bank. In practice, all completed BCRs are provided by Customs (together with the incoming/outgoing declaration form) to the SFIU.

87. *Criterion 32.7* – As noted above, the MLPA and the MLP Task Force are the overarching mechanisms for domestic coordination. Customs, Immigration, the SFIU and the Police are members of the Task Force, and the SFIU has signed MOUs with members of the Task Force to strengthen information sharing and close coordination. Responsibility for implementation of the reporting requirements at airports is primarily shared between Immigration and Customs, with Police/TCU involvement as necessary. While basic coordination arrangements are in place, the interface between Customs' and Immigration's databases on incoming passengers is not integrated and is not fully adequate for implementation of Recommendation 32.

88. *Criterion 32.8* – Under sections 13(6) and 14 of the MLP Act, an authorised officer may seize and detain any cash or BNI if the officer has reasonable grounds for suspecting that it may afford evidence as to the commission of an offence under section 13 (ie a false declaration) or a serious offence, a ML offence or a TF offence. Under section 15 of the MLP Act, cash/BNI seized under section 13(6) or 14 shall not be detained for more than 48 hours after seizure, unless the Court grants an order of continued detention for a period up to a maximum of two years. Sections 15(4) and (5) of the MLP Act state that no detained cash or BNI shall be released where it is relevant to an investigation, prosecution or proceeding under this Act, the Prevention and Suppression of Terrorism Act 2002²⁶ or the POCA. Where the cash or BNI is not forfeited or its detention is no longer justified and there is no person claiming an interest in the cash or BNI, such cash or BNI shall be forfeited to the Confiscated Assets Fund.

89. *Criterion 32.9* – Section 53 of the Immigration Act 2004 specifies that the Minister may by notice establish and cause to be maintained any registers, information systems and databases, in any form or forms as the Minister may determine, including but not limited to computer-based and electronic forms,

²⁶ It is noted that this need to be updated with reference to the Counter Terrorism Act 2014.

for the purposes of this Act. The Immigration Division collects and retains all arrival and departure cards as required under section 5 of the Immigration Act 2004. The cards are manually inputted into the system then stored in an off-site location. Information is retrieved either through the database or through hard copy. All completed BCRs are provided by Customs (together with the incoming/outgoing declaration form) to the SFIU. The SFIU retains those records/reports for at least five years as required under section 18(3) of the MLP Act. The SFIU is able to share information with foreign counterparts under sections 7(f), 7(r) and 9 of the MLP Act.

90. *Criterion 32.10* – The information collected through the declaration system is subject to appropriate safeguards regarding non-disclosure of information (sections 340 and 341 Customs Act 2014; section 53(2) Immigration Act 2004; section 44 MLP Act 2007). The MOUs signed between the MLP Authority (SFIU) and members of the MLP Task Force (i.e. Police, Ministry for Revenue-Customs and Ministry of the Prime Minister and Cabinet-Immigration) include provisions on the use and safeguards of confidential information and reports such as BCR, STRs, etc.

91. *Criterion 32.11* – As noted above, any person who leaves or enters Samoa with more than \$20,000 SAT, or such other amount as may be prescribed, in cash or BNI (in Samoan currency or equivalent foreign currency) without first having reported the fact to the SFIU, commits an offence and is liable on conviction to a fine not exceeding 100 penalty units (\$10,000 SAT) or to imprisonment for a term not exceeding five years, or to both. This meets the threshold of a ‘serious offence’ under section 11 of the POCA. Persons carrying out cash/BNI that are related to ML/TF or predicate offences are subject to range sanctions applicable to the ML/TF offences, as described in R.3 and R.5.

Weighting and conclusion

92. Samoa’s legal framework is generally adequate and Samoa meets or largely meets the majority of the criteria. **Recommendation 32 is rated LC.**

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Recommendation 5 - Terrorist financing offence

93. Samoa was rated PC with former SR.II. At the time of the 2006 MER, TF was criminalised under section 20 of the Prevention and Suppression of Terrorism Act 2002. Deficiencies in the TF offence included a failure to effectively criminalise the collection or provision of funds for use by terrorist organisations or individual terrorists, and to criminalise financing of an act that constitutes an offence under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. The TF offence also appeared difficult to apply to legal persons due to a lack of penalties other than imprisonment.

94. Samoa has made some progress since the 2006 MER. A new Counter-Terrorism Act 2014 (the CT Act) came into force in April 2014. Despite some remaining minor technical deficiencies, the APG’s 2014 ME Analysis Report found that compliance with SR.II could be considered to be at a level essentially equivalent to LC.

95. *Criterion 5.1* – Section 23 of the CT Act criminalises TF on the basis of the Terrorist Financing Convention although there remain some deficiencies (see next paragraph).

96. *Criterion 5.2* – The TF offence is defective in the following respects:

- it does not include a fault element with respect to the provision or collection of funds or property. There is no requirement that the person provides or collects funds/property with the intention or with knowledge that those funds etc will be used to carry out a terrorist act or used for the benefit of a specified entity. It is the intention or knowledge that the funds will be used

in full or in part to carry out a terrorist act or by a terrorist group or individual, not the mere provision of funds in full or in part, that is the required element of the offence. It would be clearer if the mental element of the offence was expressly provided for rather than implied;

- it does not criminalise the collection or provision of funds to individual terrorists (other than those specified under the CT Act) where there is no connection to a terrorist act or an act causing death or bodily injury. Nor does it criminalise the collection or provision of funds in relation to aircraft safety, nuclear material, and fixed platforms offences as these offences are not provided for within the definition of terrorist act;
- it is not clear whether the ancillary offences (other than attempts) require the TF offence to be committed;
- the financial penalty for a legal person is inadequate as the maximum penalty available for a legal person is the same as for a natural person.

97. *Criterion 5.3* – The definition of ‘funds’ is very broad and includes assets of every kind, whether tangible or intangible, movable or immovable, ‘however acquired’, and legal documents or instruments in any form evidencing title to or interest in such assets. Accordingly, it is irrelevant how the funds are acquired (ie whether by legitimate or illegitimate means).

98. *Criterion 5.4* – Section 23(3) of the CT Act provides that the prosecution need not prove that the property or funds collected or provided was actually used, in full or in part, to carry out a terrorist act.

99. *Criterion 5.5* – As noted above, there is no mental element required for the TF offence although it is likely that some mental element would be inferred given the severity of the penalty. The CT Act in relation to TF offence does not state that knowledge or intent may be inferred from objective factual circumstances.

100. *Criterion 5.6* – The criminal sanctions relating to natural persons are proportionate and substantive for the TF offence: life imprisonment if a death occurs and in other cases 1000 penalty units - \$100,000 SAT - or a maximum term of imprisonment of 15 years.

101. *Criterion 5.7* – The definition of ‘person’ includes a variety of entities that are legal persons. Accordingly, the offence provision applies to those entities. However, the main sanction is imprisonment and only a natural person can be subject to this sanction. There is no liability for directors or high level officials etc of legal persons in relation to the TF offence. A legal person could be subject to a maximum penalty of \$100,000 SAT, but this not considered to be sufficiently proportionate or dissuasive.

102. *Criterion 5.8* – Attempts and other ancillary offences are expressly provided for in section 24 of the CT Act. Attempts by the principal are covered in section 24(1). The remainder of the section covers participation by accomplices of the principal, organising or directing others to commit a TF offence or contributing to a TF offence. However, it is not clear whether these offences require the TF offence to be committed. There is no provision equivalent to section 23(3) which provides that the prosecution need not prove the funds or property were actually used to carry out a terrorist act

103. *Criterion 5.9* – Samoa uses a threshold approach for predicate ML offences (an act or omission that constitutes an offence punishable for a period of not less than 12 months). The TF offence falls within the definition of a serious offence and is therefore a predicate offence for ML.

104. *Criterion 5.10* – Under section 59 of the CT Act (‘Jurisdiction’), the Samoan Supreme Court can take jurisdiction over a TF offence if it is committed by a Samoan, Samoan national or Samoan resident or if the person is, after the commission of the offence, present in Samoa, regardless of whether the act or omission constituting the offence occurred inside or outside Samoa.

Weighting and conclusion

105. Samoa's TF offence is broadly consistent with the international standards, but has some significant technical deficiencies. The main deficiencies relate to non-coverage of individual terrorists and the maximum penalty with respect to legal persons, which is not sufficiently proportionate or dissuasive. **Recommendation 5 is rated PC.**

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

106. Samoa was rated NC with former SR.III. At the time of the 2006 MER, Samoa did not have laws and procedures in place to freeze without delay terrorist funds or other assets of person designated under UNSCR 1267 or to designate persons or entities in accordance with UNSCR 1373 or freeze without delay terrorist funds or other assets of such people. The CT Act 2014 now provides for terrorist property to be taken into custody and control of the Administrator without delay or prior notice having been given, if the property belongs to an entity on the UN list, however deficiencies remain and the APG's 2014 ME Progress Report found that compliance with SR.III could not be considered to be at a level essentially equivalent to LC.

107. *Criterion 6.1* – Under section 4 of the CT Act, Samoa has adopted the 'UN Consolidated List of Individuals and Entities belonging to or associated with the Taliban and Al-Qaida Organisations' (the Consolidated List). It is noted that the 'Consolidated List' no longer exists and that there are now two separate lists relating to Al Qaida and the Taliban (which combined would make up the former Consolidated List). However, even if amended to refer to the new lists, section 4 does not provide a mechanism for proposing persons and entities for designation under UNSCRs 1267 and 1988.

108. *Criterion 6.2* – The competent authority responsible for designating persons or entities pursuant to UNSCR 1373 (as required by sub-criterion 6.2(a)) is the Samoan Prime Minister (PM). The PM must have reasonable grounds to believe that the grounds for the designation are met (as required by sub-criterion 6.2(d)). The grounds for designation are set out in section 5(2) of the CT Act and are not conditional on the existence of criminal proceedings. The grounds for designation are based on the designation criteria set out in UNSCR 1373(1)(c) and meet sub-criterion 6.2(b). However, there are no provisions in the CT Act dealing with cross-border designation requests.

109. *Criterion 6.3* – In respect of country-initiated (domestic) designations under section 5 of the CT Act, the CT Act does not include provision for the PM (as the competent authority in respect of an initial designation) to collect or solicit information. However, as a matter of course the PM would consult with both the Attorney-General and the Police Commissioner before declaring any individual or group as a specified entity. The Police have investigative powers that would enable them to collect and solicit information. If there is an application to revoke a declaration, the Court hearing the application may receive anything that would not otherwise be admissible as evidence that the Court thinks is reliable and relevant (section 9 CT Act). A declaration of a designation is given without notice to the individual or group. Provision is made for the individual or group to subsequently seek to revoke the declaration. There is no requirement in the CT Act for notice to be given to a group or individual who is being considered for designation under section 5 of the CT Act. This is in accordance with sub-criterion 6.3(b).

110. *Criterion 6.4* – Financial sanctions can be implemented without delay or notice under section 39 of the CT Act in relation to entities on the Consolidated List only. However, even leaving aside the problem of the reference to the now defunct 'Consolidated List', property of both entities on the Consolidated List and entities declared to be 'specified entities' by the PM under section 5 of the CT Act are subject to the restraint and forfeiture of tainted property regime under the Proceeds of Crime Act 2007. This regime has its limitations in relation to the requirements of Recommendation 6 to freeze without delay. Section 45 of the CT Act applies the forfeiture and restraining order provisions of the POCA to terrorist property as if the property were already forfeited or subject to a restraining order. It is unclear, however, which regime (forfeiture or restraining order) applies in any given case. Consideration needs to be given as to how the regime under the POCA is intended to apply.

111. There is also an underlying deficiency with respect to the definition of ‘terrorist property’ in the CT Act. ‘Terrorist property’ is defined, relevantly, as property that ‘has been, is being, or is likely to be used’ to commit a terrorist act or by a terrorist group. Article 1(b) of UNSCR 1373 requires freezing without delay of funds and financial assets of persons who commit or attempt to commit terrorist acts; participate in or facilitate the commission of acts; of entities owned or controlled directly or indirectly; and of persons and entities acting on behalf of or at the direction of such persons etc. This is a much broader category of person and property than currently provided for in the CT Act and does not require a link between the property and any actual or proposed terrorist activity.

112. *Criterion 6.5* – Under section 39 of the CT Act, property that is the subject of a direction by the PM must be taken into the custody and control of the Administrator without delay and without notice (but only in relation to those entities on the ‘Consolidated List’). Although the CT Act does not require all natural and legal persons to freeze the property, the effect is the same, as any person having custody or control must surrender that custody and control to the Administrator. Sections 7(2) and (3) of the MLP Act enable the Court to temporarily freeze funds (the period of which can be extended). If such an order is made, then natural or legal persons cannot deal with the funds. There is also express provision in the MLP Act to temporarily prevent FIs from proceeding with transactions subject to an order. The rights of *bona fide* third parties acting in good faith are protected under section 21 of the POCA. Compliance with this criterion is impeded due to remaining deficiencies in relation to the definition of property (CT Act). Samoa has not addressed all the elements of this criterion (sub-criteria (c), (d), and (e)).

113. *Criterion 6.6* – The CT Act has a limited delisting procedure in Part V (revocation of declaration by PM) and, by cross-reference to POCA, the provisions relating to freezing and unfreezing assets apply. However, delisting only applies to those entities on the ‘Consolidated List’ and not those designated by the PM under section 5 of the CT Act (see section 39(2)). Furthermore, the current procedures do not meet the other requirements of this criterion (procedures for informing of designations on the Consolidated List, procedures for unfreezing funds of those with similar names who have inadvertently had their funds frozen, mechanisms for communicating delisting to the financial sector).

114. *Criterion 6.7* – Section 51 of the POCA, which enables ancillary orders to be made on property that is subject to a restraining order, goes some way to meeting this criterion. Section 51(2)(g) provides that the Court may include in the ancillary order anything it considers necessary in the circumstances. This is wide enough to include the power to release funds to cover basic expenses etc. Further section 51(3)(d), in relation to a third party with an interest in restrained property, enables the Court to vary an order excluding property if it is in the public interest to do so, and includes grounds relating to financial hardship or other consequences.

Weighting and conclusion

115. Samoa has a legislative framework in place for seizing without delay terrorist funds and assets in accordance with UNSCR 1267/1989 and 1988, but it does not have a mechanism for proposing individuals and entities for designation under these resolutions. Samoa’s regime is also deficient with respect to the implementation of UNSCR 1373. While there is a legal framework for domestic declarations, there have been no declarations and in the event a declaration were made, the ability to freeze without delay the funds and assets of declared individuals or entities (which would be done under the POCA) is limited. **Recommendation 6 is rated PC.**

Recommendation 7 – Targeted financial sanctions related to proliferation

116. *Criterion 7.1* – Samoa has provided no relevant information as to its compliance with this criterion. It would appear that there is no legal basis for implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

117. *Criterion 7.2* – Samoa referred in its TC response of May 2014 to the custody and control provisions of the CT Act. However, these provisions do not allow for freezing of the relevant entities – section 39 only applies to entities to which section 4 applies (which is limited to entities designated by the UN relating to the Taliban and Al-Qaida).

118. *Criterion 7.3* – While section 31 of the MLP Act imposes obligations on ‘financial institutions’ (which by definition includes DNFBPs) to appoint compliance officers to ensure that the FIs comply with the MLP Act, this provision does not extend to laws dealing with the proliferation of nuclear material.

119. *Criterion 7.4* – Samoa does not refer to any procedure for submitting delisting requests to the Security Council. Reference was made to section 6 of the CT Act, but this section does not address the requirements of this criterion.

120. *Criterion 7.5* – Samoa did not provide any information relevant to this criterion.

Weighting and conclusion

121. It would appear that there is no legal basis for implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. **Recommendation 7 is rated NC.**

Recommendation 8 – Non-profit organisations

122. Samoa was rated NC with former SR.VIII. The 2006 MER found that Samoa had yet to undertake a review of its NPO sector and the adequacy of its laws and regulations relating to NPOs. There were no laws in Samoa regulating fundraising or expenditure by NPOs. Monitoring by authorities was limited to the requirements for incorporated societies to file annual audited statements of income and expenditure. At the time of the 2006 MER, the NPO sector in Samoa consisted primarily of incorporated societies or charitable trusts which were regulated by the Incorporated Societies Ordinance 1952 (ISO) and the Charitable Trusts Act 1965. This broadly remains the situation, although the Incorporated Societies Amendment Act 2012 (ISO Amendment Act) amended the Incorporated Societies Ordinance 1952 in 2012.

123. A total of 100 societies and 227 charitable trusts were registered with the Registrar of Incorporated Societies (an officer in the Ministry of Commerce, Industry and Labour – MCIL) as at November 2014. In relation to risk, as noted above, TF risks are generally assessed to be low in Samoa, including in the NPO sector. NPOs are generally the recipients of funds from overseas (through grants, aid and so forth) and rarely are funds transmitted overseas.

124. *Criterion 8.1* – Samoa amended its legal framework in 2012 through the ISO Amendment Act. Changes introduced in the ISO Amendment Act include:

- a requirement for incorporated societies to apply for a renewal of registration annually, including through submission of an audited financial statement as required under section 22 of the ISO;
- a requirement for an incorporated society to submit annually to the Registrar of Incorporated Societies resolutions of its previous annual general meeting and an updated list of its executive committee and members of the society;
- creating a power under new section 19A for the Registrar to investigate (or to appoint an Investigator) to examine complaints against an incorporated society, and to refer to any possible breach of law to the Police for further investigation; and
- a dispute resolution mechanism for a person who wishes to lodge an appeal against a decision of the Registrar.

125. Samoa has not undertaken a domestic review of its NPO sector since the 2006 MER; the sector did form part of the 2012 National Risk Assessment for TF (and ML) risks but the draft 2014 NRA sighted on-site did not include an analysis of the NPO sector.²⁷

126. *Criterion 8.2* – There has been some outreach to the NPO sector. The MCIL has provided public awareness and training to NPOs to remind them of their general obligations under the legislation (i.e. ISO). The MLPA in collaboration with MCIL conducted a one day awareness workshop in May 2009 for NPOs on AML/CFT requirements, including providing the NPO sector with a basic understanding of the ML offence. Further discussion of ways to strengthen the NPO sector against financial abuse, including ML, TF and financial fraud was also held, however there has been no inspection of NPOs since 2009 to ensure compliance with CFT requirements.

127. *Criterion 8.3* – Samoa’s approach to promoting transparency, integrity and public confidence in the NPO sector is invested in its NPO registration and reporting regime with the MCIL under the ISO 2012. The MCIL has deregistered societies and charitable trusts that were non-compliant with the requirements of the ISO 2012, but Samoa does not have clear policies to promote transparency, integrity and public confidence in the administration and managing of all NPOs.

128. *Criterion 8.4* – Section 5 of the ISO requires an incorporated society to have rules and to state matters including: the name of the society; the objects for which the society is established; the modes in which persons become members of the society; the control and investments of funds of the society; the powers (if any) of the society to borrow money; etc. Section 22(1) of the ISO requires a society to submit an audited statement annually to the Registrar. Section 32 of the ISO requires the Registrar to keep a register of all NPOs but there is no specific requirement to keep and maintain records for five years nor any requirement for NPOs to follow a ‘know your beneficiaries and associated NPOs’ rule. Sub-criteria 8.4 (a), (b), (c) and (d) are met, however sub-criteria (e) and (f) are not.

129. *Criterion 8.5* – There is limited monitoring of NPOs for compliance with registration and annual reporting requirements and the sanctions available under the ISO are not proportionate and dissuasive. If a society fails to comply with any statutory obligations under the ISO, section 7B of the ISO allows the Registrar to: (a) remove that society from the Register if after 3 months that society has not complied with a notice to conform issued by the Registrar; or (b) publish a public notice in the Savali (Government newspaper) and any newspaper circulating in Samoa or communicate through any other medium the name of the society to the effect that the society will be removed from the Register unless cause is shown to the contrary. There are no other sanctions available under the ISO.

130. *Criterion 8.6* – Under section 19 of the ISO, the Registrar and any person appointed by him or her may in the interest of the public investigate any written complaint against a society, and may where necessary refer such matter to the Police for further investigation. There is limited domestic coordination of the NPO sector; there is an MOU in place between the SFIU and MCIL for information sharing on NPOs, and section 7(1)(b) of the MLP Act empowers the SFIU to obtain information from a government agency (including the MCIL) and to share such information with other authorities such as Police, AGO and TCU. The NPO sector has not been adequately monitored to ensure that it is not being exploited as a conduit for TF or as a front for funding terrorism activities.

131. *Criterion 8.7* – No specific points of contact or procedures for international NPO requests have been established outside of MLA and law enforcement cooperation networks. International requests for information regarding particular NPOs suspected of TF or other forms of terrorist support may be made directly through the SFIU, the AGO or the MCIL. The Attorney General is the point of contact relating to any international request for suspected TF activities relating to any NPO under the Mutual Assistance in Criminal Matters Act 2007. Other relevant laws such as the MLP Act also provide powers for the SFIU to share information with other FIU counterparts on such matters.

²⁷ Samoa advised in March 2015 that the NPO sector is included in the revised version of the 2014 NRA.

Weighting and conclusion

132. The TF risks in Samoa’s NPO sector were reviewed under the 2012 NRA and are considered to be very low, and some outreach to the sector has taken place. However, there has been little or no oversight of the sector’s compliance for AML/CFT purposes and sanctions available to the supervisor are limited. **Recommendation 8 is rated PC.**

5. PREVENTIVE MEASURES

Preamble

Scope of Financial institutions

133. The table below sets out the types of entities operating in Samoa against the 13 activities listed in the Glossary to the FATF Recommendations:

	Activities and operations according to the FATF definition of financial institutions	FIs authorised to conduct these activities and operations	Licensing/supervisory authority
1.	Acceptance of deposits and other repayable funds from the public	Commercial banks, Unit Trust of Samoa (UTOS), Samoa National Provident Fund (SNPF), life insurance companies, credit unions	CBS
2.	Lending	Commercial banks, lending services, credit unions, non-banks (SNPF, Samoa Housing Corporation, Development Bank of Samoa, Samoa Life Assurance Corp, UTOS)	CBS/MCIL
3.	Financial leasing	Commercial banks	CBS
4.	Money or value transfer services	Money transfer operators (MTOs), commercial banks	CBS
5.	Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts, electronic money)	Commercial banks	CBS
6.	Financial guarantees and commitments	Commercial banks, life insurance companies, SNPF, UTOS	CBS
7.	Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	a. commercial banks b. commercial banks, MTOs c. commercial banks, MTOs d. n/a e. n/a	CBS
8.	Participation in securities issues and the provision of financial services related to such issues	CBS	CBS
9.	Individual and collective portfolio management	Commercial banks, UTOS, DBS, SNPF, SHC	CBS
10.	Safekeeping and administration of cash or liquid securities on behalf of other persons	Commercial banks, UTOS, SNPF	CBS
11.	Otherwise investing, administering or managing funds or money on behalf of other persons	UTOS, SNPF, commercial banks, life insurance companies	CBS
12.	Underwriting and placement of life insurance and other investment related insurance	Life insurance companies	CBS
13.	Money and currency changing	MTOs, commercial banks	CBS

134. In addressing the scope of the application of the AML/CFT preventive measures, it would appear that a few financial activities (as defined by the FATF) may not be wholly covered. The term ‘financial institution’ under section 2 of the MLP Act is defined as any person whose regular occupation or business

is carrying out any activity listed in Schedule 1 to the Act. The schedule includes both entities defined as ‘financial institutions’ by the FATF, as well as designated non-financial businesses and professions (the table at [Attachment B](#) to this report sets out the entities listed in Schedule 1, the applicable legislation, and the relevant supervisor/licensing authority).

135. The following activities as defined by the FATF do not appear to be covered under the MLP Act:

- transfer of value (only transfer of money is covered);
- it is not clear if trading for its own account or the account of customers in transferable securities is covered under the definition of negotiable instruments;
- it is not clear whether ‘money broking’ covers both ‘money and currency changing’; and
- administration of cash on behalf of other persons.

136. It does not appear that these financial activities have been excluded from the AML/CFT regime on the basis of a proven low risk of ML and TF. The scope issue somewhat undermines the AML/CFT preventive measures in Samoa.

Nature of requirements applicable to financial institutions/DNFBPs

137. Since the 2006 MER, Samoa has revised its preventive measures through the MLP Act 2007 and the Money Laundering Prevention Regulations 2009 (MLP Regulations). The MLP Act and the MLP Regulations became operational on 7 February 2007 and 12 April 2010 respectively. While the MLP Act contains provisions setting out in law the principles that FIs should conduct CDD (R.10), maintain records (R.11) and report suspicious transactions (R.20), as required under the FATF Recommendations, it should be noted that the MLP Regulations also meet the definition of ‘law’ contained in the Glossary to the FATF Recommendations, as they are issued by the Head of State following a Cabinet approval process and it then becomes an official/enforceable document.

138. The SFIU also issued the Money Laundering and Terrorist Financing Prevention Guidelines for the financial sector (the Guidelines) in April 2010. These Guidelines are not ‘enforceable means’ as defined by the FATF. The Explanatory Foreword to the Guidelines expressly states that they are provided as general information only.

Recommendation 9 – Financial institution secrecy laws

139. Samoa was rated LC with former R.4. The 2006 MER concluded that there were no statutory or other financial institution secrecy or confidentiality laws in Samoa that inhibit the implementation of the FATF Recommendations. All secrecy or confidentiality obligations were overridden by section 8 of the (then) MLP Act 2000. The report noted however that due to broader issues of the lack of coverage of TF under the MLP Act, it did not appear that section 8 applied with respect to combating TF. The MLP Act 2000 has since been replaced by the MLP Act 2007, and the CT Act was passed in 2014.

140. *Criterion 9.1* – A range of confidentiality/secrecy provisions apply to both domestic and international entities (for example, sections 37 – 39 International Banking Act 2005; section 32 International Insurance Act 1988; section 31 Trustee Companies Act 1988; section 27 International Trusts Act 1988; section 39 International Partnership and Limited Partnership Act 1988; section 227 International Companies Act 1988). However, for the purposes of the MLP Act, all FI secrecy or confidentiality obligations are overridden by section 3 of the MLP Act. The scope of section 3 is extensive as it applies to any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other law or otherwise. Competent authorities such as supervisors and law enforcement agencies are able to access financial institution information and share this information under legal provisions for the purpose of performing their functions in combating ML and TF. Financial institutions are also able to share information for the purpose of implementing the requirements on correspondent banking, wire transfers and reliance on third parties. Financial institutions secrecy laws do not inhibit this sharing of information between financial institutions.

141. As noted in the analysis of R.27 below, while the CBS, SFIU and SIFA are given powers under section 10 (specific powers for the SFIU and any person it authorises in writing) and section 45 (broad powers of examination and supervision for the CBS, SIFA and SFIU as ‘relevant supervisory authorities’) of the MLP Act, the CBS and SIFA also use their powers under other relevant legislation for AML/CFT supervisory purposes. The section 3 MLP Act ‘secrecy override’ does not apply to the exercise of these specific powers under those other Acts. However, in that regard:

- the International Banking Act appears to give powers to SIFA to collect information, but only for the purposes of the IB Act. Disclosure in relation to ML and TF matters is however expressly permitted under the IB Act;
- the International Insurance Act has an investigative but not inspection power (although it states that SIFA does, in fact the power to inspect is limited to where there is a suspicion of wrongdoing – section 25(1)) and disclosure is prohibited except for the purposes of the Act or ordered by a court;
- similarly, the International Companies Act (IC Act) provides an investigation power to SIFA but prohibits disclosure except for the purposes of the International Companies Act. However, sections 227(3)(k) - (n) of the IC Act permit disclosure of information by the Registrar (SIFA) or the MLPA for the purposes of ML or TF investigations, and the Trustee Companies Act has a broader inspection and information gathering power and permits disclosure for any purpose under any Samoan law;
- the Financial Institutions Act powers for the CBS to collect information are only for the purposes of the Act. Disclosure is only possible when required by any provision of any law or the court.

142. Despite the existence of various confidentiality provisions, therefore, competent authorities such as the SFIU, CBS and SIFA have the ability and power to access the information they may require to perform their supervisory and investigative activities. As such, secrecy laws do not inhibit the implementation of the FATF Recommendations.

Weighting and conclusion

143. Samoa meets the sole criterion under R.9. **Recommendation 9 is rated C.**

Customer due diligence and record-keeping

Recommendation 10 – Customer due diligence

144. Samoa was rated PC with former R.5. The 2006 MER noted that Samoa’s AML/CFT preventive measures were contained in the MLP Act 2000, the Money Laundering Prevention Regulations 2002 and the Money Laundering Prevention Guidelines for the Financial Sector 2002, which had been prepared prior to the revision of the FATF 40 Recommendations in 2003 and did not generally reflect the 2003 standards. The 2011 ME follow-up report noted that Samoa had attempted to address the deficiencies identified in the 2006 MER by enacting the MLP Act 2007 and the issuing the MLP Regulations in 2009. The 2011 analysis found that while Samoa had made progress in implementing the requirements under R.5, some significant deficiencies still remained. Further, the scope issues (outlined at paragraphs 134 – 135 above) undermined the application of the AML/CFT regime to all financial institutions as defined by the FATF.

Detailed CDD requirements

145. *Criterion 10.1* – FIs are not permitted to open, operate or maintain any anonymous or numbered account or any account which is in a fictitious, false or incorrect name and there are corresponding guidelines and penalties relating to the opening of such prohibited accounts (sections 19(2) and 41, MLP Act).

146. *Criterion 10.2* – CDD must be undertaken before an FI enters into a business relationship and in

executing one-off or occasional transactions exceeding \$50,000 SAT. Part of the CDD requirement is to verify a customer's identity and obtain satisfactory evidence of identity on the basis of any official or other identifying document (section 16, MLP Act). For one-off/occasional transactions, it is noted that the designated threshold of \$50,000 SAT (equivalent to approximately USD 21,700/16,000 EUR) is slightly above the applicable threshold under the FATF Standards of USD/EUR 15,000. In addition, there is no requirement for the originating FI to obtain and maintain beneficiary information.

147. *Criterion 10.3* – FIs are required to identify and verify the identity of, a customer and obtain satisfactory evidence of identity covering natural and legal persons, and detailed identification procedures for such types of customers are provided and related documentary requirements to support customers' identity (section 16, MLP Act and sections 5-6 MLP Regulations).

148. *Criterion 10.4* – FIs must take reasonable measures to determine if a customer is acting on behalf of any other person or persons, including on behalf of a beneficial owner or a controller (section 9, MLP Regulations). For legal persons, entities or arrangements, FIs must obtain and verify legal provisions that authorize persons to act on behalf of the customer, such as a resolution of the board of directors or statement of trustees on opening an account and conferring authority on those who may operate the account (section 6, MLP Regulations). However, the MLP Act and MLP Regulations do not provide an explicit requirement to identify and verify the identity of the person acting on behalf of the customer (rather than the customer/beneficial owner). Section 6(1) includes a person acting on behalf of a legal person though it does not include the instance where a person, who is not a customer, is acting on behalf of a natural person who is a customer.

149. *Criterion 10.5* – For natural or legal persons, FIs are required 'to take reasonable measures to determine if a customer is acting on behalf of another person or persons including on behalf of a beneficial owner or a controller' (section 9(1), MLP Regulations). While this partially meets the requirements of the FATF Standards, the term 'beneficial owner' has not been defined in the MLP Act or MLP Regulations, though in practice Samoa appears to apply the FATF definition of beneficial owner²⁸. In addition, while 'reasonable measures' are permitted under the standards for the verification of the identity of a beneficial owner, the requirement to identify the beneficial owner of an account is an absolute one under the FATF Standards.

150. *Criterion 10.6* – In connection with the verification of a customer's identity, an FI shall take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in the transaction (section 16(2), MLP Act). However, this requirement focusses on obtaining information on the purpose of the transaction, but is silent or includes no clear provision requiring obtaining of information on the intended nature of the business relationship that is applicable during account opening or when establishing business relationship.

151. *Criterion 10.7* – With regard to the conduct of 'ongoing due diligence', FIs are required to gather and maintain customer information and to monitor transactions on an ongoing basis and to create and maintain a customer profile for each customer sufficient of nature and detail to enable the FI to monitor the customer's transactions, apply enhanced due diligence (EDD) and detect suspicious transactions. While these requirements meet the substance of this criterion, they are undermined by the fact that it is difficult to create a customer profile and to conduct ongoing due diligence without a requirement to obtain information at the start of the business relationship regarding the purpose and expected nature of that business relationship as required under criterion 10.6.

152. *Criterion 10.8* – There are CDD requirements for legal persons, entities or legal arrangements that cover the requirement to: a) obtain and verify the customer's name and legal form, obtaining proof of

²⁸ While the term 'beneficial owner' is not used in section 6 of the MLP Regulations ('Customers who are legal persons'), section 6(2) of the MLP Regulations states that financial institutions 'must take reasonable measures to understand and document the ownership and control structure of the customer. This includes identifying *the natural person who ultimately owns or controls a legal person, entity or arrangement* using reliable, independently sourced documents...' [emphasis added]

incorporation or similar evidence of establishment or existence to provide information on the nature of the customer's business and partly, the ownership and control structure; and b) understand and document the ownership and control structure of the customer (sections 6(1) and 6(2), MLP Regulations).

153. *Criterion 10.9* – For customers who are legal persons or arrangements, there is a specific requirement to obtain the: a) customer's name and legal form, obtaining proof of incorporation or establishment and the registered office or the principal place of business; b) personal details of each member of the customer's controlling body, including its directors and senior management; c) legal provisions that set out the power to bind the customer or authorize persons to act on behalf of the customer; and d) identity of the natural person purporting to act on behalf of the customer (section 6, MLP Regulations).

154. *Criterion 10.10* – For customers who are legal persons, an FI is required to take reasonable measures to understand and document the ownership and control structure of the customer that includes identifying the natural person who ultimately owns or controls a legal person, entity or arrangement using reliable, independently sourced documents. In addition, where the customer is a company, limited partnership, or similar arrangement, the FI must undertake identification and verification of the principal owner, which at a minimum includes identifying the natural person who: owns directly or indirectly (10% or more of the vote or value of an equity), exercises effective control and has a signing authority (sections 6(2) and 6(3), MLP Regulations).

155. *Criterion 10.11* – Where the customer is a trust or similar arrangement, an FI is required to identify and verify the settlors, trustees, and beneficiaries whose vested interest is more than 10% or more of the value of trust. For other types of legal arrangements, it is required to identify the natural persons, or other similar arrangements (sections 2-4, MLP Regulations). There are however no specific requirements relating to class of beneficiaries.

156. *Criterion 10.12* – For customers of life and investment-linked insurance, an FI is required to identify and verify each beneficiary under the policy using independently sourced documents (section 7, MLP Regulations). However there are no specific requirements relating to information on life insurance beneficiaries that are designated by characteristics or by class or by other means.

157. *Criterion 10.13* – There is no specific requirement under the MLP Regulations to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, as well as to apply the same to a beneficiary who is a legal person or a legal arrangement when such legal beneficiaries present higher risk.

158. *Criterion 10.14* – FIs are required to verify the identity of the customer when establishing a business relationship or conducting transactions for occasional customers and there are allowed circumstances in which FIs may delay completion of the customer verification which are consistent with the requirements of the FATF Standards (section 16, MLP Act and section 10, MLP Regulations). Usually, a timeframe is given to the FI to allow for such delay. As such, the FI must ensure that the client is to provide all the necessary information and documentation to the FI within the prescribed period.

159. *Criterion 10.15* – There are no provisions under the MLP Act or the MLP Regulations that require risk management procedures concerning the conditions under which a customer may utilize the business relationship prior to verification.

160. *Criterion 10.16* – There are no clear provisions under the MLP Act or MLP Regulations to apply CDD measures to existing customers on the basis of materiality and risk, and at appropriate times. Provisions in the MLP Regulations relating to the conduct of ongoing due diligence and monitoring of customers do not include materiality as a consideration in the CDD process.

161. *Criterion 10.17* – It is not clearly provided that FIs should apply enhanced CDD where the ML/TF risks are higher, or under what circumstances that ML/TF risks are considered higher. In addition, no

detailed guidelines have been issued by any supervisory authority or by the SFIU to comply with the requirement of this criterion. FIs are only required to apply enhanced CDD for higher risk customers, business relationships, and transactions (section 14, MLP Regulations).

162. *Criterion 10.18* – Application of simplified CDD is required for those considered as lower risk customers taking into consideration some risk factors, but FIs are required to obtain some minimum information from the customer. In addition, FIs are required to terminate simplified CDD and apply enhanced CDD when there is suspicion of ML/TF (section 15(4), MLP Regulations).

163. *Criterion 10.19* – If the business relationship has been started, there are no specific provisions under the MLP Act or MLP Regulations requiring FIs to terminate the business relationship if they are unable to comply with the relevant CDD process. What is required for an FI is not to proceed any further with the transaction if satisfactory evidence of the identity of a customer is not produced or obtained, and the immediate filing of an STR related to the transaction or the attempted transaction (section 17, MLP Act).

164. *Criterion 10.20* – There are no specific provisions under the MLP Act or MLP Regulations prohibiting FIs from pursuing or continuing the CDD process if the process will only tip-off the customer when there is reasonable ground for suspicion of a ML/TF activity. Only the obligation to report an STR is provided when there is reasonable ground for such (section 23, MLP Act).

Weighting and conclusion

165. Many of the required CDD measures are incorporated in the MLP Act 2007 and MLP Regulations 2009, and in supplemental AML Guidelines issued in 2010 (although the Guidelines are not considered legally enforceable). However, the CDD requirements have not been amended since the revision of the FATF Recommendations in 2012 and there are still several weaknesses and deficiencies including in relation to the threshold for CDD on occasional transaction (c.10.2), identification of beneficial owners (c.10.4-6), CDD for beneficiaries of life insurance policies (c.10.12-13), risk management issues (c.10.15-17), failure to complete CDD (c.10.19) and tipping off (c.10.20). **Samoa is rated PC with R.10.**

Recommendation 11 – Record-keeping

166. Samoa was rated PC with former R.10 in the 2006 MER since the MLP Act 2000 did not explicitly require all necessary records to be kept for at least five years following the termination of an account or business relationship. As noted above, the MLP Act 2007 replaced the MLP Act 2000, to align with 2003 FATF standards.

167. *Criterion 11.1* – Sections 18(1) and 18(3) of the MLP Act require FIs to keep and maintain records of business transactions and related correspondences for a minimum of five years from the date of any transaction or correspondence. Section 2 of the MLP Act provides clear and adequate definitions of the terms ‘business transaction’ and ‘business transaction record’.

168. *Criterion 11.2* – An FI is required under section 18(3) of the MLP Act to maintain records of a person’s identity obtained in accordance with section 16 of the MLP Act; records of all reports made to the SFIU; and all enquiries relating to ML and TF made to it by the SFIU. Such records must be kept for a minimum period of five years after the account is closed or business relationship ceases, whichever is the later.

169. *Criterion 11.3* – Section 18(2) of the MLP Act requires that the records to be kept (business transaction records and correspondence) shall be those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the SFIU or a law enforcement agency.

170. *Criterion 11.4* is met. Section 18(5) of the MLP Act provides that records required to be maintained shall be made available upon request to the SFIU for purposes of ensuring compliance with Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

the MLP Act. The SFIU is a domestic competent authority under the MLP Act that has the power to request submission of CDD information and transaction records under section 7 of the MLP Act, particularly when requested in writing to do so by the CBS, SIFA, Samoa Police Service and other government agencies and departments, as may be named by the SFIU.

Weighting and conclusion

171. **Samoa is rated C with R11.**

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons (PEPs)

172. Samoa was rated NC with former R.6. Since the 2006 MER, Samoa has introduced provisions for dealing with PEPs in the MLP Regulations 2009.

173. *Criterion 12.1* – A ‘politically exposed person’ (PEP) is defined in the MLP Regulations (section 2) as ‘any person who is or has been entrusted with a prominent public function in a foreign country; any person who is or has been an executive in a foreign country of a state owned enterprise and any person who is or has been a senior political party official in a foreign country and includes any immediate family member or close associates’. FIs must put in place appropriate risk management systems to determine whether a customer, a potential customer or the beneficial owner is a PEP. Approval from senior management is required before entering into a business relationship with a PEP. However, there is no obligation to impose these measures on existing customers as required under c.12.1(b). FIs must undertake enhanced customer due diligence of foreign PEPs which includes enhanced: (1) scrutiny of the source and legitimacy of funds; (2) transaction monitoring; and (3) customer profiling (section 14(1) and 14(2), MLP Regulations).

174. *Criterion 12.2* – Due to the limited definition of PEPs in the MLP Regulations, which covers only foreign PEPs, the measures for dealing with PEPs do not apply to domestic and international organisation PEPs. The MLP Guidelines (page 31) strongly encourage FIs to apply similar standards applicable to foreign PEPs to domestic PEPs. However, as noted above, the MLP Guidelines are not ‘enforceable means.’

175. *Criterion 12.3* – The definition of a PEP in the MLP Regulations includes ‘any immediate family member or close associate’ of a PEP. Thus the measures that apply to foreign PEPs also apply to their immediate family members and close associates. However, these measures do not apply to immediate family members and close associates of domestic PEPs and international organisation PEPs due to the restricted definition of PEPs²⁹.

176. *Criterion 12.4* – There is a requirement for FIs to identify and verify each beneficiary of a life insurance policy (section 7 MLP Regulations), however it does not extend to requiring that reasonable

²⁹ While Samoa’s intention to include immediate family members and close associates in the definition of all three categories of foreign PEPs currently included in the MLP Regulations seems clear, the words ‘and shall include any immediate family member or close associate of such persons’ seem to be included in part (iii) of the definition, rather than appearing below it and therefore clearly applying to all three parts of the definition of a PEP. It is suggested that this formatting issue be rectified as part of any future revision to the MLP Regulations.

measures be taken to determine whether the beneficiaries (and/or the beneficial owner of the beneficiary) are PEPs.

Weighting and conclusion

177. Samoa has requirements for dealing with foreign PEPs including their immediate family members and close associates, which largely comply with c.12.1 and partly comply with c.12.3. However, there are no provisions on domestic PEPs and international organisation PEPs; no requirements to apply these measures on existing customers; and no requirement that reasonable measures be taken to determine whether the beneficiaries of life insurance policies (and/or the beneficial owner of the beneficiary) are PEPs. **Recommendation 12 is rated PC.**

Recommendation 13 – Correspondent banking

178. Samoa was rated NC with former R.7 and former R.18. The 2006 report noted that Samoan authorities were implementing transitional arrangements to cease the continued operation of shell banks, however a small number were permitted to operate, albeit for a finite period of time.

179. *Criterion 13.1* – There are no enforceable requirements for FIs to conduct due diligence of respondent institutions. The AML Guidelines ‘require’ banks to gather sufficient information about their respondent banks to understand fully the nature of the respondent’s business. They also provide guidelines on factors banks should consider such as information about the respondent bank’s management, major business activities, where they are located and its money laundering prevention and detection efforts. However, as noted above the MLP Guidelines are not enforceable.

180. *Criterion 13.2* – There are no enforceable requirements for FIs, with regard to payable-through accounts, to satisfy themselves that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank; and is able to provide relevant CDD information upon request to the correspondent bank. The AML Guidelines (page 30) provide guidance around payable-through accounts.

181. *Criterion 13.3* – An FI is required to have internal control measures to guard and prohibit it from establishing relationships with shell banks (section 18 MLP Regulations). However, this does not extend to requiring FIs to satisfy themselves that respondent FIs do not permit their accounts to be used by shell banks. The AML Guidelines prohibit FIs from opening correspondent accounts with banks that deal with shell banks (page 30). However, as noted previously, the Guidelines are not enforceable means.

Weighting and conclusion

182. There are no enforceable requirements relating to due diligence of respondent institutions (c13.1) and payable-through accounts (c13.2). While there are guidelines that address c13.1 and c13.2, these guidelines are not enforceable. Discussions with the four Samoan banks during the on-site visit noted that none of the banks offered payable-through accounts, thus little weighting is given to the deficiency relating to c13.2. There are provisions that partly address c13.3. **Recommendation 13 is rated PC.**

Recommendation 14 – Money or value transfer services

183. Samoa was rated PC with former SR.VI. The 2006 MER concluded that awareness and implementation of AML/CFT obligations was weak, monitoring of money or value transfer services (MVTS) was inadequate to ensure compliance with AML/CFT controls; and unlicensed alternative remittance activities had not been assessed to ascertain risks. Samoa has made significant changes in this area since its 2006 MER. The MLP Act 2007 applies to MVTS. The MLP Regulations 2009 also contain revised provisions for AML/CFT measures that affect MVTS. The National Payment System Act 2014 (NPS Act), which came into force in April 2014, also regulates MVTS providers and their agents.

184. In terms of risk and context, Samoa has identified the money remittance sector as high risk. The high rate of personal remittance into Samoa from Samoan expatriates and emigrants living abroad makes the remittance sector a critical part of the Samoa's financial system.

185. *Criterion 14.1* – Natural and legal persons that provide MVTS in Samoa are required to be licensed by the CBS (section 5, Exchange Control Regulations; section 4, NPS Act). Commercial banks also offer MVTS as part of their banking business and are licensed by CBS under the Financial Institutions Act (section 6). Any natural or legal person who provides remittance services in Samoa without a license from the CBS commits an offence and is liable for sanctions under the Exchange Control Regulations (section 15) and the NPS Act (section 8).

186. *Criterion 14.2* – The CBS has issued public notices regarding MVTS to inform the public of the licensing requirements for MVTS providers and warning the public against dealing with unlicensed MVTS providers. Based on discussions with the private sector and the CBS, there was no indication of the existence of unlicensed MVTS providers in Samoa.

187. *Criterion 14.3* – MVTS providers are designated as 'financial institutions' in the MLP Act (Schedule 1) and are therefore subject to monitoring for AML/CFT compliance by the CBS. MVTS providers licensed under the NPS Act are also required to comply with the MLP Act and are subject to monitoring by the CBS (section 23, NPS Act).

188. *Criterion 14.4* – Agents for MVTS providers must be registered with the CBS. An MVTS provider must provide details of its agent (name, address and identity of directors and persons responsible for the management of the agent) to the CBS for registration. Once satisfied with these details, the CBS will register the agent. An agent cannot operate on behalf of the MVTS provider until registered by CBS (section 21, NPS Act).

189. *Criterion 14.5* – MVTS providers are required to ensure that their agents comply with the AML/CFT laws and any related directives issued (section 23, NPS Act).

Weighting and conclusion

190. Samoa has a strong legal framework for licensing and monitoring MVTS providers and their agents, which meets all five criteria of R14. **Recommendation 14 is rated C.**

Recommendation 15 – New technologies

191. Samoa was rated as PC with former R.8. The 2006 MER concluded that there was only limited guidance given for FIs to address specific risks associated with non-face to face business relationships or transactions and there were no requirements for measures to prevent misuse of technological developments. Since 2006, Samoa has enacted the NPS Act 2014, which contains relevant provisions.

192. *Criterion 15.1* partially met. The CBS stated that it assesses new products and delivery channels proposed by FIs before approving their launch. The CBS cited a recent case where, together with the FI concerned, it assessed the ML/TF risks of a new delivery channel (mobile phone banking) before it was formally launched on the market. Given the size and context of the domestic financial system in Samoa - where there is very limited options on financial services and products available, and introduction of new products and delivery channels into the market is quite rare/ infrequent - one case is sufficient to prove that this is a practice used by CBS. SIFA confirmed however that this is not a requirement for international banks and insurance companies.

193. *Criterion 15.2* – There are no specific, enforceable requirements for FIs to assess the ML/TF risks of new products or delivery channels and to take appropriate measures to manage and mitigate any risks. However, section 23 of the NPS Act 2014 requires a licensee to comply with the provisions of the MLP Act and, therefore, the MLP Regulations, which do contain relevant general provisions relating to risk,

though not a specific requirement to assess the ML/TF risks of new products or delivery channels (eg section 17 of the MLP Regulations). However, domestic FIs in Samoa are in practice required to conduct risk assessments of new products or delivery channels. In the case cited above, the relevant FI was required by CBS to undertake an assessment of the ML/TF and other risks of the delivery channel and to adopt mitigating measures for risks identified prior to launch of the new delivery channel. As stated earlier this is not a requirement for international banks and insurance companies.

Weighting and conclusion

194. There are no specific enforceable requirements for FIs to assess the ML/TF risks of new products or delivery channels and to adopt mitigating measures for identified risks. However, general risk mitigation measures under the MLP Act and Regulations do apply and in practice the CBS and domestic FIs do undertake this process for new products. **Recommendation 15 is rated PC.**

Recommendation 16 – Wire transfers

195. Samoa was rated PC with former SR.VII. The 2006 MER found that there were no separate procedures for cross-border or domestic batch transfers or for credit or debit card funds transfers; no requirement for FIs to ensure that non-routine transactions are not batched where this would increase the risk of ML or TF; and no requirement for beneficiary FIs to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. Since the 2006 MER, Samoa has enacted the MLP Act 2007 and the MLP Regulations 2009, which contain provisions relevant to R.16.

196. *Criterion 16.1* – FIs are required to include accurate originator information with all electronic fund transfers regardless of transaction value (section 21, MLP Act). This requirement applies to all domestic and cross-border transfers. The originator details that must be obtained and verified by the FI include the originator's name and address, bank/ account number affected or a unique reference number if there is no account affected; and amount of payment order (section 16, MLP Regulations). The remitting FI must include the full originator information with the transfer message or payment form accompanying the funds transfer. There is however no clear requirement for FIs to maintain the beneficiary information with the transfer message.

197. *Criterion 16.2* – The requirement to obtain the originator accurate information and include it on the transfer message applies to all cross-border transfers. This also applies where multiple cross-border transfers from a single originator are bundled in a batch file for transmission to beneficiaries. There is, however no requirement for FIs to include full beneficiary information with the cross-border wire transfer message.

198. *Criterion 16.3* – Samoa does not apply a threshold for its originator measures. FIs are required to include accurate originator information with all wire transfers, including all cross-border transfers, regardless of the transaction value. There is no requirement for FIs to include the beneficiary information with the cross-border wire transfer message.

199. *Criterion 16.4* – Samoa does not apply a minimum threshold for its originator requirements as noted above. FIs are required to include accurate originator information with all wire transfers. Furthermore, as noted earlier, there is no requirement for FIs to include full beneficiary information with the cross-border wire transfer message.

200. *Criterion 16.5* – For domestic wire transfers, ordering FIs are required to include the full originator information with the transfer message or the originator's account number or a unique identifier (section 16(4), MLP Regulations).

201. *Criterion 16.6* – In instances where the originator's account number or a unique identifier is included in the domestic wire transfer, the ordering FI must provide the originator information within Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

three days of receiving a request from the beneficiary FI or the FIU. It does not specify that this information be made available to other competent authorities (section 16(4), MLP Regulations).

202. *Criterion 16.7* – FIs are required to keep and maintain records of all business transactions and customers' identities, which includes originator information (section 18, MLP Act). There is no requirement however to obtain and maintain beneficiary information.

203. *Criterion 16.8* – Ordering FIs are required to obtain and retain accurate originator information with the wire transfer. An FI is prohibited from proceeding with a transaction if it is unable to satisfactorily verify a customer's identity (section 17, MLP Act). This applies to verification of originator details for wire transfers. These requirements do not apply to beneficiary information.

204. *Criterion 16.9* – Each intermediary FI in the payment chain must maintain all the required originator information with the wire transfer including cross-border wire transfers (section 16(7), MLP Regulations). This requirement does not apply to beneficiary information.

205. *Criterion 16.10* – All FIs are required to keep records of transactions for at least five years (section 18, MLP Act). While there are no explicit requirements for intermediary FIs with technical limitations to maintain records of wire transfers for at least five years, this general record keeping provision in the MLP Act in effect partly addresses this obligation.

206. *Criterion 16.11* – All FIs are required to pay special attention to electronic fund transfers that do not contain complete originator information. This will also apply to intermediary FIs (section 12(2)(c), MLP Regulations). This requirement does not apply to transfers lacking beneficiary information.

207. *Criterion 16.12* – FIs are required to have procedures to address fund transfers that are not accompanied by complete originator information. This includes procedures for requesting the missing originator information from the sending FI and considering whether the transfer is suspicious and should be reported to the FIU (section 16(9), MLP Regulations). These measures do not apply to transfers with missing beneficiary information.

208. *Criterion 16.13* – Beneficiary FIs are required to pay special attention to, identify and scrutinize fund transfers that are not accompanied by complete originator information (section 12(2c) and section 16(8), MLP Regulations). Beneficiary FIs are not required to apply similar measures to transfers with incomplete beneficiary information.

209. *Criterion 16.14* – FIs are required to conduct CDD of customers when establishing a business relationship; when conducting a one-off transaction exceeding USD 20,000 (SAT50,000); when there is a suspicion of a ML/TF offence or if there are doubts about previous CDD documentation/information obtained (section 16, MLP Act). The occasional customer CDD threshold of USD20,000 far exceeds the threshold of USD/EUR 1,000.

210. *Criterion 16.15* – FIs are required to have measures for dealing with transfers that lack the originator information which include at a minimum, procedures for requesting the missing originator information from the sending FI and considering whether the transfer is suspicious and should be reported to the SFIU (section 16(9), MLP Regulations). These measures do not apply to transfers with missing beneficiary information.

211. *Criterion 16.16* – All MVTS providers are required to comply with the originator requirements as set out in the MLP Act and Regulations (Schedule 1 MLP Act, section 23, NPS Act). The MLP Act does not address beneficiary information as required under R.16.

212. *Criterion 16.17* – There are requirements for MVTS providers to adopt and implement effective programmes against ML and TF and to monitor for and report suspicious transactions (section 17, MLP Regulations). There are no specific requirements in the laws for MVTS providers that control both the

ordering and beneficiary side of a wire transfer to monitor and report suspicious transactions based on information held by both the ordering and beneficiary institution.

213. *Criterion 16.18* – Banks and MVTS providers are required to monitor for transactions with designated persons and entities subject to UN resolution 1267 and 1373. The SFIU disseminates to these FIs updated lists received from the Ministry of Foreign Affairs.

Weighting and conclusion

214. Samoa has a sound legal framework addressing originator information requirements as set out in R16. The major technical deficiencies related to the absence of requirements relating to beneficiary information (16.1 – 16.4, 16.7 – 16.9, 16.11 – 16.13, 16.15 – 16.16). Other technical deficiencies are the lack of requirements for measures required under 16.14 and 16.17. **Recommendation 16 is rated PC.**

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

215. Samoa was rated PC with former R.9 in the 2006 MER. There were shortcomings in the arrangement for allowing FIs to rely on another institution to confirm identity. There was also no requirement for FIs to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements would be made available from the other institution upon request without delay. Furthermore there was no requirement for FIs to satisfy themselves that the introducing institution, when in another country, is regulated and supervised and has measures in place to comply with CDD requirements.

216. *Criterion 17.1* – With regard to third party reliance in the conduct of customer identification and CDD, ultimate responsibility for the implementation of the customer identification and verification requirements remains with the financial institution. Pertinent documents must be immediately obtained from the third party or the intermediary, or be made available without delay, and the FI should determine that the third party is regulated or supervised and has measures in place to comply with the customer identification requirements of the MLP Act and Regulations (section 11(2)(a), MLP Regulations). In addition, third party reliance shall only be made when the FI is satisfied that the third party or intermediary will not be subject to any action that calls into question its execution of those policies, and is located in a jurisdiction that is effectively implementing internationally recognised standards for customer identification (section 11(2)(d), MLP Regulations). However, these requirements do not quite meet the updated standards under R.17, which requires a financial institution relying on a third party to ‘satisfy itself that the third party is regulated, and supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11’.

217. *Criterion 17.2* – An FI must only rely upon certain other third parties or intermediaries as directed or allowed by the Samoa FIU (section 11(6), MLP Regulation). In addition, third party reliance shall only be made when the FI is satisfied that the third party or intermediary will not be subject to any action that calls into question its execution of those policies, and is located in a jurisdiction that is effectively implementing internationally recognised standards for customer identification (section 11(2)(d), MLP Regulations). However, there are no specific rules in place requiring that ML/TF risk be taken into account when determining in which countries the third party that meets the conditions can be based.

218. *Criterion 17.3* – There are no specific rules or guidelines in place on the applicability of third party reliance involving FIs that are part of the same financial group.

Weighting and conclusion

219. Samoa does not have specific rules in place requiring that the level of ML/TF risk be taken into account when it comes to third party reliance (c.17.2). Likewise, it has no specific rules or guidelines in Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

place on the applicability of third party reliance involving FIs that are part of the same financial group (c.17.3). **Recommendation 17 is rated PC.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

220. Samoa was rated PC with former R.15 and NC with former R.22 in the 2006 MER. Internal controls, compliance and audit measures were not addressed for CFT and the implementation of existing obligations was weak and was not extended beyond the large banks, NBFIs and largest remittance agencies. While a procedure was required to audit AML compliance, there was no obligation to maintain an adequately resourced and independent audit function.

221. *Criterion 18.1* – There are now specific requirements under the MLP Act and MLP Regulations relating to:

- a) compliance management arrangements (section 31(a), MLP Act and section 19, MLP Regulations), that include appointing a compliance officer at a senior level to be responsible on AML/CFT compliance;
- b) screening procedures to ensure high standards when hiring employees (section 21, MLP Regulations);
- c) ongoing employee training programme (section 21(3), MLP Regulations); and
- d) an independent audit function (section 32, MLP Act and section 20, MLP Regulations).

222. *Criterion 18.2* – There are no specific requirements under the MLP Act and MLP Regulations requiring the following:

- a) implementation of a group-wide AML/CFT programmes encompassing all branches and majority-owned subsidiaries within the financial group; and
- b) adoption of policies and procedures that will allow sharing of information among entities under the financial group for purposes of CDD and ML/TF risk management, as well as provision for appropriate safeguards on the confidentiality and use of information exchanged.

223. *Criterion 18.3* is not applicable. While there are no explicit requirements under the MLP Act or MLP Regulations to apply AML/CFT measures of the home country requirements or for financial groups to apply appropriate additional measures instances to better manage the ML/TF risks, no Samoan domestic FI has foreign branches or subsidiaries operating outside of Samoa.

Weighting and conclusion

224. Samoa is compliant with criterion 18.1. While Samoa has no specific requirements for implementation of group-wide AML/CFT programmes and on allowing sharing of information under the financial groups, little weight is given to this deficiency because there are no domestic financial groups currently operating in Samoa (c.18.2). Criterion 18.3 is not applicable. **Recommendation 18 is rated LC.**

Recommendation 19 – Higher-risk countries

225. Samoa was rated NC with former R.21 in the 2006 MER as it had no requirements to give special attention to the background and purpose of business relationships and transactions with persons from or in countries, which do not or insufficiently apply the FATF Recommendations, and to apply appropriate counter-measures.

226. *Criterion 19.1* – There is no clear, enforceable requirement for FIs to apply enhanced CDD, proportionate to the risks, to business relationships and transactions from countries for which this is called for by the FATF. FIs are however required more generally to apply enhanced CDD, proportionate to the

risks, to higher risk customers or to business relationships and transactions and natural and legal persons, as set out under sections 12 to 14 of the MLP Regulations, and supplemented by the AML Guidelines. An FI must, on an ongoing basis, gather and maintain customer information and monitor transactions, with a monitoring system that is capable of identifying transactions that are: a) from sources or to recipients identified as being of questionable legitimacy; b) unusual in terms of amount, type, numbers, and any other risk factors; and c) identified in writing by the SFIU as being a transaction that the FIs must monitor. These EDD procedures may be independently undertaken on natural or legal persons, even in the absence of information from FATF on identified higher risk countries, and partially meet this criterion.

227. *Criterion 19.2* – There are no clear requirements under the MLP Act or MLP Regulations specifically enumerating possible counter-measures to be applied to any identified higher risk countries. Domestic competent authorities in Samoa are principally responsible for determining and implementing possible counter-measures to be applied upon request of the FATF, or upon the independent evaluation of domestic competent authorities.

228. *Criterion 19.3* – Domestic competent authorities in Samoa have no mechanism in place under the MLP Act or MLP Regulations to ensure that FIs are advised of concerns about weaknesses in the AML/CFT system of other countries. Section 12.4 of the MLP Regulations requires an FI, upon its own initiative, to take into account any information available on whether the country adequately applies the internationally recognised standards. It does not however set out measures to ensure that domestic competent authorities in Samoa advise FIs of concerns about weaknesses in the AML/CFT systems of other countries (eg through notices issued by the CBS or SFIU).

Weighting and conclusion

229. There is no requirement for FIs to apply EDD, proportionate to the risks, to business relationships and transactions from countries for which this is called for by the FATF (c.19.1), as well as specific counter measures for identified high risk countries. **Recommendation 19 is rated NC.**

Recommendation 20 – Reporting of suspicious transaction

230. Samoa was rated PC with former R.13 and NC with former SR.IV in the 2006 MER. A system for STRs was in place under the MLP Act 2000 but coverage was not sufficient. The STR requirement in relation to terrorism and TF was also deficient. The MLP Act 2007, which replaced the MLP Act 2000, and the MLP Regulations 2009 contain strengthened STR reporting obligations. The 2014 APG ME progress report concluded that compliance with both R.13 and SR.IV could be considered to be at a level essentially equivalent to LC.

231. *Criterion 20.1* – FIs are required to report to the SFIU any transactions for which they have reasonable grounds to suspect are related to a serious offence, a ML offence or a TF offence (section 23(1), MLP Act). However, limitations in the scope of both the ML and TF offences may somewhat limit the reporting requirement (refer to analysis of R.3 and R.5 above). An FI must report a suspicious transaction to the SFIU as soon as practicable after forming the suspicion but no later than two working days afterwards.

232. *Criterion 20.2* – The obligation to report suspicious transactions applies regardless of the amount of the transaction involved and also includes attempted transactions (section 23(1), MLP Act).

Weighting and conclusion

233. Samoa's legal framework for reporting suspicious transactions largely meets the requirements of R20, but limitations in the scope of ML and TF offences (R.3 and R.5) slightly limit the scope of the reporting requirement. **Recommendation 20 is rated LC.**

Recommendation 21 – Tipping-off and confidentiality

234. Samoa was rated C in the 2006 MER for the former R.14.

235. *Criterion 21.1* – The MLP Act protects a financial institution, its officers, employees and agents from civil, criminal, administrative or disciplinary proceedings for reporting suspicious transactions in good faith or in compliance with directions from the FIU (section 29, MLP Act).

236. *Criterion 21.2* – The MLP Act prohibits an FI, its officers, employees or agents, its auditor or any other person from disclosing to any person: (1) that a suspicious transaction report has been or may be made to the FIU; (2) that the FI has formed a suspicion in relation to a transaction; or (3) any other information from which a person can reasonably infer that suspicion has been formed or that a report has been or may be made. Breach of this disclosure prohibition constitutes an offence and is subject to a monetary fine or imprisonment term under the MLP Act (section 27, MLP Act).

Weighting and conclusion

237. Samoa meets both criteria of R.21. **Recommendation 21 is rated C.**

Designated non-financial businesses and professions

Preamble: Scope of DNFBPs

238. Samoa has a relatively small DNFBP sector which includes lawyers, accountants, trust and company service providers (TCSPs), real estate agents and a small gold and jewellery market. The TCSP sector is the most significant part of the DNFBP sector in terms of risk and materiality, given its central role in operation of the offshore sector. Samoa has recently taken steps to legislate for the licensing and operation of two casinos in Samoa, and one license has been issued.

239. As noted above, the provisions of the MLP Act and MLP Regulations apply to ‘financial institutions’, as listed in Schedule 1 to the MLP Act. Schedule 1 includes the following DNFBP-related activities under the definition of ‘financial institution’:

- Operating a gambling house, casino or lottery, including carrying on operations through the internet, when their customers engage in financial transactions equal to or above \$10,000 [tala] or the equivalent in another currency, or such other amount as may be prescribed by regulation;
- Trust or corporate service provider;
- Trustee company business as defined by the terms ‘carry on business’ and ‘trustee company’ in section 2 of the Trustee Companies Act 1987;
- Lawyers (barristers and solicitors) when:
 - (a) assisting in the planning or execution of transactions for their clients relating to:
 - (i) depositing or investing of funds; or
 - (ii) buying and selling real property or business entities; or
 - (iii) managing client money, securities or other assets; or
 - (iv) opening or managing a bank, savings or securities accounts; or
 - (v) organisation of contributions necessary for the creation, operation or management of companies; or
 - (vi) creation, operation or management of trusts, companies or similar structures; or
 - (b) by acting on behalf of or for a client in any financial or real estate transaction, but only to the extent that the lawyer receives funds in the course of the lawyer’s business for the purpose of deposit or investment or settling real estate transactions (whether or not the funds are deposited into a separate trust account);

- Accountant or certified public accountant, but only to the extent that the accountant gives investment advice or receives funds in the course of the accountant's business for the purposes of deposit or investment (whether or not the funds are deposited into a separate trust account);
- Real estate agents, when they are involved in transactions for their client relating to the buying and selling of real estate;
- Dealing in real estate or high value items, including antiques;
- Dealers in precious metals and stones, including pearls, when they engage in any cash transaction with a customer equal to or above \$50,000 tala or the equivalent in another currency, or such other amount as may be prescribed by regulation.

240. The activities contained in Schedule 1 of the MLP Act are very largely consistent with the FATF definitions of DNFBPs, however the thresholds for conducting CDD for transactions in: (i) casinos (\$10,000 SAT, or approximately US\$4,255), and (ii) dealers in precious metals and stones (\$50,000 SAT, or approximately US\$21,300) slightly exceed the thresholds of US\$3,000 and US\$15,000 respectively contained in the FATF standards.

Scope issue: application of R.22 and R.23 to TCSPs

241. An important scope issue arises in relation to the CDD obligations of TCSPs, in particular in relation to the activities of international business companies (IBCs). At issue is the scope of CDD requirements, in particular ongoing CDD requirements as required under criterion 10.7, to TCSPs, as well as the application of and interaction of ongoing CDD requirements with Recommendations 17 (reliance on third parties) and 24 (transparency and beneficial ownership of legal persons). This issue relates primarily to effectiveness and is discussed in detail under Immediate Outcome 5 (chapter 7) in the MER. However, the scope issue also has implications for the assessment of technical compliance.

242. In summary, for the purposes of R.22 (applying c.10.5, c.10.7 and R.17 in particular) and R.23 (applying R.20 in particular), the evaluation team is of the view that:

- the obligation to conduct ongoing CDD on individual transactions in bank accounts of IBCs created in Samoa only applies when the TCSP 'prepares for or carry out transactions for a client' as per R.22; that is, it only applies where the TCSP acts as a corporate director, nominee shareholder or secretary and/or otherwise becomes involved in the creation and/or operation of an IBC's bank account as a signatory to that account. In the evaluation team's view, a TCSP cannot be expected to conduct ongoing monitoring on an individual transaction involving an IBC and a bank (probably in another jurisdiction), to which the TCSP is not a party. It is the bank/FI where the IBC has its account (as well as any introducers) that has the primary obligation to conduct CDD (including ongoing monitoring) of that company's transactions and their business relationship;
- however, the wider question is whether the Samoan TCSPs know enough about the business of the IBCs that they create to fulfil their basic CDD and STR reporting obligations. The key questions are: (a) how does the Samoan TCSP fulfil its obligation to know who its customer (and beneficial owner) is on creation of the IBC, and on an ongoing basis to ensure that transactions are consistent with the TCSP's knowledge of its customer (per R.22, applying c.10.5 and 10.7), and (b) how can it fulfil its obligation to report suspicious activity (per R.23, applying R.20)? If the TCSP is servicing the IBC on an ongoing basis by providing a registered office and annual renewals, it needs to be in receipt of sufficient information in order to make a value judgement about the company and whether it is operating in line with the TCSP's understanding of what its activities are supposed to be (per R.22, applying c.10.7). This is fundamental to the CDD process, and involves a degree of monitoring, though not of individual transactions. The TCSP may well be the only regulated entity in a position to obtain information about the activities of the IBC as a whole. The IBC may have several bank accounts and each bank may be in a different country and see only a small part of the overall activity. Only the TCSP can monitor the activities of the IBC as a whole. Moreover, the monitoring that is undertaken by a foreign bank will not result in information that will necessarily be available

to the SFIU. The TCSP therefore needs to have a clear understanding of who is operating the company's business and opening any banks accounts, etc, and such persons would potentially fall under the heading of a 'beneficial owner' (c.10.5 refers).

243. For the majority of IBCs where the Samoan TCSP only creates/renews the IBC and offers a registered office, it is not clear that the TCSP has sufficient information on and contact with the IBC to have a clear understanding of who is operating the company's business and opening any banks accounts, and whether the IBC is operating in accordance with its original profile. This significantly affects the TCSPs ability to conduct ongoing due diligence and to detect STRs.

244. The International Companies Act (ICA) was amended in April 2014 to enhance controls in this area. IBCs are now required to keep accounting records to: (a) disclose the current financial position of the company; (b) enable the directors to check that any accounts prepared by the company under this Part comply with the requirements of this Act; (c) allow for the preparation of financial statements; and (d) disclose details of the following: (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangements.³⁰ These records are to be kept by the TCSP who provides the registered office for the IBC and those records may be held here in Samoa or at the Principal's Office overseas. If the records are not kept with the TCSP then there must be a written undertaking stating that the records will be provided in a timely manner should it be required to be produced³⁰. Most IBCs are required to be renewed on an annual basis and the renewal period is from 30 November of each year, so the new provisions will apply to all the great majority of existing IBCs following the completion of the annual renewal process in late 2014. IBCs which are renewed in late 2014 will be required to submit the required financial information if and when they seek renewal in November 2015. If effectively implemented, they will significantly strengthen the ability of Samoan TCSPs to know their clients and, as appropriate, to submit STRs.

Recommendation 22 – DNFBPs: Customer due diligence

245. Samoa was rated PC with former R.12 in the 2006 MER. Although DNFBPs were subject to the same AML/CFT requirements as all other FIs, implementation by lawyers and accountants was minimal, TCSPs were not required to undertake comprehensive CDD measures and the requirements for introduced business were inadequate. TCSPs were not required to immediately obtain information on the identity of the customer or of the beneficial owner and intended purpose of the business, and were not required to conduct ongoing due diligence with respect to introduced business relationships.

246. As outlined above, the scope issue regarding casinos and dealers in precious metals and stones has a minor impact on Samoa's compliance with Recommendation 22.

247. *Criteria 22.1 to 22.5* – see Recommendations 10, 11, 12, 15 and 17.

Weighting and conclusion

248. The scope issue regarding casinos and dealers in precious metals and stones is minor but the deficiencies identified in R.10-12, 15 and 17 apply equally to DNFBPs. In addition, the ability of TCSPs to conduct meaningful ongoing due diligence of transactions undertaken by IBCs is currently limited. As a result, **Recommendation 22 is rated PC**.

Recommendation 23 – DNFBPs: Other measures

249. Samoa was rated PC with former R.16 in the 2006 MER. AML/CFT measures had not yet been implemented by most of the DNFBPs, with the exception of trust and company service providers. As

³⁰ Samoa has advised that a further amendment to the ICA will be submitted to Parliament in April 2015 which will require that these records be kept with the TCSP in Samoa, which will further strengthen this measure.

outlined above, the scope issue regarding casinos and dealers in precious metals and stones has a minor impact on Samoa's compliance with Recommendation 23. The scope issue in relation to when preventive measure obligations apply to TCSPs outlined at paragraphs 240 to 241 above also applies to the analysis of R.23.

250. *Criteria 23.1 to 23.4* – the analysis in relation to R.20, 18, 19 and 21 above applies equally to DNFBPs, subject to the threshold issues noted above.

Weighting and conclusion

251. The scope issue regarding casinos and dealers in precious metals and stones is minor and the minor deficiencies identified in R.18 – R.21 apply equally to DNFBPs. In addition, the ability of TCSPs to detect and report suspicious transactions undertaken by IBCs is currently limited. As a result, **Recommendation 23 is rated PC.**

6. SUPERVISION

Recommendation 26 – Regulation and supervision of financial institutions

252. Samoa was rated PC with R.23 in the 2006 MER. The factors underlying the PC rating were inadequate scope and frequency of AML/CFT supervision due to limited resources and CFT aspects had yet to be adequately addressed. The 2014 ME progress report recognised the progress made by Samoa, but compliance was still considered to be at the PC level. Samoa had yet to supervise the non-bank financial sector and no evidence was presented regarding supervision of CFT requirements.

253. *Criterion 26.1* – The MLP Authority is responsible for supervising financial institutions in accordance with the MLP Act (section 4(1)). Furthermore, the MLP Act designates supervisory authorities to be responsible for examining and supervising financial institutions' compliance with the MLP Act (section 45(b)). The designated supervisory authorities responsible for supervising FIs' compliance with the MLP Act are the CBS (responsible for supervising domestic banks; money changers, MTOs, insurance companies and brokers); SIFA (responsible for supervising international banks and international insurance companies) and the SFIU (for any other financial institution) (Schedule 1 MLP Regulations). The SFIU, due to its location within the CBS, often participates in the CBS's inspections of its supervised entities.

254. *Criterion 26.2* – All Core Principle FIs are required to be licensed. Banks, securities brokers or dealers, money changers and money transfer operators and insurance companies and brokers are required by law to be licensed by the CBS (section 6 Financial Institutions Act 1996; section 5 Exchange Control Regulations 1999; section 9 Insurance Act 2007). Samoa does not have an organised securities market.

255. International banks are required to be licensed by the Minister of Finance subject to the recommendation of SIFA (sections 5(e), 8 and 14 International Banking (IB) Act). International insurance companies are required to be licensed by SIFA (sections 4 and 5 International Insurance (II) Act).

256. Samoa does not allow the establishment or operation of shell banks. International banks are required to establish a 'physical presence' in Samoa. This is defined as a place of business maintained by the international bank and located at a fixed address, other than a post office or electronic address in Samoa and at which location the bank employs one or more individuals full-time and maintains operations and banking related records (section 11 International Banking Act). However, this definition falls short of the requirements of R.26 as it does not require that meaningful mind and management be located within Samoa

257. *Criterion 26.3* – The relevant supervisory authority of an FI, namely CBS, SIFA and SFIU, may adopt any necessary measures to prevent or avoid any person who is not a fit and proper person from Anti-money laundering and counter-terrorist financing measures in Samoa – 2015

controlling or participating, directly or indirectly in the directorship, management or operation of the FI (section 45(a) MLP Act).

258. Domestic banking and insurance: A condition for issuance of a licence to a bank, insurance company, and insurance broker is that the CBS must be satisfied that applicants (including directors, controllers, persons associated with the management of the company) are fit and proper persons (section 6(5) FI Act, section 11(f) and section 14 Insurance Act). The CBS undertakes fit and proper tests of directors and principal officers involved with the FI, which include checking their criminal records. Persons who have been convicted of any offence involving fraud or dishonesty (and for insurance applications, money laundering and suppression of terrorism), cannot become directors or principal officers of a bank, insurance company or broker. These fit and proper measures do not however extend to beneficial owners.

259. Approval of the CBS is required prior to any key changes in the shareholding structure or management arrangement that will result in the 'transfer of control' of the bank or the 'controlling interest' of an insurance company (section 18 FI Act; section 57 Insurance Act).

260. The CBS has powers to remove the principal officer of an insurer or agent or at any time to cancel the licence of an insurance broker if he/she is convicted of an offence involving dishonesty, money laundering or the financing of terrorism (section 13(4) and 14(2) Insurance Act). Furthermore, insurance licences, which are valid for one year, will not be automatically renewed if any person associated with the business is or becomes disqualified (section 19 Insurance Act).

261. International banking and insurance: A condition for issuance of a licence to an international bank and international insurance company is that the directors, controllers, manager or chief executive of the applicant company must be fit and proper persons (section 13(c) IB Act; section 6(1)(c) II Act). SIFA conducts fit and proper tests of directors, controllers, managers and chief executives of applicants which include police criminal checks. These fit and proper measures do not extend to beneficial owners.

262. Once a licence is issued to an international bank or insurance company, SIFA approval is required prior to key changes in shareholding structure to the institution (section 18 IB Act; section 20A II Act). SIFA may cancel, suspend or impose conditions on a licence of an international insurance company if there is any change in the shareholding, management or beneficial ownership of the company which would have caused SIFA to have refused the application for registration if such changed circumstances had been part of the original application (section 9 II Act). Furthermore, before appointment of a director or chief executive, an international bank must obtain prior SIFA approval that he/she is a fit and proper person. SIFA can withdraw that approval if he/she ceases to be fit and proper (s19 IB Act).

263. Other controls aimed at preventing criminals (and their associates) from holding a controlling interest in international banks in Samoa is the explicit prohibition on an international bank from transferring its licence without the Minister's approval and from issuing bearer shares or share warrants to bearer (section 17; section 18(4) IB Act). Similar to the international insurance companies, under section 18(1) and (2) international banks are prohibited from transferring any shares that would result in the change of beneficial ownership of the bank without the prior approval of the Inspector of Banks.

264. Money changers and MTOs: Under section 5(3) of the Exchange Control Regulations, the CBS shall issue a foreign exchange dealer licence if it is satisfied that all the requirements (as determined from time to time) for the carrying of the business of foreign exchange dealer are met. The CBS also undertakes a fit and proper assessment of the proposed management team of the applicant taking into account their reputation and character.

265. *Criterion 26.4* – According to the CBS, banks and insurance companies are supervised in accordance with Core Principles; however the extent to which they are supervised with the Core Principles could not be assessed. This supervisory framework is provided in the Financial Institution Act. Banks and insurance companies and brokers are also subject to AML/CFT supervision by the CBS.

Money changers and MTOs are also supervised for compliance with AML/CFT requirements by the CBS (section 45 MLP Act; Schedule 1 MLP Regulations). International banks and international insurance companies are supervised by SIFA for compliance with AML/CFT requirements.

266. *Criterion 26.5* – According to the CBS and SFIU, their supervision of FIs for compliance with AML/CFT requirements is based on risk. The CBS stated that generally the frequency and scope of on-site examination depend on factors such as the overall condition of the institution, its geographical presence, whether the local institution is affiliated to an international group or FI and the level of compliance with the laws and regulations by the financial institution. The limited number, infrequent nature and limited scope and depth of supervision by CBS suggest that risk plays a minor role in determining the nature and frequency of supervision. For SIFA, there were no indications that it employs a risk-based approach to supervision of the international banks and insurance companies.

267. The SFIU has developed a *Compliance Examination Manual* to help guide the examinations of financial institutions (and DNFBPs). As noted above, formally under the MLP Act, the SFIU is responsible only for the AML/CFT supervision of some DNFBPs, with financial institutions supervised by the CBS and SIFA. However, as outlined in the analysis of IO.3 in the MER, in practice SFIU staff (who are also staff of the CBS) have participated in on-site examinations of domestic FIs. The *Compliance Examination Manual* of the SFIU requires that scheduling of examinations should be risk-based, focusing on larger and higher risk FIs such as banks on a two-year cycle. Furthermore, it requires that the work plan for AML/CFT examinations should be developed on a risk-based approach and that selection of institutions should be based on factors such as STR reporting, market feedback or intelligence that the SFIU has gathered. The *Compliance Examination Manual* contains a risk matrix to assess the ML/TF risk of a financial institution. The risk matrix considers a wide range of risk drivers or factors (such as industry type; senior management's involvement in AML/CFT compliance initiatives, general attitude to compliance) which if properly completed, provides an adequate basis if utilised to assess the ML/TF risk of an FI as required by R.26.

268. The 2012 and 2014 NRAs have also provided the CBS and SIFA with an understanding of the ML/TF risks of the financial institutions they supervise. This understanding of risks gained from the NRAs and from prudential supervision has to some extent determined the supervision priorities of CBS with banks being targeted more frequently for compliance assessments. Outside of the NRA process, the CBS and SIFA do not have established processes to identify and maintain an on-going understanding of the ML/TF risks between different sectors and individual institutions.

269. *Criterion 26.6* – While there is no formal mechanism for the supervisors to regularly update their assessment of ML/TF risks, particularly when there are major events or changes to a particular FI or sector, the 2012 and 2014 NRA have however, enabled the supervisors to review the ML/TF risks of their supervised entities including risks arising from new developments in the sectors supervised.

Weighting and conclusion

270. Samoa has designated the CBS and SIFA to be the AML/CFT supervisors for FIs. Samoa has strong licensing requirements for FIs, however, the definition of 'physical presence' for international banks falls short of the FATF requirements. There are legal measures in place aimed at preventing criminals and their associates from holding controlling interest or holding management functions in an FI, but these measures do not extend to beneficial owners. All FIs are required by the MLP Act to be supervised for compliance with the AML/CFT requirements and the CBS to some extent determines its supervision priorities based on ML/TF risks of its supervised FIs. There were no indications that SIFA employs a risk-based approach to supervision of the international banks and insurance companies. Outside of the NRA process, neither CBS nor SIFA regularly and formally assess ML/TF risks of FIs as a basis to make decisions on supervision priorities. **Recommendation 26 is rated PC.**

Recommendation 27 – Powers of supervisors

271. Samoa was rated PC with R.29 in the 2006 MER. Supervisors did not have powers, beyond on-site inspections, to compel or obtain access to relevant records to monitor compliance and they did not have any direct powers of enforcement or sanction for failure to implement or comply with national AML/CFT requirements. The MLP Act 2007 and MLP Regulations 2009 contain revised provisions that are relevant to compliance with R.27.

272. *Criterion 27.1* – The SFIU has specific powers to examine and supervise any FI to ensure its compliance with AML/CFT requirements (section 10, MLP Act). Furthermore, the CBS, SIFA and SFIU, as the designated AML/CFT supervisors, are empowered to examine and supervise FIs' compliance with AML/CFT requirements (section 45(b), MLP Act).

273. *Criterion 27.2* – The CBS, SFIU and SIFA have powers under the MLP Act to verify, through regular on-site examinations, that financial institutions comply with its requirements (section 45(b)). The CBS and SIFA are empowered to conduct inspections of domestic and international banks and insurance companies and brokers under other laws for the purpose of assessing compliance under those laws (section 11, FI Act; section 63, Insurance Act; section 5 and 29, IB Act; section 3, II Act). For the purpose of assessing compliance with the MLP Act, the supervisors rely on the broad provision under section 45(b) of the MLP Act for their inspection powers.

274. *Criterion 27.3* – CBS and SIFA do not have powers under the MLP Act or other laws to compel the production of information for the purpose of assessing compliance with AML/CFT requirements in the MLP Act. The SFIU may during on-site inspections access any information that it may reasonably require for assessing a financial institution's compliance with the MLP Act, however these powers do not extend to the CBS and SIFA (section 10(2), MLP Act). The CBS and SIFA have comprehensive powers under other laws to access information and compel the production of information, but these powers are restricted to the purpose of assessing compliance with these laws (section 62, Insurance Act; section 9(2) and 11(2), FI Act; section 5, IB Act; section 24, II Act).

275. *Criterion 27.4* – CBS and SIFA do not have legal powers to impose sanctions on their supervised entities for breaches of the AML/CFT requirements in the MLP Act. The CBS has powers to issue directives and impose a range of sanctions on its supervised entities under other laws (sections 9 and 14, FI Act; section 69, Insurance Act; section 15, Exchange Control Regulations). However these sanctioning powers are restricted to breaches of requirements under these other laws and cannot be applied for breaches of the MLP Act. SIFA also has powers to issue directives to international banks (section 7, IB Act). There are other provisions for administrative sanctions against international banks under the IB Act which can be applied by the Minister for Finance. SIFA is also empowered to cancel, suspend or impose conditions on the licence of an international insurance (section 9, II Act). However, SIFA's powers to apply sanctions on international banks and international insurance companies are restricted to breaches under the IB Act and II Act.

276. The SFIU has powers to issue directives to any FI which, without reasonable excuse, breaches the MLP Act to implement an action plan to ensure its compliance with the Act. The SFIU does not have powers to directly impose administrative fines for AML/CFT breaches. Under the MLP Act, the SFIU can apply for a court order to enforce compliance with the MLP Act, failing which a penalty may be applied by the Court against the FI in breach (s11 MLP Act). The prior requirement to seek a court order restricts the SFIU's ability to issue sanctions when needed.

Weighting and conclusion

277. While Samoa meets some of the requirements of R.27, CBS and SIFA do not have powers to compel the production of information for the purpose of assessing FIs' compliance with the MLP Act or to impose sanctions on their supervised entities for AML/CFT breaches. In addition, the SFIU's power to apply sanctions for AML/CFT breaches is limited. **Recommendation 27 is rated PC.**

Recommendation 28 – Regulation and supervision of DNFBBs

278. Samoa was rated PC in the 2006 MER with the former R.24. While trustee companies had been subject to an equivalent level of oversight as banks and other FIs, most other DNFBBs had not been properly supervised and monitored since the enactment of the MLP Act 2000.

279. As noted above under the analysis of Recommendation 22 above, other than some minor scope/threshold issues, all DNFBBs (as defined by the FATF) are now included in Schedule 1 to the MLP Act (which lists ‘activities of financial institutions’) and therefore subject to its requirements.

280. *Criterion 28.1* – Licensing procedures for the grant of a casino license by the Gambling Control Authority are provided for under Part III (sections 23-33) of the Casino and Gambling Control Act 2010 (CAGC Act). Section 30(1) of the CAGC Act provides that prior to a casino operation agreement being entered into, the Authority shall be satisfied that the applicant and persons with a significant influence are ‘suitable’. Section 30(2), ‘Suitability of casino licensee’, sets out fit and proper criteria for the applicant and ‘persons with a significant influence’ (which is broadly defined in section 2 of the Act) which must be considered by the Authority. These criteria relate to honesty (including whether the person has a criminal record), financial position, business skills and management structure. Under section 30(5) of the CAGC Act, the Commissioner of Police and a government agency to whom the application is referred must inquire into, and report to the Authority on the applicant and persons with a significant influence.

281. Casinos are included in Schedule 1 to the MLP Act (which lists ‘activities of financial institutions’) and therefore subject to its requirements. Such activities include ‘operating a gambling house, casino or lottery, including carrying on operations through the internet, when their customers engage in financial transactions equal to or above \$10,000 [SAT] or the equivalent in another currency, or such other amount as may be prescribed by regulation’.

282. Section 45(a) of the MLP Act states that the relevant supervisory authority of an FI (including casino) may adopt any necessary measures to prevent or avoid any person who is not a fit and proper person from controlling or participating, directly or indirectly in the directorship, management or operation of the financial institution. Section 45(b) of the MLP Act requires the relevant supervisory authority to examine and supervise the FI, and verify, through regular on-site examinations, that an FI complies with the requirements of the MLP Act. Under Schedule 1 of the MLP Regulations, the SFIU is the supervisor of casinos for AML/CFT compliance purposes. The SFIU has informed the casino operators of their AML/CFT obligations under the MLP Act and MLP Regulations. However, at the time of the mutual evaluation, on-site visit to Samoa (November 2014), no AML/CFT supervision of the recently opened casino had occurred.

283. *Criterion 28.2* – As noted above, section 45 of the MLP Act sets out the obligations of supervisory authorities to monitor and ensure compliance with the Act. Schedule 1 of the MLP Regulations designates the ‘relevant supervisory authority’ for each type of supervised entity. For DNFBBs, the AMC/CFT supervisory authorities are:

- any FI regulated by SIFA (this includes TCSPs): SIFA;
- for accountants licensed by the Samoan Institute of Accountants: the Samoan Institute of Accountants (SIA);
- for all other FIs (this includes casinos, lawyers, dealers in bullion, real estate agents, persons dealing in real estate or high value items, including antiques; dealers in precious metals and stones, including pearls: the SFIU.

284. In terms of general regulation and supervision of DNFBBs, for accountants and auditors, the self-regulatory body (SRB) is the SIA (sections 5 and 6 of the SIA Act). For lawyers, the SRB is the Samoa Law Society (sections 13 and 14 of the Law Practitioners Act).

285. *Criterion 28.3* – While, as outlined above, there is a designated AML/CFT supervisory authority for each category of DNFBP, DNFBPs are not yet subject to systems for monitoring their compliance with AML/CFT requirements, other than TCSPs, whose compliance is monitored by SIFA.

286. *Criterion 28.4* – SFIU, SIA and SIFA are empowered under the MLP Act to examine and supervise DNFBPs, and to verify through regular on-site examinations their compliance with AML/CFT requirements (section 45(b)). As the relevant supervisory authority, SIFA, SFIU and SIA may adopt any necessary measures to prevent or avoid any person who is not a fit and proper person from controlling or participating, directly or indirectly in the directorship, management or operation of the DNFBP (section 45(a) of the MLP Act). SRBs (such as SIA and the Samoa Law Society) also have powers to take necessary measures to prevent criminals from being members of their association/society in accordance with their respective laws/acts. With regard to sanctions, the SFIU has limited powers to impose sanctions on DNFBPs for any non-compliance with AML/CFT requirements (section 11, MLP Act). SIFA and SIA do not have powers to impose sanctions on their supervised DNFBPs for breaches of AML/CFT requirements.

287. *Criterion 28.5* – There are no specific requirements or policies relating to supervision of DNFBPs to be performed on a risk-sensitive basis, as well as risk-based approach when assessing the adequacy of the AML/CFT internal controls, policies, and procedures. Section 45(b) of the MLP Act only allows the relevant supervisory authority of an FI to examine and supervise the FI, and verify, through regular on-site examinations, that it complies with the requirements of the MLP Act, but contains no specific provision on the frequency and intensity of AML/CFT supervision of DNFBPs. In practice, however, supervision of TCSPs (identified as higher risk in the 2012 NRA) has been undertaken on a more frequent basis by SIFA.

Weighting and conclusion

288. While the legal framework for the AML/CFT regulation and supervision of casinos is generally adequate, no AML/CFT supervision of the recently established casino had taken place at the time of the on-site visit. The SFIU, SIFA and SIA are designated authorities responsible for the supervision of DNFBPs, but only TCSPs are actually subject to systems for monitoring their compliance with AML/CFT requirements. There are no policies requiring that supervision of DNFBPs is performed on a risk-sensitive basis. **Recommendation 28 is rated PC.**

Recommendation 34 – Guidance and feedback

289. Samoa was rated PC with R.25 in the 2006 MER. No specific AML/CFT guidelines had been issued to DNFBPs. Inadequate feedback had been provided to FIs and DNFBPs, both on general trends and case-by-case feedback. Since the 2006 MER, the MLP Act 2007 has been enacted which requires authorities to issue guidelines to FIs. AML/CFT Guidelines were issued in 2010.

290. *Criterion 34.1* – The MLPA issued Guidelines on ML/TF prevention to all FIs listed in Schedule 1 of the MLP Act in April 2010, together with the MLP Regulations 2009. As well as providing general guidance on customer identification, record keeping and reporting obligations, and the identification of suspicious transactions, they include sector-specific guidance for different types of FIs, as well as different classes of DNFBPs. While the Guidelines are quite comprehensive (and are well regarded by reporting institutions), it is noted that they have not been updated to reflect passage of the CT Act in 2014. Furthermore, the Guidelines have not been updated to reflect the risks highlighted in the 2012 NRA and do not reflect any feedback received from reporting institutions.

291. In relation to feedback, the SFIU disseminates STRs to Police and TCU. The Police, as the lead investigative agency, are expected to provide feedback to the SFIU regarding those STRs, but no such feedback has been provided. While the SFIU continues to liaise and coordinate with FIs regarding AML/CFT matters, no evidence or examples of actual feedback provided to reporting entities was provided.

Weighting and conclusion

292. The 2010 Guidelines are well regarded by the financial sector, but there is only limited feedback between government agencies and very little ongoing feedback between the government and the private sector. **Recommendation 34 is rated PC.**

Recommendation 35 – Sanctions

293. Samoa was rated PC with former R.17 in the 2006 MER. There had been very limited use of dissuasive sanctions against FIs that failed to comply with AML/CFT requirements and criminal and civil sanctions were available but administrative ones were unclear.

294. *Criterion 35.1* – There is a range of criminal sanctions available under the MLP Act for breaches of its requirements. These include:

- for breaches of CDD and record keeping requirements; failure to maintain an account in true name; failure to monitor transactions; failure to maintain originator details; failure to report suspicious transactions and breaches of requirements on protection of information reported in suspicious transaction reports: an FI or any person is liable upon conviction to a fine not exceeding \$50,000 SAT (approximately US\$20,610) or imprisonment for a term not exceeding five years, or both (section 22 and 33(1), MLP Act);
- for less serious breaches (failure to appoint a compliance officer, establish AML/CFT procedures and systems and train staff on suspicious transaction reporting): an FI or person is liable upon conviction to a fine not exceeding \$10,000 SAT (approximately USD4,100) or to imprisonment for a term not exceeding two years, or both (section 33(2), MLP Act);
- for breaches of requirements relating to PEPs, relationships with shell banks and reliance on third parties, a person or FI can be fined up to \$10,000 SAT (approximately US\$4,100) or imprisoned for a term not exceeding one year or both (section 48(3), MLP Act; section 22, MLP Regulations);
- for breaches of any other requirement of the MLP Act: a person convicted under this provision may be fined up to \$10,000 SAT (approximately US\$4,100) or imprisoned for a term not exceeding one year or both (section 40, MLP Act).

295. There are limited administrative sanctions available under the MLP Act for breaches of its requirements. The SFIU has powers to direct any FI and DNFBP that has without reasonable excuse failed to comply with any obligations under the Act to implement any action plan to correct the breach (section 11 MLP Act). If the FI or DNFBP fails to comply with such a directive, the SFIU may apply to the Court for an order against the FI or DNFBP (or any/all of its officers) to enforce compliance with the MLP Act. In granting the order, the Court may order that should the FI or DNFBP (or any officer of the institution) fail to comply with the order, it should pay a penalty of SAT 50,000 (approximately US\$20,610) or such other penalty as the Court may determine.

296. The financial supervisors, CBS and SIFA, have powers under other laws to impose a range of administrative sanctions for regulatory breaches by their supervised FIs. Domestic banking licenses have as a condition compliance with the MLP Act. However for other FIs, these sanctioning powers cannot be applied by CBS and SIFA for AML/CFT breaches as they are restricted to breaches of these respective laws (refer to analysis of c.27.4 above).

297. Thus Samoa relies heavily on criminal sanctions (in the MLP Act) to penalise FIs, DNFBPs or any persons for breaches of the AML/CFT requirements. The range of sanctions available is not considered proportionate (in cases of less serious breaches which may not merit court action) and dissuasive.

298. *Criterion 35.2* – The sanctions available for breaches of the AML/CFT requirements are applicable to FIs, DNFBPs and natural persons including directors and senior management.

Weighting and conclusion

299. Samoa relies largely on criminal sanctions to deal with natural or legal persons who fail to comply with the MLP Act. The range of sanctions available is not considered proportionate and dissuasive. Samoa fully meets c.35.2. **Recommendation 35 is rated PC.**

7. LEGAL PERSONS AND ARRANGEMENTS

Recommendation 24 – Transparency and beneficial ownership of legal persons

300. *Criterion 24.1* – The Companies Act 2001 (Part II, section 6), the International Companies Act 1988 (ICA), the Segregated Fund International Companies Act 2000, the Special Purpose International Companies 2012 and the International Partnership and Limited Partnership Act 1988 provide a statutory framework for different forms of incorporated entities including:

- | | |
|--|--------|
| • Public companies: | 0 |
| • Private companies: | 119 |
| • International/limited partnerships: | 0 |
| • International companies: | 34,141 |
| • Segregated fund international companies: | 4 |
| • Special purpose international companies: | 0 |

301. The process for creation of these legal persons and for the obtaining and recording of basic ownership about them is reasonably clear. An online registry accessible by the public for domestic companies established under the Companies Act 2001 holds basic information relating to company directors, shareholders, and the share register. The website (www.companies.gov.ws), which is maintained by Ministry of Commerce, Industry and Labour (MCIL), outlines the types of domestic legal persons that can be created, their basic features and the creation/registration process and how to search for basic ownership information. SIFA's website (<http://www.sifa.ws>) contains similar information regarding the various types of legal persons that can be created in the international sector. There is however no clear process for the obtaining or recording of beneficial ownership information (as defined by the FATF) for either domestic or international legal persons.

302. *Criterion 24.2* – The regulators of both domestic (MCIL) and foreign (SIFA) companies are members of the MLP Task Force, which was responsible for preparation of the 2012 NRA. While the 2012 NRA includes an assessment of ML and TF and international companies and trusts sectors, it does not address the risks associated with domestic companies and other legal persons.

Basic information

303. *Criterion 24.3* – For domestic companies, the information required to be disclosed on registration under section 6 of the Companies Act 2001 is the following:

- the name of the company;
- whether the company is a private company or a public company;
- whether the rules of the company differ from the model rules set out in Schedule 2 (in the case of a private company) or Schedule 4 (in the case of a public company);
- the full name and residential address and postal address of every director of the proposed company;
- the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder;
- the registered office of the proposed company; and

- the postal address of the company, which may be the postal address of the registered office or any other postal address.

304. This information is publicly available via MCIL's online registry.

305. For international business companies (IBCs), under the ICA, application is made to the Registrar of International and Foreign Companies (within SIFA) through a trustee company, accompanied by the registration fee and:

- a certified copy of its Certificate of Incorporation;
- a certified copy of its constitution or Memorandum and Articles of Association;
- a list of its directors and secretaries. If any directors are residents of Samoa, a memorandum stating what their powers are is also required;
- a memorandum stating details of a trustee company which is authorised to accept service of process and notices on behalf of the company;
- the address of the registered office in Samoa which must be the principal office of a trustee company;
- a declaration setting out particulars of the company's capital.

306. Upon registration, the Registrar issues a Certificate of Registration, which is valid for 12 months. It is renewed on payment of the annual renewal fee for further periods of 12 months. After registration, the IBC is required to lodge an annual return within three months after the date of its AGM for the year to which the annual return relates. It must also notify the Registrar within one month of changes in its name (section 23 of ICA), constitution (section 26 of ICA allows an IBC to alter its articles), memorandum (section 19 of ICA); capital (or number of registered members if it does not have a capital) (section 54 of the ICA), directors, registered office or in the powers of any local resident director. IBCs are required to keep a register of all members, including changes in ownership, and persons who ceased to be a member during the last seven years (except in relation to bearer shares), including names, addresses, and details of the shares held by each member (ICA, sections 30G(3) and 105). The register must be kept in Samoa, generally at the registered office of the company which is also the principal office of a trustee company (ICA, sections 81 and 106).

307. SIFA maintains the name and other basic information on all international legal persons on its register, which is accessible to the public (though not online). Due to confidentiality provisions in the ICA, only limited information relating to an IBC can be provided. On request, the Registrar can confirm to a member of the public the existence of an IBC, its registered office including a contact person, without needing the consent of the TCSP or IBC. A copy of an IBC's Memorandum and Articles of Association as well as a Certificate of Good Standing can also be provided on request and on payment of a fee. This information is provided as a matter of good practice although there is no requirement for the Registrar to do so.

308. Under the International Partnership and Limited Partnership Act 1988, application for registration of an international or limited partnership is made to the Registrar through a trustee company in the prescribed form, accompanied by the prescribed fee and a certificate by the trustee company confirming that:

- one of the partners of the limited partnership is either an international company; a foreign company; or a trustee company; and
- each partner is a non-resident.

309. For a limited partnership, the trustee company must certify that upon registration it will consist of at least one general and one limited partner. On registration of a limited partnership and before it commences business a certificate completed and signed by a general partner may be filed with the Registrar containing the following particulars:

- the firm name;
- names and addresses of all the partners distinguishing general from the limited partners;
- capital contribution of each limited partner;
- the general nature of the business to be transacted;
- the principal place of business;
- the term for which the limited partnership is entered into or if for an unlimited duration, a statement to that effect and the date of its commencement.

310. The filing of a certified true copy of the partnership agreement with the Registrar is optional. No information held by the registrar regarding an international or limited partnership can be open for inspection unless the trustee or partnership agrees (section 7(2)).

311. *Criterion 24.4* – With respect to each Act:

- section 117 of the Companies Act 2001 lists the type of documents that must be kept by a company at its registered office (with a limited exception provided in section 119). Although the provision does not expressly provide for the ‘maintenance’ of these documents, the need to update the documents is implicit (requirement that accounting records for the last seven completed accounting periods be kept). Companies are required to maintain a share register (section 40) which includes information about shareholders and the number of shares held by each shareholder and the class of shares held. The share register is also one of the documents that must be kept by the company at its registered office. Share information can be viewed via the online registry but only immediate shareholder information.
- the International Companies Act 1988 requires that registration of an international company with the Registrar of International and Foreign Companies must be done either through a trustee company or by a person/s who has subscribed their name to a memorandum (section 13). The Registrar need only keep such registers as he or she considers necessary (section 12(1)). Samoa confirms that the following registers are kept: Register of Companies, Register of Charges against IBCs, Register of International Partnerships, Register of Segregated Funds, and Register of all entities the SIFU regulates. These registers are not open for inspection without consent of the trustee company. However, as noted above the Registrar is able to confirm the existence of an IBC, its registered office and contact details including a contact person without needing the consent of the TCSP. A search for company documents may only be undertaken with the consent or if the person can demonstrate to the Registrar that he or she has good reasons. With respect to the maintenance of information required under criterion 24.3, as outlined above, an IBC must notify the registrar (SIFA) within one month of a change in its name, constitution, memorandum, capital (or number of registered members if it does not have capital, directors or registered office or in the powers of any local resident director.
- the International Partnership and Limited Partnership Act 1998 (IPLPA) requires that registration of an international partnership with the Registrar of International Partnerships must be done through a trustee company (section 10). All partners must be non-residents of Samoa but must have a registered office in Samoa. No information held by the registrar can be open for inspection unless the trustee or partnership agrees (section 7(2)). Although there is an annual renewal fee, there is no requirement to maintain and update the information contained in the register. Section 7 of the Act merely provides that the Registrar *may* keep such registers as the Registrar considers necessary. Currently the only register kept by the Registrar is the number of international partnership that are registered. However as noted under criterion 24.1, no international partnerships to date have been registered.

312. *Criterion 24.5 – Domestic companies*: Section 117 of the Companies Act 2001 sets out the documents that must be kept at the registered office and includes rules of the company, full names and addresses of directors and the share register. Company details are maintained on-line through the Companies E-Registry website. An authority is required in order to maintain information on line. Authority may be granted to existing directors and authorised agents such as law firms, accounting firms

and company secretaries. Registered companies are required to file an Annual Return (section 124). This is done via the E-Registry website. In addition to the annual return required under section 124 of the Act, section 126 of the Companies Act requires the company to send the following documents to the Registrar:

- (a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;
- (b) notice of a change in the registered office or postal address of the company under section 18 of the Act;
- (c) notice of the issue of shares by the company, under section 26 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 31 of the Act;
- (e) notice of the redemption of a share, under section 35 of the Act;
- (f) notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
- (g) notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
- (h) notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
- (i) documents requested by the Registrar under section 312 of the Act.

313. International companies: As noted in c.24.4, there is no requirement under either the ICA or the IPLPA to keep registers of IBCs or international partnerships. Section 12(1) ICA and section 7(1) merely provide that the Registrar *may*, subject to the Act and regulations, keep such registers as he or she considers necessary and in such form as he or she sees fit. Samoa confirms that the following registers are kept: Register of Companies, Register of Charges against IBCs, Register of International Partnerships, register of Segregated Funds, and Register of all entities the SIFU regulates. These registers are not open for inspection without consent of the trustee company. However, the Registrar is able to confirm the existence of an IBC, its registered office and contact details including a contact person without needing the consent of the TCSP. There is only limited information on the mechanisms for keeping any registers required up to date. The register of charges is dependent on the IBCs actually lodging the charges for filing (section 75). Under section 91 (Register of Directors and Secretaries) the IBC is required to notify the Registrar within 1 month if a person ceases to be a director or a new director is appointed. However, this requirement only applies to IBCs that have elected to do so under subsection (5A). Further there does not appear to be any mechanism or system in place for ensuring that the information provided is accurate and able to be provided on a timely basis (with the exception of notifications relating to directors under section 91).

Beneficial ownership information

314. *Criterion 24.6* – There is no requirement for companies to obtain information on their beneficial ownership (per the requirements of c.24.6(a) and (b)) or to hold this information in a register. However, this criterion provides for an alternative mechanism in c.24.6(c). It is sufficient for compliance if a competent authority (such as the SFIU or SIFA) is able to obtain beneficial ownership information by using existing information such as that obtained by FIs/DNFBPs (including, in Samoa, TCSPs) in the process of, for example, carrying out due diligence on a customer. The MLP Act and its associated regulations require FIs (which includes trustee companies, lawyers and accountants) to obtain information on their customers. With respect to legal persons (both domestic and international), this includes a requirement to take reasonable measures to understand and document the ownership and control structure of the customer. ‘Reasonable measures’ include identifying the natural person who ultimately owns or controls the legal person, entity or arrangement (ie the beneficial owner) by using reliable, independently sourced documents (regulation 6(2) MLP Regulations 2009). Regulation 6 also has express provisions covering the identification and verification of companies, and trusts. These obligations apply to both domestic companies and international companies. As outlined in the analysis of R.10 above, the term ‘beneficial owner’ has not been defined in the MLP Act or MLP Regulations, though in practice Samoa appears to apply the FATF definition of beneficial owner.

315. In relation to domestic companies, the MCIL does not centrally hold any information on beneficial ownership. Although there is no central register of beneficial ownership in relation to IBCs, SIFA (which keeps a publicly available summary register of basic information of all IBCs), knows which TCSP to approach if beneficial ownership information of an IBC is required to be disclosed by law (eg under the MLP Act, the MACMA or the Tax Information Exchange Act).

316. However, there is an issue as to whether accurate beneficial ownership information is available and whether it is able to be obtained in a timely manner in relation to IBCs created in Samoa as a result of introduced business. In order to comply with its legal requirements under the MLP Act and regulations when creating an IBC, a Samoan TCSP must identify and verify the ultimate beneficial owner (natural person) of the IBC. In order for the Samoan TCSP to meet this legal obligation, as a matter of practice the Samoan TCSP requires the introducer (normally an affiliated or parent TCSP operating in Asia) to identify and verify the ultimate beneficial owner. This beneficial ownership information is then provided to the Samoan TCSP and the introducer either provides a copy of the supporting documentation or signs a letter of undertaking that the documentation will be provided to the TCSP on request. The information regarding beneficial ownership provided by the introducer is maintained by the TCSP in Samoa, which updates any changes to beneficial ownership information when the IBC files its annual return. This system has been tested in practice on a number of occasions (for example, in response to foreign requests to Samoa for beneficial ownership information) and the beneficial ownership information has normally been available in a timely manner. However, such requests are relatively rare and on-site inspections do not test the availability of beneficial ownership information. Accordingly, this makes it difficult to make an informed assessment of both the true availability of that information and its accuracy.

317. There is also the risk that either the introducer or the beneficial owner may withhold the information if their interest in withholding the information is greater than their interest in co-operating with the Samoan authorities. The TCSP, however, ultimately remains responsible for any failure to provide the information.

318. *Criterion 24.7 – Domestic companies:* Annual returns are required to be filed by domestic companies (section 124, Companies Act). An annual return must be in a prescribed form and must contain information prescribed by the Registrar. Regulations prescribing the information to be provided do not include updates to beneficial ownership information although companies are required to update their list of shareholders. It is noted that there is no definition of beneficial owner in the Companies Act 2001 and the Act does not refer to beneficial owners, only to shareholders. MCIL only records the changes in shareholders and allocated shares. It is the responsibility of each company to keep records of their shareholders. Accordingly, MCIL does not maintain information concerning the ultimate beneficial owner. This information should be maintained and kept by the law firms that created the company and by a bank where the legal person or arrangement operates a bank account in Samoa.

319. *International companies:* Beneficial ownership information is updated annually as a matter of practice during the registration renewal process, though it may be updated on an ad hoc basis during the year. There is, however, no express provision requiring IBCs to update beneficial ownership information unlike requirements relating to the update of other information. In particular under the ICA, an IBC must notify the Registrar (SIFA) within one month of changes in its name, constitution, memorandum, capital (or number of registered members if it does not have a capital), directors or registered office or in the powers of any local resident director. It is noted that there is no definition of beneficial owner in the ICA. The Registrar treats the Members as legal owners and not beneficial owners. The Registrar conducts weekly inspections of changes to Members and has the power under section 109 ICA to rectify the Register of Members.

320. *Criterion 24.8 – Domestic companies:* There is no provision in the Companies Act that one or more natural persons who are resident in Samoa are required to maintain information. The only person authorised by the directors of the company to maintain information for the company is nominated through a Letter of Authority. *Foreign companies:* Under section 283 of the Companies Act, a foreign company wishing to register in Samoa must provide the full name of one or more persons resident or incorporated

in Samoa who are authorised to accept service in Samoa of documents on behalf of the overseas company.

321. International companies: Section 81(1) of the ICA requires an international company to have a registered office in Samoa, which office shall be the principal office of a trustee company. Section 83(1) of the ICA focuses on the appointment of an officer of the trustee company as a resident director of an international company. International companies and foreign companies registered under the ICA are required to keep a register and index of members of an international company, generally at the registered office of the company. Section 83(8) states that a director or resident director of an international company shall not disclose or use information he or she has obtained by reason of his or her office to any person or for any purpose except in accordance with his or her duty as a director of the company and so far as he or she may be compelled by law so to do. Section 8 of the Trustee Companies Act 1988 imposes obligations on TCSPs relating to the supply of information and inspections. An officer or authorised agent of the TCSP may be required by the Minister, in certain circumstances, to provide information, including financial statements. There is, however, no general requirement holding the resident director accountable to the authorities for providing information

322. *Criterion 24.9* – A domestic company is obligated under section 117 of the Companies Act 2001 to keep company records for 7 years in a form and location specified under sections 118 and 119 respectively. However, the Act is silent about the retention of records of domestic companies being wound up. Section 185(2) of the ICA states that where an international company has been wound-up, the liquidator shall return the books and papers to the resident secretary of that company who shall ensure that those books and papers are retained by a trustee company for a period of 6 years from the commencement of the winding-up. After the expiration of the 6 years the books and papers may be destroyed.

Other requirements

323. *Criterion 24.10* – Domestic companies: The MLP Act contains powers for the SFIU, the Authority and the Police Service to obtain access to and examine records (which would include information relating to beneficial ownership required to be kept under the Companies Act 2001 and obtained under the MLP Regulations in the course of CDD). However, the power is limited. It can only be exercised for certain purposes such as compliance with the MLP Act and Guidelines or for the purposes of an investigation or analysis being undertaken by the SFIU. For instance, this does not appear to cover the sharing of information with other countries under the Mutual Legal Assistance in Criminal Matters Act 2007 (MACMA).

324. International legal persons: A range of confidentiality/secretcy provisions apply to international entities (for example, section 31, Trustee Companies Act 1988; section 39, International Partnership and Limited Partnership Act 1988; section 227, International Companies Act 1988). However, all secrecy or confidentiality obligations are overridden by section 3 of the MLP Act. The scope of section 3 is extensive as it applies to any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other law or otherwise. The SFIU has very broad powers to obtain information under section 10 of the MLP Act, and to disseminate any such information to domestic or foreign law enforcement agencies if it has reasonable grounds to suspect that it is suspicious or is relevant to a serious offence, an ML offence or a TF offence. Section 12 of the MLP Act contains an additional power for the SFIU, SIFA and the Police Service to obtain access to and examine records upon obtaining a warrant (which would include information relating to beneficial ownership required to be kept under the ICA and obtained under the MLP Act and Regulations in the course of CDD). However, the power is somewhat limited, as it can only be exercised for certain purposes such as where there is a failure of compliance by a financial institution with the MLP Act (CDD and STR obligations) or if an officer or employee of a financial institution has committed or is about to commit an ML or TF offence. Whether law enforcement authorities can obtain timely access to beneficial ownership information if that information needs to be obtained by the TCSP from an introducer in another jurisdiction has not been tested.

325. *Criterion 24.11* – Bearer shares and bearer share warrants were permitted under the International Companies Act 1988. Samoa is unable to advise how many of bearer shares and bearer share warrants were issued under the previous law. However, an immobilisation regime introduced in 2008 required IBCs to lodge the bearer share or bearer share warrant with the relevant TCSP. The TCSP holds the bearer shares and bearer share warrants as a custodian for the beneficial owner. Although it is possible for an IBC to apply to extend the transitional period for lodgement (section 39A, ICA), no applications have been received by the Registrar. Past on-site inspections have not monitored compliance with the immobilisation process however steps have now been taken by the Registrar to ensure that this occurs at future on-site inspections. The International Companies Amendment Act 2014 abolished bearer shares and bearer warrants. Under this amendment, all bearer shares must be converted into registered shares within 6 months of the amendment coming into force otherwise any rights attaching to the shares will be cancelled by operation of law. Although enacted in April 2014, the amendment had yet to come into force at time of the on-site visit in November 2014³¹.

326. *Criterion 24.12* is not applicable. There is no legislative mechanism for the appointment of nominee directors or for the issuance of nominee shares. Nor is SIFA aware of the appointment of any nominee directors by IBCs or the issuance of nominee shares.

327. *Criterion 24.13 – Domestic companies*: The maximum penalties for offences set out sections 339 to section 343 of the Companies Act relating to false statements and fraudulent activities (a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 7 years, or both) are considered proportionate and dissuasive. In addition, domestic companies can and have been deregistered for non-compliance with the requirements of the Companies Act 2001, including filing of annual returns. Furthermore minor offences relating to failure to produce documents and to allow inspection of documents for inspection of documents and obstruction of the Registrar are provided in sections 314, 315, 318, 319 and 320 of the Companies Act. The maximum penalties for these lower level offences are a fine not exceeding 50 penalty units (\$5,000 SAT/US\$2,125) and are considered proportionate and dissuasive.

328. *International companies*: As noted above, international companies are required to keep a register and index of members, generally at the registered office of the company. If an international company fails to comply with this obligation, the company and each officer thereof who is in default commits an offence. The general penalty for non-compliance is 50 penalty units (\$5,000 SAT/US\$2,125) on a first offence and 100 penalty units (\$10,000 SAT/ US\$4,250) for a second or subsequent offence (ICA, s.219(1)). Violation of section 106 of the ICA – prescribing the location of the register of members – is punished upon conviction with a fine not exceeding 100 penalty units (\$10,000 SAT/US\$4,250) or to imprisonment for a term not exceeding three months or both (ICA, s.219(2)). Section 197 of the ICA also provides the Registrar the power to strike an international company off the register for non-compliance with the payment of its annual fee or failing to comply with instructions from the Registrar of Companies or the Minister. For ensuring that the basic and beneficial information requirements relating to IBCs are met, however, the most dissuasive general sanction is the revocation of a TCSP's license to conduct business as a trustee company. There is also a default penalty provision in section 32 of the ICA which provides for a fine not exceeding 20 penalty units (\$2,000 SAT/US \$850) for any person who is guilty of any wilful act of commission or omission contrary to the Act.

329. *Criterion 24.14* – The Mutual Assistance in Criminal Matters Act 2007 (MACMA) enables Samoa to provide a wide range of mutual legal assistance in relation to criminal matters, including ML and TF. In accordance with section 4 of MACMA, assistance may be given in order to identify and locate a person and evidence and documents obtained and documents produced. Accordingly information relating to beneficial ownership where it relates to a criminal matter, and where it is available, is able to be provided by Samoa to its foreign counterparts and obtained by Samoa from foreign counterparts, however limitations on the availability of beneficial ownership locally may also impede this information being available to foreign competent authorities. Also, as noted under c.24.10 above, the ability of the

³¹ Samoa advised that the amendments came into force on 27 April 2015.

SFIU and other authorities to examine and get access to information on beneficial ownership must be for the purposes of the administration of the MLP Act or an investigation by the SFIU. It does not appear to cover sharing of information at the request of other countries. The TIEA Act 2012 enables the exchange of information for tax transparency and information has been provided by Samoa to foreign jurisdictions under this Act. Other legislative mechanisms permitting the exchange of information include section 37(3) of the International Banking Act 2005. This enables disclosure of information about a licensee by the Inspector of International Banks to foreign or domestic banking supervisory authorities or to a domestic or foreign agency responsible for the prevention and suppression of terrorism, or to the ML Authority or similar foreign authority. The information disclosed under this provision must, however, be for supervisory purposes or for the prevention of terrorism or the enforcement of the MLP Act. Furthermore the Inspector must be satisfied that the recipient is subject to adequate legal restrictions on disclosures, including giving an undertaking on confidentiality. Section 227(3) of the ICA provides circumstances in which information regarding IBCs may be disclosed. This includes disclosure by the Registrar to domestic or foreign agencies responsible for the prevention and suppression of terrorism, if the information is required for the purpose of the prevention and suppression of terrorism or by the MLP Authority of any domestic or foreign authority responsible for the prevention of money laundering if the information is required for the purposes of the enforcement of the MLPA or any other laws relating to the prohibition or control of money laundering activities. The Minister or the Registrar may also disclose information to any other person if he or she believes that the disclosure is in the best interests of Samoa or necessary to uphold the integrity of the jurisdiction as an offshore financial centre or to ensure compliance with the ICA, MLP Act and the CT Act.

330. *Criterion 24.15* – Samoa advises that SIFA monitors the quality of assistance provided by other countries. The basis for information exchange under mechanisms such as the Tax Information Exchange Act 2014 is that the information exchanges are carried out in good faith. Samoa further advises that it is able to monitor the quality of information through its membership of international standard setter groups such as the APG, GIFCS and the Peer Review Group, Sub-Group of the OECD Global Forum (PRG). Exchange of information on request can also happen in the context of Samoa's TIEA treaty network. Samoa has signed TIEAs with 16 treaty partners with whom it may exchange tax information (including information on beneficial ownership) on an 'on-request' basis. The scope for such exchanges includes information that may benefit investigations into criminal tax matters in partner jurisdictions. However, the TIEAs were signed in a 12 month period and include a number of countries with whom Samoa's economic relations are minimal (eg. San Marino, Faroe Islands, Greenland, Denmark, Finland, Iceland, Norway, Sweden, and Monaco). There are no TIEAs with Hong Kong or China (countries which are the source of many Samoan IBCs), although Samoa has made a formal request through diplomatic channels with the People's Republic of China to enter a double tax agreement.

Weighting and conclusion

331. While the statutory framework for the regulation of both domestic and international legal persons is generally adequate there are some gaps. The most significant gap and the main area of concern is with respect to IBCs particularly given the number of IBCs (34,141) and the potential for abuse. There is no mandatory requirement to keep registers of IBCs (although some registers are kept) and there is a lack of transparency as the registers are not open for inspection without the consent of the TCSP. Beneficial ownership information is only updated annually. Furthermore, the Samoan TCSP is reliant on the introducer providing accurate and timely information with regard to the ultimate beneficial ownership of the IBC. **Recommendation 24 is rated PC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

332. Samoa was rated PC with former R.34 in the 2006 MER.

333. Trusts are a feature of the Samoan legal system, and are governed by a mix of the principles of equity and statute law. The following types of trust may be created in Samoa: (i) domestic trusts (including express, implied and other forms of trusts, such as charitable trusts); (ii) international/foreign

trusts or foreign benefiting trust (formed under the Trusts Act 2014), and (iii) unit trusts (1400 formed under the Unit Trust Act 2008).

334. As with other common law jurisdictions, Samoa does not have a system of central registration of domestic trusts and Samoan authorities are not able to determine how many domestic trusts operate in Samoa. Charitable trusts must however be registered under section 11 of the Charitable Trusts Act 1965. Currently there are 227 charitable trusts in Samoa.

335. International trusts were until April 2014 formed and regulated under the International Trusts Act 1988. As of April 2014, there were 155 international trusts registered with the Registrar of International Trusts (which is part of SIFA). In April 2014, both the Trustee Act 1975 and the International Trusts Act 1988 were repealed and replaced by the Trusts Act 2014. Under section 91 of the Trusts Act 2014, at its commencement: (a) any international trust registered under the International Trusts Act 1988 continues for a period of 12 months as if it was a foreign trust under the Trusts Act despite being repealed; and (b) any existing trust created under the Trustee Act 1975, continues as if created under the Trusts Act. Any existing registered international trust must, within 12 months from the commencement of this Act, comply with the requirements of a trust under this Act.

336. There is no legal requirement that a domestic or foreign trust must be established through a service provider or legal practitioner. Nor is there any requirement for domestic or foreign trusts to be registered with a central authority. However, a 'foreign benefiting trust' as defined under section 2 of the Trust Act 2014 is defined as one where a (Samoan) trustee company is a trustee, and has tax benefits so long as it does not generate any source of income in Samoa where it will attract capital gains tax including any income earned. A 'foreign trust' is defined under section 2 of the Trust Act 2014 as a trust governed under a foreign law and so long that it complies with section 79 of the Trust Act 2014, can operate in Samoa but does not benefit from any tax exemption under the Income Tax Act 2012, or as provided under section 90 of the Trust Act 2014. While the Samoan authorities hope that TCSPs will continue to be involved in the creation and operation of foreign trusts (and therefore subject to the requirements of the MLP Act in relation to such trusts), this is not a strict requirement of the new legislation, other than for foreign benefiting trusts.

337. More broadly, and as outlined above, under the MLP Act (section 2(1) and Schedule 1), trust or corporate service providers, trustee company businesses, and lawyers assisting in the planning or execution of transactions for their clients relating to the creation, operation or management of trusts, companies or similar structures are defined as 'financial institutions' under the MLP Act. Therefore, trustees of express trusts are subject to the CDD requirements of the MLP Act and MLP Regulations, including in relation to obtaining beneficial ownership in relation to legal arrangements (as outlined in the analysis of R.10 above).

338. *Criterion 25.1* – Other than where a trust is created by a 'financial institution' as defined in the MLP Act, trustees of domestic and foreign trusts are not required to obtain and hold adequate, accurate and current information on trustees, settlors, beneficiaries or protectors of trusts in Samoa. Trustees are also not required to hold information on their regulated agents or service providers.

339. Where a trust *is* created by a 'financial institution', section 6(4) of the MLP Regulations 2009 requires an FI to identify and verify the settlors, trustees, and beneficiaries of the trust or similar arrangement, whose vested interest is more than 10% of the value of trust. Sections 21 and 22 of the Trust Act 2014 provide for the appointment of a Protector and an Enforcer respectively but there is no specific requirement for their identification and verification. Furthermore, there is no specific requirement to obtain and hold adequate information on a Protector, or to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants and tax advisors. An FI is required to retain records for a minimum of five years under section 18(3) of the MLP Act.

340. *Criterion 25.2* – Other than where a trust is created by a ‘financial institution’ as defined in the MLP Act, there is no specific requirement to ensure that any information held pursuant to this Recommendation be kept accurate and as up-to-date as possible and on a timely basis.

341. *Criterion 25.3* – When a trustee operates as an FI as defined under section 16 of the MLP Act, the trustee is required to identify and verify a customer when establishing a business relationship or conducting any transaction. However for all other trusts, there is no such requirement.

342. *Criterion 25.4* – Under section 80 of the Trustees Act 2014, the trustee of a Samoan trust must treat all documents and information ‘whatsoever’ concerning the trust as confidential and not release any such information to any person except a court or parties to a trust – settlor, enforcer or protector. Trustees are able to provide, upon request, to financial institutions and DNFBPs beneficial ownership information and other details of the trust when entering into a business relationship.

343. *Criterion 25.5* – The MLP Act provides as follows:

- section 7: empowers the FIU to collect information from a commercial and government database, or instruct an FI to take appropriate steps regarding information or a report received by the FIU, or to facilitate any anticipated investigation;
- section 10: empowers the FIU or any person authorised in writing to enter an FI to examine records and enquire into the business affairs of the entity to ensure compliance including for the purposes of any investigation;
- section 12: empowers the FIU, the Authority or a Commissioned Officer of the Police to apply for a search warrant to search records, customer due diligence information and transactions.

344. However, these powers apply only when a trust is created by a ‘financial institution’ as defined in the MLP Act and not otherwise.

345. *Criterion 25.6* – As per criterion 25.4, trust information and documents are generally strictly confidential and cannot be disclosed to competent authorities as defined in the glossary to the methodology. However, these confidentiality provisions can be overridden by sections 3 and 10 of the Tax Information Exchange Act 2012 if the exchange of information relates to tax issues.

346. *Criterion 25.7* – Under section 71 of the Trusts Act 2014 the remedies available to a court for breach of trust by a trustee include, suspension, removal, denial of compensation and any other relief. There are no criminal, civil or other administrative sanctions or penalties in the Act.

347. *Criterion 25.8* – Where a trust is created by an FI as defined by the MLP Act, the FI is subject to the sanctions contained in the MLP Act for failure to comply with CDD obligations (which include cooperation with the competent authorities). For other persons, there is no specific sanction for failure to grant access to information, but general sanctions (for failure to comply with a judicial warrant) apply.

Weighting and conclusion

348. Samoa partially meets most of the criteria, on the basis that entities involved in the creation and operation of trusts falling within the definition of ‘financial institution’ under the MLP Act are captured by its CDD and other obligations. However, the repealing of the International Trusts Act 1988 by the Trusts Act 2014 has removed the additional measures applied by that Act, including the maintenance of a register of international trusts. **Recommendation 25 is rated PC.**

8. INTERNATIONAL COOPERATION

Recommendation 36 – International instruments

349. Samoa was rated PC with former R.35 and NC with former SR.I in the 2006 MER. While Samoa had acceded to the Vienna Convention and signed and ratified the Financing of Terrorism (TF) Convention, it was not a party to the Palermo Convention and had not implemented Palermo, Vienna or fully implemented the TF Convention. Regarding SR.I, Samoa had not implemented UN Security Council Resolutions 1267 and 1373 and the full range of terrorism acts as per the TF Convention were not covered by the Prevention and Suppression of Terrorism Act.

350. *Criterion 36.1* – Samoa acceded to the Vienna Convention on 19 August 2005 and the TF Convention on 27 September 2002. Samoa is not a party to the UN Convention against Corruption (Merida Convention). The Cabinet has recently endorsed Samoa to become a party to the Palermo Convention, but this has not yet occurred.

351. *Criterion 36.2* – Amendments to the Narcotics Act have covered many of the obligations in relation to the offences under the Vienna Convention, though some gaps remain regarding special investigative techniques and criminalisation of ML (see analysis of R.3). While the majority of the TF Convention's provisions have been implemented by the Counter Terrorism Act 2014 (CT Act), as noted under the analysis of R.5 above, some deficiencies remain. Samoa is yet to fully implement the Palermo and Merida Conventions.

Weighting and conclusion

352. Samoa has acceded to the Vienna and TF Conventions and has implemented many of the relevant articles, though some gaps remain. Samoa is yet to accede to or fully implement the Palermo and Merida Conventions. **Recommendation 36 is rated PC.**

Recommendation 37 – Mutual Legal Assistance

353. Samoa was rated PC with former R.36 and NC with former SR.V in the 2006 MER. Mutual legal assistance (MLA) was available for the investigation and prosecution of ML offences but not for other predicate offences or for TF. There was no power in the MLP Act (2000) for the police to take witness statements for use in investigations and prosecutions pursuant to a mutual legal assistance request. Regarding SR.V, MLA was not available for matters involving financing of terrorism, terrorist acts or terrorist organisations. Since the 2006 MER, Samoa has enacted the Mutual Assistance in Criminal Matters Act 2007 (MACMA), which came into force on 7 February 2007. The 2011 Mutual Evaluation Progress Report found that sufficient progress had been made in relation to the legal framework for MLA for ML and predicate offences to bring Samoa's level of compliance with former R.36 to a level equivalent to an LC. In relation to SR.V, the 2014 Mutual Evaluation Progress Report found that the previous shortcomings in the criminalisation of TF had been largely addressed by passage of the CT Act, and that compliance with SR.V could be considered to be at a level essentially equivalent to LC or C.

354. *Criterion 37.1* – The MACMA in section 3 enables Samoa to provide and obtain a wide range of international assistance in relation to investigation, prosecution and related proceedings in respect of serious offences. A 'serious offence' has the same meaning as in the POCA, and means an offence against any law of Samoa that constitutes an unlawful activity or against the law of the foreign state punishable for a maximum period of not less than 12 months. As noted under R.3 above, the ML and TF offences meet the requirement of Samoa's threshold of unlawful activities, as the penalties are more than 12 months imprisonment. Also as noted under R.3 above, some predicate offences of Samoa are not deemed serious offences which somewhat limits the range of MLA that can be provided.

355. *Criterion 37.2* – The Attorney-General is Samoa's central authority for MLA and executes all incoming and outgoing MLA requests. The monitoring and prioritisation of MLA requests is managed

using a manual case management system overseen by the Assistant Attorney General of the Criminal Division as part of the general workload of the Criminal Division. An average of four or five MLA requests is received per year.

356. *Criterion 37.3* – Grounds for the Attorney-General to deny an MLA request are set out in section 24 of the MACMA. The only grounds for refusal are if the request would prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice. Provision of MLA can be postponed if the request would prejudice the conduct of an investigation or proceeding in Samoa. Such conditions are common in MLA practices of many countries and are not considered unduly restrictive.

357. *Criterion 37.4* – While the MACMA makes no specific reference to bank secrecy, sections 24 to 26 of the MACMA do not cite fiscal matters or confidentiality requirement on FIs or DNFBPs as grounds for refusal. It is noted that section 3 of the MLP Act overrides any obligation as to secrecy or other restriction upon the disclosure of information. To date there has been no court decision on the issue.

358. *Criterion 37.5* – Section 70 of the MACMA addresses the privilege accorded foreign documents which requires the maintenance of confidentiality of MLA requests, with clear penalties for breaches of confidentiality or disclosure of information in relation to the request (a fine of 500 penalty units - \$50,000 SAT or approximately US\$20,000 - or imprisonment for five years, or both).

359. *Criterion 37.6* – The MACMA requires dual criminality for all MLA, including non-coercive actions. Under sections 27(2)(a) and 28(2)(a) of the MACMA, an MLA request from a foreign state shall be granted where the request relates to a serious offence in a foreign state. A request for assistance made for foreign serious offences or made by foreign states is to be complied with in respect of serious offences. The POCA defines a ‘serious offence’ as an offence against the laws of the foreign state that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activities against any law of Samoa. Even non-coercive actions such as assistance in locating or identifying a person (section 27) are still tied to a serious offence as Samoan law makes no distinction between coercive or non-coercive measures for MLA purposes. During the on-site visit, the AGO indicated that it is possible that Samoa could look for witnesses, obtain witness statements etc in the absence of dual criminality (section 23(2) of the MACMA refers, although this issue has not been tested). The evaluation team notes, however, that the MACMA requires dual criminality for granting assistance in any case. While it is true that it makes no reference to dual criminality, section 23 of the MACMA concerns the format of requests, not the scope assistance that can be granted.

360. *Criterion 37.7* – As mentioned above, Samoa assesses the alleged conduct of the person to determine whether, if the relevant act or omission had occurred in Samoa, it would be an offence that would constitute unlawful activities against any law of Samoa. The dual criminality test does not require the same category of offence, or to denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

361. *Criterion 37.8* – Sections 40 to 42 of the MACMA and sections 45, 71 and 73 of the POCA set out powers in relation to facilitating investigations in response to an MLA request. However, no information was provided as to the availability and use of a broad range of other powers and investigative techniques in response to an MLA request. Investigative powers are for the most part legislated in the Police Powers Act and other legislation, however, not all investigative techniques are noted in legislation, as the practical application of all investigative techniques must remain lawful.

Weighting and conclusion

362. Samoa has a robust legal framework for the provision of mutual legal assistance, with only relatively minor technical deficiencies. **Recommendation 37 is rated LC.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

363. Samoa was rated PC with R.38 in the 2006 MER as freezing and forfeiture orders pursuant to mutual legal assistance requests were subject to the same limitations as domestic freezing and forfeiture orders, i.e. they applied only to proceeds of crime/property derived from ML and not to instrumentalities used in, or intended for use in, the commission of an offence

364. *Criterion 38.1* – Under section 39 of the MACMA, where the Attorney-General is satisfied that: (a) the request relates to a criminal matter in respect of a foreign serious offence; and (b) there are reasonable grounds for believing that an article or thing relevant to the proceedings is located in Samoa, the Attorney-General may direct an authorised officer to apply to a Judge or the Registrar of the Court for a search warrant under section 40. A search warrant issued under section 40 enables the seizure of a wide variety of things and may cover a thing intended to be used for the commission of a foreign serious offence. This would cover instrumentalities. It does not however allow for the seizure of property of corresponding value. Under section 49, where the Attorney-General is satisfied that: (a) a person has been convicted of the offence in respect of which the foreign order was made; and (b) the conviction and the order are not subject to further appeal in the foreign State, the Attorney-General may apply to the Court for the registration of the foreign forfeiture order or the foreign pecuniary penalty order.

365. *Criterion 38.2* – There is no clear legal basis for cooperation in non-conviction based confiscation. However, section 23(2) of the MACMA states that a request for mutual assistance from a foreign State may be granted even if the request does not comply with subsection (1) of the section. Samoan authorities indicated that this might extend to the provision of MLA on the basis of non-conviction based confiscation proceedings and related provisional measures, but this has not yet been tested.

366. *Criterion 38.3* – Section 39(1) prescribes search and seizure pending approval by the Attorney-General. Section 44 provides for mechanisms necessary for disposing of, property frozen, seized or confiscated.

367. *Criterion 38.4* – Section 71 of the MACMA allows asset sharing. In addition, section 36 of the MLP Act allows the Ministry of Finance to remit the property (or equivalent value) to a foreign state when it was forfeited under the POCA.

Weighting and conclusion

368. Samoa has a robust legal framework for taking provisional and confiscation action in response to a mutual legal assistance request. The only technical deficiency relates to the lack of a clear legal basis for cooperation in relation to non-conviction based confiscation, but this deficiency might be overcome in practice. **Recommendation 38 is rated LC.**

Recommendation 39 – Extradition

369. Samoa was rated NC with R.39 in the 2006 MER. While Samoa had legislation in place (the Extradition Act 1974) that would allow extradition of money launderers to designated Commonwealth countries and foreign countries with which Samoa has an extradition treaty, the absence of any designations or extradition treaties prevented extraditions from taking place.

370. *Criterion 39.1* – An offence falls within the definition of an ‘extradition offence’ if the offence is punishable by more than 12 months imprisonment and would be an offence against the law of Samoa. ML and TF offences fall within this definition and are both extraditable. Section 39 of the MLP Act also expressly states that ML is an offence for extradition purposes and under section 57 of the CT Act, a police officer may arrest a foreign national if that officer suspects on reasonable grounds that the person is wanted by a Commonwealth or foreign country to face charges relating to a terrorist act.

371. While Samoa has legislation in place that allows for extradition for both ML and TF offences to designated Commonwealth countries and foreign countries with which Samoa has an extradition treaty, the 2006 MER noted that there was an absence of both designations and extradition treaties which could prevent extraditions from taking place. However, with regard to designations this is not correct. Samoa has designated a total of 10 countries as designated Commonwealth countries for purposes of extradition (1981 designations: Australia, Fiji, Kiribati, New Zealand, PNG, Solomon Islands, Tonga, Tuvalu, and Vanuatu and in 1984 Nauru was also designated). It is noted that these countries are all in the Pacific region and are more likely than some other countries to seek extradition. Samoa has only received one extradition request since 2011, from New Zealand. This extradition was successfully carried out. Samoa instead responds to requests by utilising its immigration laws to deport people. A person can be declared to be a 'prohibited immigrant' under Part VI of the Immigration Act 2004 enabling deportation. Section 30 sets out who may be declared a prohibited immigrant. This includes anyone who has entered or attempted to enter or remains in Samoa in breach of Samoa's immigration law or any other law, has breached a term or condition of the person's entry permit, would put at risk Samoa's relationship with another country, has been convicted in Samoa or elsewhere of any offence nominated by the Minister by notice and has not received a free pardon, or is otherwise regarded by the Minister as undesirable. A number of these declarations have been made (Chinese, Dutch and Nigerian nationals have been declared to be prohibited immigrants and deported).

372. *Criterion 39.2* – Section 7 of the Extradition Act 1974 allows for the extradition of any person found in Samoa, which includes a Samoan national present in Samoa at the time of the request. However, under section 11(6) the Minister may refuse to extradite a person who is a citizen of Samoa. This is at the Minister's discretion on the basis of nationality. There is no requirement for Samoan authorities to instigate a domestic prosecution at the request of the country seeking extradition.

373. *Criterion 39.3* – Samoa requires dual criminality as a precondition for extradition (definition of 'extradition offence', para (a)(ii), section 2 Extradition Act). Samoa advises that it would extradite if the foreign offence would be an extradition offence under the Samoan Extradition Act 1974.

374. *Criterion 39.4* – Samoa has a straightforward extradition procedure in place under Part II of the Extradition Act 1974. An authority to proceed is made by Ministerial order, following which a warrant or provisional warrant is issued for the arrest of the person. On arrest the person must appear in front of a District Court Judge who, after being satisfied of certain matters (e.g. the offence is an extradition offence, there is sufficient evidence etc), commits the person to custody to await extradition. Extradition is then effected by a Ministerial warrant ordering the extradition. There are also protective mechanisms in place (a potential action concerning personal liberty in the Supreme Court) and the Minister must not make an order if it would be unjust or oppressive to do so.

Weighting and conclusion

375. Samoa has an adequate legal framework in place for extradition although Samoa tends to deport rather than extradite people under its immigration laws. There continues to be an absence of both designations and extradition treaties (other than the 10 designated Pacific countries) which restricts the number of countries a person can be extradited to or from. However, Samoa is able to utilise its immigration laws to deport nationals back to their own countries when requested. **Recommendation 39 is rated LC.**

Recommendation 40 – Other forms of international cooperation

376. Samoa was rated PC with former R.40. The 2006 MER concluded that the Samoan Government was seen as willing to cooperate with international community in regard to AML/CFT. However, the legal framework did not directly support this willingness with effective legal measures. It is noted that the requirements in new Recommendation 40 are considerably more detailed.

377. *Criterion 40.1* – The SFIU, Samoa Police, TCU, Customs, the CBS and SIFA can provide a range of information to their foreign counterparts in relation to ML, predicate offences and TF, both spontaneously and on request.

378. *Criterion 40.2* –

- a) The competent authorities have a lawful basis for providing cooperation (SFIU: sections 7(a), (f), and (r), and 8 of the MLP Act; Samoa Customs: section 329 of the Customs Act 2014; CBS: section 24, FI Act; SIFA: section 37(3), International Banking Act; SIA: section 227(3)(d),(k),(l),(m), and (n), IC Act; Samoa Police/TCU: the Samoa Police has the ability to form inter-governmental agreements under Part IV of the Police Powers Act. When the TCU BoM (Board of Management) was established it was agreed upon that no formal MOUs were needed that fact the BoM contained the relevant CEO was sufficient to allow for the sharing of information and co-operation between TCU members).
- b) Nothing prevents competent authorities from using the most efficient means to co-operate;
- c) As a member of the Egmont Group, the SFIU uses Egmont's secure web as the primary channel for international exchange, as well as direct liaison with other FIUs (eg New Zealand, Australia, Papua New Guinea). The police and TCU use the PTCCC and/or Interpol mechanisms as appropriate. Samoa Customs is a member of the Oceania Customs Organisation and has close ties with New Zealand Customs.
- d) Authorities generally have clear processes for the prioritisation and timely execution of requests and in practice tend to give high priority to international requests. Resources can be a challenge and requests are responded to as quickly as possible;
- e) The competent authorities have clear processes for safeguarding the information received. Under section 8 (2) of the MLP Act, agreements between the SFIU and its counterparts (both foreign and local) must contain restrictions on the use of information to purposes relevant to investigating or prosecuting a serious offence or ML or TF offences. Any information must be treated in a confidential manner and not further disclosed without the consent of the Samoan FIU. MOUs also include confidentiality provisions. Furthermore, in respect of immigration matters, all intelligence received via the TCU is confidential and release of any information is subject to the approval of the Customs CEO.

379. *Criterion 40.3* – Samoa has a well-developed network of bilateral and multilateral channels for international cooperation. These include membership of regional and international organisation such as the APG, the Egmont Group, PTCCC, Association of Pacific FIUs, Interpol, Oceania Customs Organisation (OCO), Pacific Immigration Directors' Conference (PIDC), Pacific Islands Chiefs of Police (PICP), Pacific Islands Law Officers' Network (PILON), and the Pacific Island Forum. It also has excellent relationships with counterparts in New Zealand and Australia. Samoa has three formal information sharing agreements with the Indonesia FIU (PPATK), Fiji FIU and the Association of Pacific Islands FIUs and the ability to form inter-government agreements under Part IV of the Police Powers Act. The CBS is a member of the Association of Financial Supervisors of Pacific Countries and has recently signed an MOU with the Australian Prudential Regulation Authority (although this is a forum for mutual support, training initiatives and lobbying the interests of the region rather than an exchange of regulatory information). SIFA has memberships the following international organisations: Group of International Insurance Centre Supervisors (GIICS); Group of International Finance Centre Supervisors (GIFCS); International tax Planning Association ((ITPA); Corporate Registers Forum (CRF); International Conference of Banking Supervisors (ICBS); International Association of Insurance Supervisors (IAIS); Peer Review Group, Sub-Group of the OECD Global Forum (PRG). SIA is a member of the Confederation of Asian and Pacific Accountants (CAPA) and is also affiliated with the CPA Australia.

380. *Criterion 40.4* – There is no legal impediment to prevent any requesting competent authority from providing feedback on use and usefulness of the information legally provided. Samoa is able to, and does, provide feedback to agencies on the usefulness of information provided, although such requests for feedback are not common

381. *Criterion 40.5* – The relevant laws and agreements that enable the sharing of information by competent authorities as outlined under criterion 40.2 above do not unduly restrict information exchange. While there are some strict secrecy provisions in the legislation relating to the offshore centre, they are overridden by section 3 of the MLP Act, which enables the SFIU to share information with foreign entities under section 9 of the MLP Act. In addition, the provisions of various pieces of offshore legislation as well as tax information exchange agreements negotiated under the Tax Information Exchange Act 2012 permit the sharing of information with foreign counterparts by SIFA and the Ministry of Revenue in appropriate circumstances. In practice, the Samoan authorities were able to demonstrate that information relating to the offshore sector can be shared without there being unduly restrictive conditions.

382. *Criterion 40.6* – The MLP Act has restrictions around the use of information and documents provided by foreign countries under the MACMA which are privileged. Information from reports may only be disclosed to governments of a foreign state, or an institution, agency or international organisation established by the foreign government. Further, the disclosure may only be made if the agency, institution, or international organisation has equivalent powers to the SFIU and the disclosure may only be made if the SFIU has reasonable grounds to suspect that the report or information is relevant to investigating or prosecuting a serious offence, a ML offence or a TF offence (section 7, MLP Act). Information sharing agreements or arrangements are also similarly restricted (section 7(2)). Further disclosure may only be made with the express consent of the FIU. The TCU has MOUs with Interpol and Pacific Transnational Crime Network (PTCN) which provide safeguards against improper disclosure of information by either party. The SFIU has similar clause in the MOUs with the FIUs of Fiji and Indonesia. Both Customs and Immigration have similar provisions. It is not clear whether similar controls apply in relation to information exchanged by other supervisors.

383. *Criterion 40.7* – There are safeguards to protect the confidentiality around requests for assistance and the information provided as a result of a request. Section 8 of the MLP Act imposes restrictions around the use of information provided under information agreements or arrangements under that section. Section 7(e) also expressly states that the power for the SFIU to enter MOU arrangements with government and non-government agencies is to ensure the secure exchange of information. The MACMA provides for documents sent by foreign states as a result of a request by Samoa to be treated as privileged. Nor can the fact of the request, the contents of the request or whether the request has been granted or refused be disclosed (section 70(3), MACMA). It is not clear whether similar controls apply in relation to information exchanged by other supervisors.

384. *Criterion 40.8* – There is no general provision enabling competent authorities to conduct inquiries on behalf of foreign counterparts and to exchange information that would be obtainable if the inquiry were a domestic enquiry. However, the TCU can conduct enquiries on behalf of foreign counterparts if related to criminal matters and solely for intelligence purposes. If any information is to be used for evidence, a formal request must be made for mutual legal assistance. Sections 7 (1)(f) and (r), 8 and 9 of the MLP Act allows the SFIU to conduct enquiries locally and share the information with other FIUs.

EXCHANGE OF INFORMATION BETWEEN FIUs

385. *Criterion 40.9* – Section 7(1)(f) of the MLP Act allows the SFIU to provide information concerning an ML/TF offence, without the need for a request, to foreign agencies concerned with the prevention or investigation of ML or the prevention and suppression of terrorism. Furthermore, section 8 of the MLP Act permits the SFIU (with the approval of the MLPA) to enter into an agreement or arrangement with a foreign agency or an authority or an institution that has powers and duties similar to those of the SFIU regarding the exchange of information specifically for investigation or prosecution of a serious offence or a ML/TF offence as the case may be. As such, the SFIU has signed MOUs with the following the Indonesian FIU; the Fiji FIU; and the Association of Pacific Islands FIUs. Section 9 of the MLP Act also provides the SFIU with a broad power to share information for the purposes of an investigation, prosecution or proceedings relating to a serious offence, an ML or a TF offence.

386. *Criterion 40.10* – Section 7(1)(n) of the MLP Act requires the SFIU to provide feedback to FIs and other relevant agencies regarding outcomes relating to the reports or information given under the Act. This section also applies to feedback provided by SFIU to foreign counterparts regarding the requests made as well as the outcome of such requests. The SFIU has made three requests to foreign counterparts (all in 2014), one of which has been responded to. The SFIU acknowledged the assistance provided by the agency and informed them about the next action taken by SFIU (i.e. refer the matter to Police for investigation). To date, the Police have not provided an update regarding the case.

387. *Criterion 40.11* – Section 9 of the MLP Act allows the SFIU to disclose any information to an institution or agency of a foreign State or to an international organization or other institution or agency established by the governments of foreign States that has powers and duties similar to those of the SFIU, on such terms and conditions as are set out in the agreement or arrangement regarding the exchange of such information.

EXCHANGE OF INFORMATION BETWEEN FINANCIAL SUPERVISORS

388. *Criterion 40.12* – While there are no explicit provisions allowing the CBS to cooperate with foreign supervisory authorities, section 24 of the FI Act permits the CBS to disclose information relevant to the affairs or condition of any licensed FI (or any of its clients) which was acquired in the performance of its duties where disclosure is required for the purpose of performing its duties. This general provision can apply to disclosure by CBS to any party including foreign counterparts, and the CBS has signed an MOU with the Australian prudential regulator APRA. This provides an indirect but broad legal basis for CBS to disclose supervisory information with foreign counterparts. As noted above under criterion 40.11, the SFIU (which exercises AML/CFT supervisory functions under the MLP Act), has the ability under section 9 of the MLP Act to share information with foreign counterparts. Regarding SIFA, section 37(3) of the International Banking Act 2005 enables the Inspector of International Banks to disclose to a foreign or domestic banking supervisory authority or domestic or foreign agency responsible for the prevention and suppression of terrorism or money laundering authority information about the licensed international bank. In addition, sections 227(3)(d),(k), (l), (m) and (n) of the ICA empower the Registrar or an officer of an international company to disclose information to another domestic authority, foreign authority or any other person in the circumstances highlighted in the sub-sections referred to.

389. *Criterion 40.13* – The CBS has broad authority under section 9 of the FI Act to request for financial information from a licenced financial institution. As noted under criterion 40.12, section 24 of the FI Act allows the CBS to disclose the required information to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the CBS under the FI Act. Section 37(3) of the International Banking Act 2005 enables the Inspector of International Banks to disclose to a foreign or domestic banking supervisory authority or domestic or foreign agency responsible for the prevention and suppression of terrorism or money laundering authority information about the licensed international bank.

390. *Criterion 40.14* – When disclosing information in accordance with section 24 of the FI Act, the CBS can disclose ‘any information relating to the affairs or conditions of any licensed financial institution’. This provision is general enough to include disclosure of regulatory information, prudential information and AML/CFT information. Section 26(3) of the International Insurance Act 1988 enables the Registrar to disclose to a foreign insurance supervisory authority or any like supervisory authority information about the insurer. See also analysis under criterion 40.12 above for provisions allowing SIFA and the SFIU to share information.

391. *Criterion 40.15* – See analysis of criterion 40.12 above.

392. *Criterion 40.16* – The MOU signed by the CBS with APRA contains a confidentiality provision regarding the use and dissemination of exchange information between supervisors. The Tax Information Exchange Agreements (modelled after the 2002 OECD model TIEA template) that Samoa has entered into with several treaty partners, contain Article 8 where information (being exchanged) may not be

disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested State.

EXCHANGE OF INFORMATION BETWEEN LAW ENFORCEMENT AUTHORITIES

393. *Criterion 40.17* – Law enforcement authorities are able to exchange domestically available information with foreign counterparts for intelligence and investigative purposes. The legal basis for this includes section 47 of the Counter Terrorism Act; section 340 of the Customs Act 2014, through mutual legal assistance and the Crimes Act Police to police contact occurs regularly between Samoan police and other partner police agencies in the region. The TCU is involved in the Pacific Transnational Crime Coordination Centre (PTCCC) which is a multi-agency and multi-jurisdictional team of officers drawn from Pacific law enforcement agencies and based in Samoa. It aims to offer Pacific Islands States a regional approach to supporting and combating transnational organised crime and act as a hub for all law enforcement intelligence in the Pacific Region. Samoa is also a member of Interpol.

394. *Criterion 40.18* – As noted above in the analysis of criterion 40.8, there is no general provision enabling competent authorities to conduct inquiries on behalf of foreign counterparts and to exchange information that would be obtainable if the inquiry were a domestic enquiry. However, the TCU can conduct enquiries on behalf of foreign counterparts if related to criminal matters and solely for intelligence purposes. If any information is to be used for evidence, a formal request will have to be made for mutual legal assistance. Sections 7 (1) (f) (r), 8 and 9 of the MLP Act allow the SFIU to conduct enquiries locally and share the information with other FIUs.

395. *Criterion 40.19* – Part IV of the Police Powers Act relates to visiting specialists to the police force. ‘Visiting specialists’ means a team of police or specially trained persons from another country that are in Samoa at the request of the Government pursuant to an inter-governmental agreement to carry out specified activities. ‘Inter-government agreement’ means an agreement between Samoa and another country for the provision of visiting specialists by that other country to carry out specified activities. In practice, the Samoa Police are able to work jointly with foreign counterparts and have done so with both New Zealand and Australian Federal Police.

EXCHANGE OF INFORMATION BETWEEN NON-COUNTERPARTS

396. *Criterion 40.20* – Section 8 of the MLP Act provides a broad power for the SFIU to enter into agreements to exchange information with non-counterparts. It is not clear however whether other competent authorities in Samoa have similar powers to exchange information with non-counterparts.

Weighting and conclusion

397. Competent authorities are able to provide a broad range of direct and indirect international assistance and many criteria are met or largely met, although there are some deficiencies remaining in relation to the ability to conduct inquiries on behalf of foreign counterparts and to exchange information that would be obtainable if the inquiry was a domestic enquiry and powers to exchange information with non-counterparts. **Recommendation 40 is rated LC.**

Table 1: Predicate offences for money laundering

FATF designated categories of offences	Predicate offences under the law of Samoa / Penalty(ies)
Participation in an organized criminal group and racketeering	Section 146 Crimes Act 2013 / imprisonment term not exceeding 10 years
Terrorism, including terrorist financing	Section 23 Counter Terrorism Act 2014 / life imprisonment; or a fine not exceeding \$100,000 or 15 years imprisonment or both
Trafficking in human beings and migrant smuggling	Part XIII Crimes Act 2013 ss153-158 / imprisonment term not exceeding 10 years (migrant smuggling) and 14 years (trafficking people)
Sexual exploitation, including sexual exploitation of children	Part VII Crimes Act 2013; Section 157 Crimes Act / imprisonment term not exceeding 14 years
Illicit trafficking in narcotic drugs and psychotropic substances	Sections 7, 17, 17A, 18, 18A, 18B, 19 Possession of Narcotics – Narcotics Act 1967 / life imprisonment – class A narcotic; imprisonment term not exceeding 14 years – class B narcotic; imprisonment term not exceeding 7 years – class C narcotic.
Illicit arms trafficking	Section 6 (6) Arms Ordinance 1960 / imprisonment term not exceeding 5 years, or a fine not exceeding \$20,000, or both
Illicit trafficking in stolen and other goods	Sections 226, 229 Customs Act 1977 / maximum fines of 100 penalty units and 20 penalty units respectively
Corruption and bribery	Corruption - S147, Crimes Act 2013 / imprisonment term not exceeding 7 years Bribery – S149, Ss150 and 151 Crimes Act 2013 / imprisonment term not exceeding 7 years
Fraud	Part XVII and Part XVIII Crimes Act 2013 / penalties range from imprisonment term of not exceeding 5 years to 10 years For Tax: Please refer to the provisions stated below in Tax Crimes
Counterfeiting currency	Section 18 (2) CBS Act 1984 / imprisonment term not exceeding 14 years Section 204 Crimes Act 2013 / imprisonment term not exceeding 5 years Part XVII Crimes Act 2013
Counterfeiting and piracy of products	Sections 3, 4, Part IV, 32 Copyright Act 1998 / punished by a maximum fine not exceeding \$25,000 or imprisonment term not exceeding 5 years or both. Section 227 Customs Act 1977 / liable to a fine not exceeding \$1,000
Environmental crime	Sections 47 & 73 Forestry Management Act 2011 / fine not exceeding \$100,000 or imprisonment term not exceeding 1 year or both. Sections 3 & 4 Fisheries (Ban on Driftnet Fishing) Act 1999 / penalties fines not exceeding \$25,000 or \$100,000 or imprisonment term not exceeding 2 years or both.
Murder, grievous bodily harm	Sections 103 – 106, 118, 119, 129, 188, Crimes Act 2013 / grievous bodily harm - imprisonment for a term not exceeding 5 years; murder – imprisonment for life
Kidnapping, illegal restraint and hostage-taking	Sections 17 - 19, 21, 27 Counter Terrorism Act 2014 / penalty range from imprisonment term not exceeding 12 years or 15 years.

FATF designated categories of offences	Predicate offences under the law of Samoa / Penalty(ies)
	Sections 130, 131, Crimes Act 2013 / imprisonment term not exceeding 10 years
Robbery or theft	Sections 162 - 165, 174 - 180 Crimes Act 2013 / imprisonment term for robbery or theft range from at least one year to 14 years
Smuggling (including in relation to customs and excise duties and taxes)	Section 217 Customs Act 1977 / 50 penalty units or 3 times the value of the goods, whichever is greater.
Tax crimes (related to direct taxes and indirect taxes)	<p>All governing rules to counter tax crimes are set out in Part 12-Division 2, Part 15-Division 1 of the Tax Administration Act 2012 and Division 10 Part 6 of the Income Tax Act 2012 and Part 10 of the VAGST Act 1992/1993</p> <p>Section 70 - Failure to file tax return, Tax Administration Act (TAA) / fine not exceeding \$1,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 71 - Failure to withhold tax/ fine not exceeding \$1,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 72 - Failure to comply with obligations under TAA/ fine not exceeding \$1,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 73 - Failure to maintain records/ fine not exceeding \$3,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 74 - Improper use of Tax Identification Number/ fine not exceeding \$3,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 75 Making false or misleading statement to Tax Officer/ fine not exceeding \$3,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 76 - Obstruction of a tax officer/ fine not exceeding \$3,000 or imprisonment term not exceeding 1 year or both</p> <p>Section 77 - Rescuing seized goods/ fine not exceeding \$3,000 or imprisonment term not exceeding 1 year or both</p>
Extortion	Section 181 Crimes Act 2013 / imprisonment term not exceeding 7 years
Forgery	<p>Section 194 Crimes Act 2013 / imprisonment term not exceeding 10 years</p> <p>Part XVII Crimes Act 2013 / imprisonment term range from not exceeding 5 years to 10 years</p>
Piracy	No piracy offence exists
Insider trading and market manipulation	<p>Section 16F Financial Institutions Act 1996 fine not exceeding 40 tala or imprisonment not exceeding a year</p> <p>No stock exchange in Samoa.</p>

Table 2: Financial institutions operating in Samoa

FIs operating in Samoa	Relevant Legislation	Regulator/supervisory authority
Commercial banks	Financial Institutions Act 1996 MLP Act 2007	CBS
Money transfer Operators (MTOs)	FI Act / MLP Act / Business Licences Act 1998 (BL Act)	CBS
Foreign Exchange Dealers	FI Act / MLP Act / BL Act	CBS
Unit Trust of Samoa (UTOS)	FI Act / MLP Act / Unit Trusts Act 2008 / UTOS Loans Act 2013	CBS / Ministry of Finance (MOF)
Development Bank of Samoa (DBS)	DBS Act 2010 / FI Act / MLP Act	CBS / MOF
Samoa National Provident Fund (SNPF)	NPF Act 1972 / FI Act / MLP Act	CBS / MOF
Samoa Housing Corporation (SHC)	Housing Corp Act 2010 / FI Act / MLP Act	CBS / MOF
Credit Unions	Credit Union Ordinance 1960 / FI Act / MLP Act / BL Act	MCIL / CBS
Lending Services	BL Act / FI Act / MLP Act	MfR
Insurance companies (Life & General)	Insurance Act 2007 / FI Act / MLP Act / BL Act	CBS
Real Estate Agents	MLP Act / BL Act	MfR
Car Dealers	MLP Act / BL Act	MfR
Dealers in Precious Metals	MLP Act / BL Act	MfR
Lawyers	Law Practitioners Act 1976 / MLP Act / BL Act	Samoa Law Society
Accountants	SIA Act 2006 / MLP Act / BL Act	SIA
Casino	Casino & Gambling Control Act 2010 / MLP Act	Gambling Control Authority
Trustee companies	Trustee Companies Act 1988	SIFA
Public Trust Office	Trustee Act 1975 / Public Trust Office 1975	

List of acronyms

AFSPC – Association of Financial Supervisors of the Pacific Countries
AML – anti-money laundering
APG – Asia/Pacific Group on Money Laundering
BNI – bearer negotiable instrument
CBS – Central Bank of Samoa
CDD – customer due diligence
CFT – combating the financing of terrorism
CT Act – Counter Terrorism Act 2014
DBS – Development Bank of Samoa
DNFBPs – Designated Non-financial Businesses and Professions
FATF – Financial Action Task Force
FI – financial institution
FI Act – Financial Institutions Act 1996
FIU – financial intelligence unit
GIFCS – Group of International Finance Centre Supervisors
GIICS – Group of International Insurance Centre Supervisors
IBC – international business company
ICA – International Companies Act 1988
ICBS – International Conference of Banking Supervisors
IPLPA – International Partnership and Limited Partnership Act 1998
ITPA – International Tax Planning Association
MER – mutual evaluation report
ML – money laundering
MLA – mutual legal assistance
MLPA – Money Laundering Prevention Authority
MLP Act – Money Laundering Prevention Act 2007
MLP Task Force – Money Laundering Prevention Task Force
MLRO – Money Laundering Reporting Officer
MOU – memorandum of understanding
MTO – money transfer operator
NPF – National Provident Fund
NPO – non-profit organisation
OCO – Oceania Customs Organisation
PEPs – politically exposed persons
PICP – Pacific Islands Chiefs of Police
PIDC – Pacific Immigration Directors’ Conference
PILON – Pacific Islands Law Officers’ Network
POCA – Proceeds of Crime Act 2007
PRG – Peer Review Group, Sub-Group of the OECD Global Forum
PTCCC – Pacific Transnational Crime Co-ordination Centre
PTCN – Pacific Transnational Crime Network
SAT – Samoan tala
SFIU – Samoa Financial Intelligence Unit
SIFA – Samoa International Finance Authority
SROs – self-regulatory organisations
STR – suspicious transaction report
TCU – Transnational Crime Unit
TCSP – trust and company service provider; trustee company
TF – terrorist financing
TFS – targeted financial sanctions
TIEA – taxation information exchange agreement
UNSCR – United Nations Security Council Resolution



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Anti-money laundering and counter-terrorist financing measures – Samoa *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Samoa as at 14 November 2014. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Samoa's AML/CTF system, and provides recommendations on how the system could be strengthened.