



Anti-money laundering and counter-terrorist financing measures

Fiji

Mutual Evaluation Report

October 2016





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

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

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EXECUTIVE SUMMARY

FIJI

3RD ROUND APG MUTUAL EVALUATION REPORT 2016

1. This report provides a summary of the AML/CFT measures in place in Fiji at the time of the APG mutual evaluation on-site visit from 12 to 23 October 2015. It analyses the level of compliance with the FATF 40 recommendations and the level of effectiveness of Fiji's AML/CFT system. This report also provides recommendations on how Fiji's system can be strengthened.

Key Findings

- Fiji's National Anti-Money Laundering Council (NAMLC), consists of a number of government agencies and is the principle agency through which Fiji coordinates AML/CFT policies and strategies. The cooperation and coordination between the relevant agencies through NAMLC platform is generally reasonable except in relation to ML investigations and prosecutions where significant improvement is needed. The cooperation and coordination is not comprehensive as Fiji has yet to put in place any mechanism for cooperation and coordination of policies and activities to combat the financing of proliferation in Fiji.
- Generally, Fiji has a reasonable understanding of its ML and TF risks. But, there are gaps in Fiji's understanding of its ML/TF risks because an assessment of risk relating to all types of legal persons, foreign investment, and cross-border transportation of currency and BNIs relating to transit passengers on cruise ships is lacking. In addition, the primary focus of the NRA (as a reflection of that understanding) was on ML. TF was of limited focus only. Fiji also lacks a comprehensive national strategy informed by its understanding of risks to combat ML and TF.
- Fiji's principal proceeds generating crimes are drugs and drug-trafficking, fraud on the government (i.e. direct and indirect tax crimes) and corruption. Fiji is also a transit and destination point for drugs. According to Fiji the banking sector, foreign exchange dealers, real estate agents and legal persons are highly vulnerable to ML. The NPO sector is considered to have high vulnerability to terrorism financing due to global concerns.
- TF risks are rated low in Fiji's NRA. However Fiji does not take a holistic approach in dealing with terrorism and terrorist financing threats and risks. One case in Fiji involving a listed entity under UNSCR 1267 highlights that TF risks are real. No agency has been identified to deal with, coordinate and develop TF policy.
- Fiji lacks a comprehensive legislative framework to implement targeted financial sanctions

including the identification of a competent authority. Fiji has not implemented measures against PF and does not have a legal framework or processes for implementing UNSCRs 1718 and 1737. Fijian authorities do not systematically disseminate UN notices on PF to financial institutions or DNFBPs.

- Fiji's FIU has an excellent understanding of the AML/CFT environment in Fiji and provides good quality intelligence to law enforcement agencies on a range of predicate crimes and ML, including its high risk crime types. The FIU and other competent authorities regularly exchange information and financial intelligence. However, capacity, capability and resource limitations undermine and limit the ability of the Fiji Police Force (FPF) to effectively respond to that intelligence. The Fiji Revenue and Customs Agency (FRCA) and the Fiji Independent Commission on Corruption (FICAC) (with similar resource limitations) respond to financial intelligence more effectively. Neither agency investigates ML offences and neither pursues confiscation action; nor do they refer ML issues to the FPF.
- While Fiji has a full suite of forfeiture mechanisms to target profit and property derived from crime, forfeiture outcomes are modest and do not reflect an effective implementation of confiscation mechanisms. FPF, FRCA, FICAC and the ODPP lack resources as well as a combined focus to target criminal proceeds.
- DNFBPs generally do not have a good understanding of the risks in their sectors despite outreach by the FIU. Awareness among DNFBPs of the FTR Act and FTR Regulations as well as AML/CFT guidelines is very low. Some DNFBPs have no understanding of their obligations at all. And, many of the CDD and other measures in the FTR Act are unenforceable and all of the measures in the FTR Regulations are unenforceable due to absence of sanctions and penalties.
- The Reserve Bank of Fiji (RBF) conducts on-site inspections of financial institutions (banks, credit institutions, insurance companies, foreign exchange dealers, moneychangers and the capital market intermediaries). The RBF's supervision activities in the past have been largely related to its prudential responsibility, however since 2014 the RBF has conducted AML/CFT-focused compliance assessments on three banks, one credit institution, two unit trusts, nine Restricted Foreign Exchanged Dealers (RFEDs) and two moneychangers and provided feedback in this regard. Fiji allows for AML/CFT supervision (by the FIU) of most DNFBPs, but no on-site supervision visits have occurred.
- Fiji has not undertaken an adequate ML/TF risk assessment of all forms of legal persons and legal arrangements. Authorities acknowledge that legal persons and arrangements in Fiji, can be used to facilitate predicate crimes and ML/TF offences. Fiji laws on the collection of beneficial ownership information is limited. Competent authorities do face challenges in obtaining beneficial ownership information. Fiji has recognised this and (following the on-site visit) a new Companies Act came into force.
- On international cooperation (both formal and informal) requests by Fiji do not match its ML and TF risk profile. While the FIU cooperates very well on an informal basis other agencies are not as robust. Moreover in relation to formal cooperation there are few outgoing MLA requests and no extradition requests in the last seven years. Fiji cannot exchange anything more than basic beneficial ownership information in relation to companies and trusts.

Risks and General Situation

2. Fiji faces a range of ML and TF threats and vulnerabilities. It has identified banking, foreign exchange dealers, real estate agents and legal persons (in particular, companies) as highly vulnerable to ML. The NPO sector (which consists of a large number of NPO entities) is considered to have high vulnerability to terrorism financing due to global concerns even though the TF risks in Fiji are rated as low. However, like the real estate sector, the NPO sector is not subject to supervision or monitoring by authorities.

3. Drug and tax offences (including other forms of fraud against the government) generate the largest and most significant amount of illegal proceeds in Fiji. Fiji's ML/TF risks involve cross-border illicit flows. In relation to drug offences, Fiji is a transit and destination point for drugs. Fiji is also a source of illicit drugs manufacturing and exportation. Based on publicly available and reliable independent sources of information corruption, especially within the public service, even though assessed in the NRA as "moderate" in terms of producing illegal proceeds for ML, is considered a significant issue.

4. Factors such as Fiji's strategic geographic location in the South Pacific, porous borders, cash intensive economy, technology constraints and limited expertise within certain relevant agencies, escalate Fiji's vulnerabilities to ML/TF risks. However, the NRA concluded that Fiji is not exposed to any significant ML/TF risks.

5. Regardless of past political turmoil and instability, the structural elements, including high-level commitment to address Fiji's AML/CFT issues required for an effective AML/CFT system, are in place. However, political commitment to implement targeted financial sanctions related to terrorism, terrorism financing and proliferation financing is currently lacking.

6. Fiji has trade relationships with Iran and the Democratic People's Republic of Korea. However, while general customs prohibitions applicable to all countries apply to all imports and exports, with respect to these two countries, there are no special licences or conditions applicable to imports from and exports to these destinations in light of relevant UN sanctions requirements. .

Overall Level of Effectiveness and Technical Compliance

Assessment of risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

7. Fiji adopted its first formal NRA in 2015 which, to a certain extent, identifies and assesses Fiji's ML/TF risks in a structured manner with a commitment to reassess risks on a periodic basis and when circumstances change. Generally, the analysis and conclusions in the NRA are reasonable. However, the NRA did not sufficiently cover certain key risk areas including risks associated with various forms of legal persons and arrangements, foreign investment, cross border transportation of currency and bearer negotiable instruments in relation to transit passengers from cruise ships and illegal businesses. Moreover, linkages between sectors and its impact on individual sector risk ratings are not considered. The factors taken into consideration in determining risk ratings for certain sectors are not consistent and are unclear.

8. The primary focus of the NRA is on ML risks; TF risks were of limited focus. While the NRA draws reasonable conclusions about the primary ML/TF risks, it is not extensive enough in covering all foreseeable ML/TF risks faced by Fiji.

9. Public sector agencies (including law enforcement) and private sector stakeholders lack a clear and informed understanding of the principal ML and TF risks in Fiji. The gaps in Fiji's understanding of ML/TF risks is evident from varying levels of understanding of overall ML/TF risks across public sector agencies and the private sector. For example, several law enforcement agencies had differing views with regard to the ranking of significant criminal activities that generate illicit funds for laundering in Fiji. A key ministry senior official responsible for anti-terrorism policies was not aware of the risk rating for terrorism financing in Fiji's NRA.

10. Many relevant private sector stakeholders were either not aware of the NRA, and the process leading to its publication, or not familiar with its findings relating to their respective sectors despite efforts by Fijian authorities (through awareness raising sessions) to familiarize them with the NRA process and findings. Based on the interviews with private sector representatives during the on-site visit, the assessment team formed the view that the involvement of the private sector in the entire process appeared to be limited to providing statistical data to the government. However, Fijian authorities advised that they consulted the private sector throughout the NRA development process.

11. The National Anti-Money Laundering Council (NAMLC), consisting of a number of government agencies (including the Fiji Financial Intelligence Unit ('the FIU'), supervisory authorities, law enforcement agencies and other government agencies) is responsible for the formulation of Fiji's AML/CFT policies and strategies. The NAMLC plays a key role in the formulation of Fiji's AML/CFT policies and strategies and the institutional framework currently in place is designed to promote collaboration between relevant agencies. The cooperation and coordination between the relevant agencies through the NAMLC platform in relation to general areas on formulation of AML/CFT policies, operational arrangements and sharing of information is reasonable. This is evidenced, for example, in the NRA process where the NAMLC played a key role in putting together an action plan, advising and making substantial contributions in the NRA exercise. However, coordination between authorities in relation to ML investigations and prosecutions needs significant improvement. The existing coordination and cooperation is not comprehensive as there is no cooperation and coordination in relation to measures against TF and PF especially on the development and implementation of policies and activities to combat PF.

12. The government adopted the NRA as policy document just prior to the mutual evaluation on-site visit. Thus, the authorities had not developed detailed AML/CFT policies to address key ML/TF risks identified in the NRA. Plans are underway for the authorities to reorganize resources to focus on key risk areas.

13. Although some statistics on matters relevant to the effectiveness and efficiency of Fiji's AML/CFT system were available, comprehensive, relevant and reliable statistics across all AML/CFT related agencies are not, and have not been, maintained as required by the FATF standards.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6, 7-8; R.3, R.4, R.29-32)

14. The FIU provides intelligence to law enforcement agencies on a range of predicate crimes and ML, including those identified in the NRA. The FIU and other competent authorities regularly exchange information and financial intelligence.

15. On occasion, FPF investigate alleged offences on the basis of intelligence received from the FIU. However, capacity, capability and resource limitations undermine and limit the ability of the FPF to effectively respond to that intelligence. The Fiji Revenue and Customs Agency (FRCA) and the

Fiji Independent Commission on Corruption (FICAC) (with similar resource limitations) respond to financial intelligence more effectively. However, neither agency investigates ML offences and neither pursues confiscation action; nor do they refer ML issues to the police.

16. FPF established a specialist AML/CFT unit and Proceeds of Crime Unit in 2001. The specialist AML Unit has the responsibility for investigating all complex ML matters and supports financial investigations that relate to serious crime. Some successful ML prosecutions for self-laundering, third party laundering, stand-alone and foreign predicate offending have been undertaken. Of note is that there have been no ML convictions associated with drug crimes despite the fact that drug related crime is identified in the NRA as a serious ML threat.

17. ML and proceeds of crime matters are not routinely referred to FPF by FRCA or FICAC and therefore parallel investigations associated with tax crimes, bribery and corruption do not occur. The lack of referrals from both FICAC and FRCA reflects a non-coordinated approach between relevant operational agencies.

18. A significant deficiency exists with the inability to intercept private communications in furtherance of ML, TF, corruption, bribery and other serious crime (with the exception of serious drug crime). The capability of law enforcement to intercept telecommunications would complement the range of law enforcement investigation tools currently available .

19. Fiji has a full suite of forfeiture mechanisms to target profit and property derived from crime. However, forfeiture outcomes are modest and do not reflect an effective implementation of confiscation policy objectives. FPF, FRCA, FICAC and the ODPP, lack resources as well as a combined focus to target criminal proceeds.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9, 10, 11; R.5-8)

20. The TF offence is significantly defective, as it does not cover the provision of property to individual terrorists or terrorist organisations in the absence of a link to terrorist acts. The effectiveness of the legal framework is yet to be demonstrated.

21. Fiji lacks a comprehensive legislative framework to enable implementation of targeted financial sanctions. Fiji has not identified a competent authority for implementing the relevant targeted financial sanctions. There is a lack of awareness regarding TF among law enforcement agencies and the private sector, especially DNFBPs.

22. Two specialist units within FPF have responsibility for TF: (1) the Counter Terrorist Unit (CTU) has responsibility for developing intelligence on suspected terrorists and terror-related entities; and (2) the AML Unit has the responsibility to investigate specific allegations of TF.

23. While TF risks were rated low in Fiji's NRA, one recent case in Fiji highlights the need for law enforcement to consider that there is a real risk of TF in Fiji. That case had elements of possible TF involving the remittance of funds on several occasions by a foreign national in Fiji to an individual with a similar name to a designated entity pursuant to UNSCR 1267/1989 residing outside of Fiji. Fijian authorities (acknowledging the severe resource constraints which hampered its ability to respond more fully), conducted only limited intelligence gathering and surveillance in this case. No investigation for the TF offence was pursued, nor was international cooperation actively sought to assist in confirming details of persons involved, or in building a TF case. LEAs in Fiji lack in-depth technical knowledge to deal with TF issues.

24. Fiji has limited, pre-NRA, policies, procedures and mechanisms to identify and handle TF offences. Fiji is not taking a holistic approach in dealing with terrorism and terrorist financing threats and risks. This is evident from Fiji's approach to anti-terrorism policies which lack any focus on terrorism financing; moreover no single agency has been identified to deal with, coordinate and develop TF policy.

25. Fiji has not implemented measures against PF and does not have a legal framework or processes for implementing UNSCRs 1718 and 1737. Fijian authorities do not systematically disseminate UN notices on PF to financial institutions or DNFBPs. Authorities are not well informed on the use of TFS in general. Low levels of awareness of the risk, coupled with low capacity to prevent or address instances of PF, increases Fiji's vulnerability.

26. There is no data to show the extent of funds and assets of designated entities and persons identified, or prevented financial transactions related to proliferation. Fiji has trade relationships with Iran and DPRK. Fiji is not effective in identifying designated persons and entities (or those acting on their behalf) at the trade stage of the transaction.

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

27. The FTR Act 2004 applies to financial and non-financial businesses required by international standards. However, at the time of this assessment, due to lack of staff resources, relevant competent authorities had not conducted supervision activities over certain sectors such as the real estate agents and companies (a sector that is identified as high risk). Hence, there is little evidence that businesses in the designated non-financial business and profession (DNFBP) sectors have implemented AML/CFT preventive measures that the FTR Act intended.

28. The FTR Act has sanctions for non-compliance with matters in relation to the following:

- Verifying customer identity
- Maintaining account in true name
- Monitoring customers' transactions
- Keeping records
- Reporting financial transactions
- Monitoring and reporting suspicious transactions
- Disclosing information relating to the property of terrorist groups
- Providing false or misleading statements
- Tipping off offence
- Obstructing or fails to co-operate with the FIU or any authorised person.

29. However, there are no sanctions in the Act or elsewhere for non-compliance with the following requirements:

- Managing risks of 'payable-through' accounts
- Cross-border correspondent banking relationship
- Reliance on third party or intermediary
- Conducting enhanced customer due diligence and continuous due diligence of the customer
- Adopt and implement preventive measures against ML and TF.

30. Another shortcoming in the FTR Act is the definition applied to “politically-exposed persons” (PEPs). The definition is limited to any individual who has been entrusted with any prominent public function in a foreign country and therefore excludes domestic PEPs as well as persons who are, or have been, entrusted with a prominent function by an international organisation.

31. The FTR Regulations (issued under the FTR Act) came into force on 1 May 2007 and contain detailed measures in relation to CDD, including enhanced CDD for higher risk customers; reporting of cash transactions and suspicious transactions; adoption by financial institutions of effective AML/CFT programmes; and border currency reporting. The FTR Regulations also provide that financial institutions must achieve full compliance with the regulations before 31 December 2007. A significant deficiency in the FTR Regulations is that they lack sanctions or penalties for non-compliance with any of the relevant measures in those regulations and therefore lack enforceable means.

32. Fiji also made enhancements to the Banking Supervisory Policy Statement No. 6 to strengthen the AML/CFT measures and now requires financial institutions to have a ML/TF risk management framework to, among other things, conduct customer due diligence and monitor transactions. The Reserve Bank of Fiji (RBF) is the competent authority for supervision of the banking sector and other the financial sectors that it licences. It conducts on-site assessments of these institutions to assess whether the institutions have implemented adequate AML/CFT framework.

33. The FIU has provided AML/CFT awareness training and published guidance on the FTR Act. However, due to a lack of resources, the FIU does not have the capacity to conduct on-site assessments of DNFBPs (for which it is responsible). Consequently, Fiji does not have information on whether the DNFBP sectors have fully implemented AML/CFT preventive measures.

34. Awareness of the FTR Act, Regulations and Guidelines within DNFBPs is very low. DNFBPs also have low levels of awareness of ML and TF risk within their own businesses and, more widely, within their own sectors. STR reporting among DNFBPs is low. Preventative measures for CDD, especially on risk management and internal control systems, are not in place for the majority of these entities.

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

35. Fiji has a legal framework to supervise financial institutions and DNFBPs. The main instruments are the FTR Act and the Banking Supervision Policy Statement No. 6 (revised 2014) the latter of which was issued under the Banking Act 1995.

36. FTR Regulation 2007 provides that the RBF and the FIU are supervisory authorities as follows:

- the RBF is the AML/CFT supervisor for banks, credit institutions, insurance companies, foreign exchange dealers, moneychangers, and the capital market and its intermediaries (all of the entities that it licences and regulates). The RBF’s AML/CFT-related supervision is largely a component of its overall prudential supervision. The RBF has plans to conduct more targeted and comprehensive AML/CFT on-site assessments and has developed, and implemented, standard operating procedures as well as a risk matrix to its AML/CFT supervision framework. The RBF plans to include credit unions under its supervisory responsibility (credit unions are not currently licensed by the RBF).

- while DNFBPs are licensed by licensing boards and professional bodies, the FIU is the AML/CFT supervisor for DNFBPs. Due to severe resource constraints, the FIU has been unable to undertake any compliance on-site supervision of the institutions it is responsible for supervising. The FIU conducts off-site monitoring of reports submitted by financial institutions and makes visits to the institutions on matters relating to STRs and transaction reporting obligations. The FIU, however, has not conducted any on-site assessments of DNFBPs' compliance with the AML/CFT obligations or monitored whether the institutions have systems and internal controls in place.

37. While the RBF can exercise its licencing powers to compel financial institutions to comply with AML/CFT legislative requirements, the FIU's powers are limited. The FTR Act, the FTR Regulations, and the advisory policies and guidelines issued by the FIU, all lack clear and comprehensive sanctions to address breaches of the provisions in those instruments.

38. The FIU is building an intelligence case-management system to enable it to monitor and disseminate timely intelligence reports. It has provided AML/CFT awareness training and issued a number of advisory policies and guidelines to help institutions understand ML/TF risk and AML/CFT obligations.

39. Although the FIU has an excellent understanding of the AML/CFT environment it has not developed a risk-based approach to supervision. The FIU has not prioritised resources to supervise DNFBP sectors rated as high risk of ML/TF (such as real estate agents, legal and accounting professionals).

40. Fiji has a regulatory framework that includes licensing requirements, and the application of 'fit and proper' tests for market entry as well as ongoing supervision for compliance with its licensing conditions.

41. The FIU lacks the necessary number of staff members in order to effectively meet the supervisory obligations placed on it. At the current level of staffing, the FIU cannot effectively undertake the duties placed on it across all sectors for which it is responsible.

42. Under the FTR Act, the interpretation of a 'supervisory authority' allows for bodies, including the Real Estate Agents Licensing Board, Legal Practitioners Unit and the Fiji Institute of Accountants, to act in a supervisory capacity for AML/CFT. However, none of these bodies is aware of their power under the FTR Act and consequently have not exercised those powers. These bodies do not fully understand the risks posed by ML/TF to their professional members nor do they understand their members' AML/CFT-related obligations.

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

43. Fiji has not assessed the risks associated with all types of legal persons as required by recommendation 24. The NRA does state, however, that in general there is a high risk of ML and TF with the companies. The Registrar of Companies collects only basic shareholder information. This basic information is publicly available. Companies themselves are not required to collect and/or hold up-to-date beneficial ownership information beyond immediate shareholders.

44. Financial institutions doing business with companies are not required to collect beneficial ownership information beyond basic shareholder information (the provisions of the FTR Regulations purporting to require the collection of more extensive beneficial ownership information lack sanctions and therefore lack enforceable means).

45. The ML risks posed by bearer share warrants are not mitigated by any additional measures in the Companies Act or requirements in other instruments.

46. Trustees are not required to collect beneficial ownership information. There is no requirement that any information held by express trustees, trustees of other forms of trusts, and professional trustees, is kept as accurate and up-to-date as possible, or is updated on a timely basis.

International Cooperation (Chapter 8 - IO.2; R. 36-40)

47. The use of formal and informal international cooperation does not match Fiji's risk profile, with the exception of intensive international cooperation by the FIU.

48. Fiji has a legal framework for mutual legal assistance but Fiji lacks legislative provisions allowing for interception of private communications beyond investigations involving narcotics offences, which may hinder Fiji's ability to cooperate in ML and TF investigations fully through MLA.

49. MLA requests to other countries are limited and not in line with Fiji's risk profile. Fiji identifies Australia and New Zealand as primary destination countries for illicit drugs using Fiji as a transshipment point. But while large drug seizures have recently been made, the use of MLA is minimal. Fiji instead prefers to utilize informal mechanisms.

50. Fiji has a legal framework for extradition but deficiencies remain which affect Fiji's ability to cooperate effectively through the extradition process: namely Ministerial decision-making processes may cause delays; there is no system for prioritising requests based on ML/TF offences; and Fiji is able to refuse extradition of a national without being compelled to prosecute domestically.

51. Fiji has not made any extradition requests in the last seven years. Fiji has received three requests in the same period, with varying times for response.

52. Fiji engages with Australia and New Zealand effectively with respect to law enforcement. Both of those agencies have staff based in Fiji. The support of these two countries and the effectiveness of the TCU network has supported the FPF in obtaining law enforcement outcomes associated with organised and transnational crime.

53. Fiji readily utilises INTERPOL for law enforcement information exchanges. The Fiji Police responds within 24 hours to two working days for urgent requests. For non-urgent administrative requests, Fiji Police responds within five working days.

54. The Fiji FIU cooperates with other FIUs effectively within and outside the Egmont Group of Financial Intelligence Units (Egmont Group).

55. FRCA is a member of the Oceania Customs Organisation connecting Fiji to 23 customs organisations throughout the Pacific region. There is routine exchange of information within this organisation.

56. FRCA has double tax agreements with a number of jurisdictions including Australia and New Zealand.

57. Fiji does not, and cannot, exchange anything more than basic beneficial ownership information in relation to legal persons and is therefore restricted in its ability to cooperate in this area.

Priority Actions

National AML/CFT Policies and Coordination (Chapter 2 – IO1)

58. The methodology, scope and process for future risk assessments in Fiji should be improved as follows:

- the NRA should be based on reliable data and statistics maintained by a wide range of public authorities and private sector stakeholders.
- more active involvement of law enforcement agencies (especially the transnational crime unit and counter terrorism unit of FPF) and the private sector in the NRA process should occur with deeper consultation and engagement involving the latter.
- more comprehensive and increased focus in the assessment process should be given to Fiji's unique ML/TF risks.
- findings and updates of any future NRA should be communicated to the public and private sector in an effective and timely manner.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6, 7-8; R.3, R.4, R.29-32)

59. The FIU should have more resources, including financial analysts with experience in the financial and DNFBP sectors.

60. The FIU and FPF should increase the feedback exchange on the use of financial intelligence information, keeping statistics on investigations and convictions arising from STRs and other FIU information for reference and direction to further develop these as an investigatory tool.

61. Direct access to the FPF computer systems should be available within the FIU.

62. Additional capability and capacity is required within FPF to enable timely investigation of suspected ML and additional training on financial investigations techniques to identify ML offences associated with drug crime.

63. Operational coordination between LEAs needs to be improved. Opportunities are currently being lost to pursue ML investigations and/or the forfeiture of criminal proceeds.

64. FICAC should have a mandate to investigate ML, and all FPF and FICAC should have the ability to intercept private communications in support of investigations relating to ML, bribery, corruption and other serious predicate crimes.

65. Given the potential for criminal proceeds recovery in Fiji, a multi-agency taskforce should be created to combine the skills of the FPF, FICAC and FRCA to target unexplained wealth and the proceeds of crime. A taskforce of this nature will increase the benefits of FIU intelligence and improve the operational effectiveness of those agencies.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9, 10, 11; R.5-8)

66. Fiji should:

- remedy the defective TF offence and implement a legal regime to give effect to targeted financial sanctions relating to terrorism and TF without delay;

- formulate the necessary policies and operational frameworks for the implementation of targeted financial sanctions;
 - establish a legal framework, and effectively implement that framework to counter proliferation financing (PF);
 - implement a feedback mechanism for PF cases from the financial sector, and should start freezing actions wherever there is a violation of the international conventions on PF.
67. Further training is required to develop TF investigation capability to improve responsiveness of TF intelligence.

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

68. Fiji should:
- amend its AML/CFT legislation to provide clarity on the sanction powers to ensure that the preventive measures are enforceable. The AML/CFT legislation should also provide adequate, proportionate, dissuasive powers to the supervisors;
 - amend its AML/CFT legislation to extend the definition of PEPs so that it is in line with international standards to include domestic PEPs and also persons entrusted with a prominent function by an international organisation; and
 - work with the professional bodies to issue AML/CFT guidelines specifically for the real estate agents, legal and accounting professionals and the outreach activities to these sectors should be enhanced to raise their awareness to the ML/TF risks.

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

69. Fiji should:
- ensure that the FIU has more explicit and clear powers to enforce compliance with the FTR Act and FTR Regulations and has the staff to perform its supervisory function fully and effectively;
 - ensure that the RBF and the FIU (as AML/CFT supervisors) develop and apply a ML/TF risk-based approach to regulating the institutions. The appropriate frequency and intensity of AML/CFT supervision should be applied across all the sectors to be effective; and
 - provide the AML/CFT supervisors additional human resources and capability to conduct off-site and on-site assessments for effective monitoring and supervision of institutions to ensure the institutions understand ML/TF risk and put in place mitigating measures.

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

70. Fiji should:
- assess the risks associated with all forms of legal persons;
 - require the collection and holding of up-to-date beneficial ownership information beyond the immediate shareholder;
 - require financial institutions to collect beneficial ownership information beyond basic information;

- mitigate risks associated with bearer share warrants by additional measures¹; and
- require trustees for express trusts to collect accurate and up-to-date beneficial ownership information.

International Cooperation (Chapter 8 - IO.2; R. 36-40)

71. Fiji should:

- ratify and fully implement the Palermo Convention as a priority and more fully implement, within domestic law, the relevant obligations under the TF, Vienna and Merida Conventions.
- increase the use of formal MLA in cases reflecting its overall risks and develop a prioritisation system for responding to extradition requests.
- more effectively utilize the formal MLA system to follow and restrain assets (including illicit assets) that have moved to other jurisdictions.
- encourage formal and informal communication between different agencies and their foreign counterparts with appropriate instruments.
- prioritise the making of informal and formal cooperation requests in keeping with the risk profile.
- enact legislative provisions allowing for interception of private communications beyond investigations involving narcotics offences in order to facilitate MACMA requests which seek relevant information and evidence.
- address the deficiencies in its extradition law, namely: remove the ministerial process which causes delays in rendering extradition with comity countries; establish a prioritisation process in relation to fugitive offenders involved in ML and TF offences; and institute an extradition or prosecution system.
- streamline the extradition process to address the varying timeframes to address extradition requests from other countries.
- monitor response times for INTERPOL requests and put mechanisms (SOPs, guidance and/or other procedures) in place to address unreasonable delays when they occur.
- monitor the response times associated with information exchanges between the TCU and foreign counterparts and put mechanisms in place (SOPs, guidance and/or other procedures) to address unreasonable delays when they occur.

¹ The Companies Act 2015 came into force in January 2016 and repealed the Companies Act 1985. This issue is partly addressed in the new Act.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 Risk, policy and coordination	IO.2 International cooperation	IO.3 Supervision	IO.4 Preventive measures	IO.5 Legal persons and arrangements	IO.6 Financial intelligence
Mod.	Mod.	Mod.	Mod.	Low	Mod.
IO.7 ML investigation & prosecution	IO.8 Confiscation	IO.9 TF investigation & prosecution	IO.10 TF preventive measures & financial sanctions	IO.11 PF financial sanctions	
Mod.	Low	Low	Low	Low	

Technical Compliance Ratings

AML/CFT policies and coordination

R.1	R.2
PC	PC

Money laundering and confiscation

R.3	R.4
LC	C

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
PC	NC	NC	PC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
C	PC	PC	PC	C	C
R.15	R.16	R.17	R.18	R.19	R.20
PC	PC	PC	PC	NC	LC
R.21	R.22	R.23			
LC	NC	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
PC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
LC	LC	PC	C	C	LC
R.32	R.33	R.34	R.35		
LC	PC	LC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
PC	LC	C	PC	LC

MUTUAL EVALUATION REPORT OF FIJI

Preface

This report summarises the AML/CFT measures in place in Fiji 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 the AML/CFT system, and recommends how the system in Fiji can be strengthened.

This evaluation report is based on the 2012 FATF recommendations, and was prepared using the 2013 assessment methodology. The assessment process used information provided by Fiji prior to, and during, the on-site visit to the country from 12 to 23 October 2015.

The mutual evaluation assessment team consisted of the following persons:

- Ahmutha Chadayan, Senior Legal Counsel, Legal Department, Bank Negara Malaysia, (legal expert)
- Det. Senior Sergeant Craig Hamilton, Asset Recovery Unit, Financial Crime Group, New Zealand Police, (law enforcement/financial intelligence expert)
- John Kingsly, Joint Director, Enforcement Directorate, India, (legal expert)
- Deborah Ng, Director, Financial Intelligence Office, Macao, China, (financial intelligence unit /financial expert)
- Sue Wong, Senior Manager Compliance, Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia, (financial sector supervision expert)
- Gordon Hook, Executive Secretary, APG secretariat
- Bronwyn Somerville, Principal Executive Officer, APG secretariat
- Jennifer Ford, Executive Officer, APG secretariat

The report was reviewed by Marion Ando from the FATF secretariat (financial and general reviewer), and Bob Williams, Cook Islands Financial Intelligence Unit, (law enforcement/financial intelligence unit reviewer), and Ferti Srikandi Sumanthi, Indonesia Financial Intelligence Unit (legal and general reviewer).

Fiji was previously evaluated by the APG in 2006, the report of which is available at www.apgml.org. That evaluation was conducted according to the 2004 FATF assessment methodology.

Fiji's 2006 mutual evaluation rated Fiji as compliant with eight recommendations, largely compliant with six, partially compliant with 32, and non-compliant with three. Fiji was rated compliant or largely compliant with three of the 16 core and key recommendations.

CHAPTER 1. ML/TF RISKS AND CONTEXT

Background

1. The Republic of Fiji ("Fiji") is a group of approximately 300 islands forming an archipelago in the South Pacific Ocean with a total area of almost 194 000 square kilometres (75 000 sq. mi.). Fiji is located midway between Vanuatu and Tonga, and 2 781 kilometres east of Queensland, Australia. Fiji has two main islands: Viti Levu with more than 10 400 square kilometres accounts for more than half of Fiji's total land area; and Vanua Levu, covering 5 500 square kilometres. Fiji has two main cities, the capital Suva and Lautoka, both of which are located on Viti Levu. The official language in Fiji is English.

2. Fiji's population is approximately 863 892 (2014). Indigenous Fijians, or iTaukei, make up an estimated 58 percent of the population while Indo-Fijians and other ethnic communities comprise 36 percent and six percent of the population respectively. The iTaukei or indigenous Fijians communally hold approximately 91 percent of all land under customary ownership. The remaining portion is classed as state land and freehold land.

3. Fiji gained independence from the United Kingdom in 1970. It is a parliamentary democracy and consists of an executive, legislative and judicial branch. The legislative branch consists of a 50-seat single chamber Parliament (no upper house or senate). Parliament's proceedings are chaired by an independent Speaker who is not a member of Parliament. The last general election was in September 2014 following enactment of a new constitution in 2013.

4. The President is the Head of State and Commander-in-Chief of the armed forces. The Prime Minister is the head of government and chairperson of the Cabinet. The Prime Minister selects the Ministers of the Cabinet, all of whom are accountable to Parliament.

5. The judiciary consists of the Supreme Court, Court of Appeal, High Court, Magistrates Court, and other courts created by law. The Supreme Court is Fiji's highest court and the final court of appeal. It has jurisdiction to hear and determine constitutional issues. The Court of Appeal determines appeals from the High Court regarding the Constitution and its interpretation or other judgments as prescribed by law. The High Court has jurisdiction over civil and criminal matters and over matters arising under the Constitution and its interpretation. The High Court may hear appeals from lower courts. The Magistrates Court has limited statutory jurisdiction in criminal matters.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

6. A national risk assessment (NRA) entitled *Fiji Money Laundering and Terrorism Financing National Risk Assessment Framework 2015* was completed by the government in 2015 and adopted as an official policy document by the Acting Permanent Secretary for Justice as chair of the National AML Council in June 2015.

7. Fiji is exposed to a range of money laundering (ML) and terrorist financing (TF) threats and vulnerabilities. Fiji's strategic geographic position and porous borders increase its exposure to ML/TF risks. The significant cash economy, limited technology and limited expertise among relevant agencies increases the vulnerabilities. The sectors most vulnerable to ML are identified as banking, real estate and companies.

8. A comprehensive but classified version of the NRA contains estimates of the minimum level of funds available for ML in and through Fiji. The NRA identifies drug trafficking; fraud on the government (fraud related to direct and indirect value-added taxes); evasion of duties and licence fees as high priority ML threats. The NRA also rated the NPO sector's vulnerability to ML/TF risks as high. Fiji's location within the South Pacific Ocean exposes it as a transit country for illicit drugs originating in South-East Asia and South America. Typologies confirm that illicit funds generated from this activity flow into the region's financial centres, including Australia and New Zealand.

9. Other areas of risk identified in the NRA include criminal proceeds resulting from deception, misappropriation, cybercrime, theft, offshore offences, corruption, the illicit cross-border movement of currency and trade based financing. The overall findings of the NRA are that there are no significant ML/TF risks in Fiji.

Country's risk assessment and scoping of higher-risk issues

10. During the mutual evaluation on-site visit the assessment team focussed on the following high-risk issues, based on the results of Fiji's 2015 NRA and other multiple, confidential and open source information, including information provided by APG and FSRB delegations:

- *Transnational organised crime* – risks and networks associated with instances of transshipment of drugs, and other trafficked entities such as humans and wildlife, and associated criminal proceeds generated in and flowing through Fiji; the source country of foreign threats, and the Fiji's understanding of, and response to, these risks and networks.
- *Cash economy* – ML/TF implications of Fiji's reliance on cash intensive businesses and any associated cash courier activity; as well as Fiji's financial inclusion policies and strategies.
- *Drug trafficking* – increase in domestic drug use creating greater opportunities for criminals to generate criminal proceeds, compounded by evidence that Fiji is used as a transshipment point for illicit drugs bound for other countries increasing the risk of money laundering. Fiji's understanding of the risks involved and the policies and measures in place to mitigate those risks were examined.
- *Fraud* – ML of illicit proceeds generated by fraud on the government, especially fraud related to tax evasion, including direct and indirect tax evasion and fraud, and evasion of duties and licence fees.
- *Other crimes* – risk of ML arising from other predicate crimes such as deception, misappropriation, cybercrime, theft, bribery and corruption and the illicit cross-border movement of currency and Fiji's responses.
- *Dealers in precious metals and dealers in precious stones* – captured by the Financial Transactions Reporting (FTR) Act but not supervised. The gold industry is not well known, but is rated as low to very low risk in the NRA. Fiji's understanding of the risks involved and the measures in place to further identify and mitigate those risks were examined.
- *Legal persons, transparency and beneficial ownership* – the ML and TF risk posed by legal persons (including companies and limited partnerships) and the relatively low cost of establishing these entities; as well, the ability to issue and use bearer shares/warrants were examined. Emphasis was placed on the links to vulnerabilities elsewhere, for example the legal sector and trust and company service providers (TCSPs). Also the use of express trusts as an ML/TF tool were examined.

- *Foreign investors* – the presence of a large number of foreign investors (7 000 companies with ongoing projects valued at above FJD2 billion (approximately USD939 million²) and involving 40 000 to 50 000 individuals) and associated ML/TF risks, especially in Fiji’s real estate sector.
- *Cross-border currency movements* – non-declaration of currency movements by an estimated large number of persons entering and leaving Fiji through air and sea. The treatment of pleasure cruise passengers as “in transit” without customs and immigration checks was examined as a risk area for ML and TF.
- *Terrorism financing and proliferation* – TF offence, implementation of targeted financial sanctions relating to terrorism and TF, implementation of targeted financial sanctions relating to proliferation of weapons of mass destruction and Fiji’s trade relationship with Iran and Democratic People’s Republic of Korea (DPRK) were examined.
- *Inter-agency cooperation* – cooperation among domestic law enforcement agencies and with foreign authorities.
- *Resources* – resourcing issues among key agencies especially law enforcement agencies.

Materiality

11. Fiji’s gross domestic product (GDP) in 2014 is estimated at approximately FJD 9.5 billion³ (~USD 4.5 billion). The gross national income (GNI) per capita in 2014 is estimated at FJD10 184 (~USD4 833⁴). Fiji’s major merchandise exports include sugar, fish, timber, mineral water, gold and garments. Total exports (excluding aircraft) increased from FJD1.193 billion (~USD560 million) in 2013 to FJD2.207 billion (~USD961 million) in 2014. The main export destinations are Australia, United Kingdom, United States, Pacific Islands, New Zealand and Japan. Fiji’s major merchandise imports include mineral fuels, machinery and transport equipment, food and manufactured goods. Total imports (excluding aircraft) increased from FJD2.723 billion (~USD1.292 billion) in 2005 to FJD4.861 billion (~USD2.306 billion) in 2014.

12. Economic growth has been volatile over the past decade, owing in part to a range of internal and external shocks. However, there has been steady growth over the last four years with an average growth of 3.4 percent per year from 2011-2014⁵. Fiji achieved its fifth consecutive year of economic growth in 2014 with an estimated growth of 4.5 percent that year. Industrial activity gained momentum in 2014 driven by increases in sugar, other food and non-food production and higher construction activity. In the 2014 Reserve Bank of Fiji (RBF) Annual Report, the RBF reported that gold production ‘continued its poor performance throughout the year mainly due to mining lower grade ore.’

13. Tourism is the largest foreign exchange earner contributing approximately 33.0 percent of GDP. Australia is the largest source market with 50.4 percent of all visitors, followed by New Zealand (17.9%), the United States (8.9%), Pacific islands (5.7%), continental Europe (4.4%) and China (4.1%). The tourism industry is highly sensitive to external and domestic shocks. Tourism earnings rose by 6.6 percent to FJD1 404.6 million (~USD192 million), while inward remittances increased annually by 13.0 percent to FJD383.2 million (~USD182 million) in 2014.

² All currency conversion amounts in this document are approximate and based on the exchange rate as of 23 October 2015, <http://www.oanda.com/currency/converter/>.

³ World Bank, ‘GDP at market prices’, for Fiji, at 23 October 2015 USD currency rate

⁴ World Bank, ‘GNI per capita, Atlas method’, for Fiji, at 23 October 2015 USD currency rate

⁵ World Bank, ‘GDP growth (annual %)’ for Fiji

Financial Sector

14. Fiji's financial system consists of financial institutions, financial markets, and clearing and settlement systems. As at 31 December 2014, the size (gross assets) of Fiji's financial services sector (excluding the Reserve Bank of Fiji) was FJD18.4 billion (~USD8.731 billion) representing 179.12 percent of GDP. The financial sector contributed 11.8 percent of the GDP, or FJD5.5 billion (~USD2.610 billion). Over the last five years, the financial sector's gross assets have registered an average growth of 12.9 percent with annual growth rates ranging from 2.1 percent (2010) to 10.7 percent (2013).

15. In 2014, Fiji's financial sector consisted of six licensed commercial banks and three credit institutions, nine restricted foreign exchange dealers (RFEDs) and two moneychangers. The insurance industry had seven general insurers, two life insurers, four insurance brokers and 356 agents. The superannuation industry consisted solely of the Fiji National Provident Fund (FNPF). The capital market consisted of a single securities exchange with 17 listed companies, two unit trusts, 11 investment advisors, three brokers and three dealers. The RBF regulates and supervises these institutions.

16. The number of bank branches, automated teller machines (ATMs) and electronic fund transfers at point of sale (EFT-POS) increased in 2014, indicating increased access to cash and payments channels.

17. Fiji also has two statutory lenders, the Housing Authority of Fiji and the Fiji Development Bank. The Registrar of Credit Unions and Department of Cooperatives exercise oversight of credit unions and cooperatives (respectively).

18. In 2014, the banking sector comprised 50.6 percent of the financial sector followed by the FNPF and the insurance sector at 33.7 percent and 9.3 percent respectively. The capital market industry expanded in 2014 to FJD4 billion (~USD1.898 billion).

DNFBP Sector

19. Designated non-financial businesses and professions (DNFBPs) consist of casinos, accountants, lawyers, real estate agents and dealers of precious metals and stones. Although there is a licencing authority for casinos in Fiji, at the time of the on-site visit, there were no licenced land-based casinos. Fiji had issued one casino licence in the recent past but revoked that licence before the casino operator started business. Casinos aboard cruise ships are required to discontinue operations while in Fiji territorial waters unless licensed under the Gaming Decree 2009 – at the time of the on-site visit there were no Gaming Decree licences in this regard.

20. As at December 2013, there were 787 members/accountants registered with the Fiji Institute of Accountants (consisting of 38 Chartered Accountants in public practice; 275 Chartered Accountants not in public practice). As at 10 April 2015, there were 494 lawyers with current practising certificates. As at January 2015, there were 133 registered real estate agents. The precious metals and stones sector is primarily retail in nature, the majority of which are small family businesses.

21. All DNFBP sectors are covered under the AML/CFT framework, but the requirements under the Financial Transactions Reporting Act 2004 (FTR Act) have not been implemented for dealers in precious metals and stones.

22. There are other business sectors not defined as DNFBPs under the FATF recommendations but covered under the Fiji's AML/CFT framework for which the requirements of the FTR Act are not yet in effect. These include pawnbrokers, dealers in gold bullion, bookmakers, dealers in art/antiques, travel agencies and dealers in motor vehicles/aircrafts/other vessels.

23. The NRA identifies high ML vulnerabilities with real estate agents, but only medium vulnerabilities with legal practitioners, accountants and dealers in precious metals and stones. The primary risks with real estate agents are the cash intensive nature of the business and the lack of AML/CFT-related supervision. The ML risks with the legal and accounting profession lie primarily with their gatekeeping services to financial institutions, including the operation of trust accounts.

Structural Elements

24. The structural elements required for an effective AML/CFT system are largely in place in Fiji, despite previous periods of political turmoil and instability. The elements include high-level commitment to address Fiji's AML/CFT obligations partly evidenced by adoption of the 2015 NRA. However, human and other resources required to effectively address ML and TF risks are lacking in key government ministries and agencies.

25. Political commitment to implement targeted financial sanctions relating to terrorism and terrorism financing, and targeted financial sanctions related to proliferation is, however, lacking.

26. Corruption within the public service is an issue. According to the most recent Transparency International Global Corruption Barometer report (2013), 50% of Fijians felt that political parties were "corrupt/extremely corrupt" and 49% felt that civil servants and public servants were "corrupt/extremely corrupt." The overall findings of that report indicate that "[b]ribery is widespread. Overall, more than one in four people (27 per cent) report having paid a bribe in the last months when interacting with key public institutions and services. Public institutions entrusted to protect people suffer the worst levels of bribery."⁶ Large poster displays are present at locations such as the airport to encourage visitors and tourists to report corrupt practices and incidents of bribery in Fiji are reported in the local media, including a number of significant cases during the on-site visit⁷.

27. Fiji has a competent, efficient and independent judiciary.

Background and other Contextual Factors

28. Within the South Pacific region, Fiji has a relatively mature AML/CFT regime. However, access to resources, operational coordination, knowledge and experience varies across agencies, creating inconsistencies within the system. Fiji has had four military coups since 1987, resulting in some political and economic instability, with the most recent coup in 2006. Fiji was under military rule from 2006 to 2014.

29. While Fiji's geographic location provides some measure of protection from international and cross-border crimes, numerous cases demonstrate that Fiji is not immune from them. There is evidence that Fiji is a transshipment point for the movement of illicit drugs and there are

⁶http://www.transparency.org/news/pressrelease/transparency_international_fijis_statement_on_global_corruption_barometer; and <https://www.transparency.org/gcb2013/country/?country=fiji>

⁷ Also it was reported after the on-site visit that the Fiji Police Commissioner resigned from his office citing issues of interference by the Fiji military in policing matters.

vulnerabilities created by a lack of measures to process cruise ship passengers visiting Fiji. Passengers are treated as “in transit” and are not required to declare cash over the threshold for reporting.

30. As noted above, corruption is an issue in Fiji. Most notably petty corruption (small-scale bribery) is pervasive, but is dealt with by authorities, within available resources, although many cases are not fully addressed, as the ML aspect is generally not referred for investigation and prosecution. There have been instances where significant corruption cases have been detected; however, ML investigations, prosecution and criminal proceeds recovery action have not been actively pursued.

31. Overcoming financial exclusion is a challenge for Fiji. A recent survey has put preliminary figures at 27% of respondents not having access to banking and other financial services. Providing financial services to the poor and to rural communities, and expanding access to financial services for small enterprises, are key development goals for the government. Authorities are pursuing financial inclusion activities, such as simplified customer due diligence (CDD) and supporting financial institutions, notably the locally-owned bank, in providing services to financially excluded sectors.

Overview of AML/CFT Strategy

32. Fiji’s National AML Strategy was issued by the NAMLC and updated in February 2015 (prior to adoption of the NRA). The national strategy requires stakeholders to identify, assess and understand ML and TF risks but the strategy itself does not reflect the identified risks in Fiji. Private sector stakeholders are also required to undertake their own risk assessments, or depend on the outcomes and recommendations of the NRA. Fiji’s first NRA was adopted in June 2015. The National AML Strategy has not been updated to reflect the NRA’s findings. Fiji is aware of the need to do this.

33. Fiji’s NAMLC provides oversight and guidance on the national strategy, with regular meetings and coordination on strategic AML/CFT issues.

Overview of the legal and institutional framework

34. Fiji has made progress in addressing the technical deficiencies identified in its 2006 APG mutual evaluation report. The money laundering offence now largely reflects the international standards, with minor deficiencies remaining in the range of predicate offences required by the FATF standards and legal documents or instruments evidencing title to, or interest in, assets.

35. The key institutional elements for an effective AML/CFT system are present in Fiji. There is an independent and effective judiciary consisting of the Magistrates Court, High Court, Court of Appeal and Supreme Court; and a number of departments, agencies and public authorities having significant functions in Fiji’s AML/CFT system as follows:

- **National Anti-Money Laundering Council (NAMLC):** was established in 2008 under s.35 of the Financial Transaction Reporting Act 2006 (FTR Act). The Council is the designated authority responsible for national AML/CFT strategy and policy. The NAMLC is chaired by the Permanent Secretary for Justice and its members include: the Director of Public Prosecutions, Commissioner of Police, Governor of the Reserve Bank, Chief Executive of Fiji Revenue and Customs Authority and Director of the Financial Intelligence Unit. Five regularly invited members include the Department of Immigration, Fiji Independent Commission Against

Corruption, Ministry of Finance, Ministry of Defence, and Ministry of Foreign Affairs and International Cooperation.

- **Fiji Financial Intelligence Unit (FIU):** is established under Part 4 of the FTR Act 2004 and is the primary agency responsible for administering the FTR Act. That Act provides for the FIU's powers, functions and independence. The FIU is administered and funded by the Reserve Bank of Fiji (RBF) and its offices are physically located within the RBF. The FIU Director is appointed by the Minister for Justice on the recommendation of the NAMLC.
- **Reserve Bank of Fiji (RBF):** is established under the Reserve Bank of Fiji (RBF) Act 1985 and is the primary agency responsible for administering the Banking Act (1995), the Insurance Act (1998), Capital Markets Decree (2009), Exchange Control Act (1985) Fiji National Provident Fund Act (1966) and the RBF Act. The RBF is responsible for licensing and supervising all banks, credit institutions, insurance companies, including insurers and intermediaries, the Fiji National Provident Fund, securities intermediaries, restricted foreign exchange dealers, and moneychangers. The RBF also has a regulatory role with regard to statutory credit institutions such as the Fiji Development Bank and Housing Authority. The RBF has AML/CFT supervisory powers under s.36 of the FTR Act.
- **Fiji Police Force (FPF):** is responsible for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of laws and regulations with which it is directly responsible. FPF is responsible for investigating all money laundering, terrorist financing and predicate offences. The Criminal Investigation Department (CID) of the FPF is responsible for the investigation of serious crime in Fiji. A dedicated AML Unit responsible for investigating complex ML/TF offending has been established within the CID.
- **Transnational Crime Unit (TCU):** is located within the FPF and is responsible for supporting the investigation of ML/TF and predicate crimes, in addition to supporting transnational crime investigations. The TCU includes investigators from Fiji Revenue and Customs Authority.
- **Office of the Director of Public Prosecutions (ODPP):** is established under s.117 of the Constitution of Fiji. The ODPP is responsible for the conduct of criminal proceedings in Fiji, including prosecuting money laundering and terrorist financing offences and predicate offences. The ODPP also facilitates international requests for extradition and mutual legal assistance. ODPP is responsible for making applications to the courts for orders under the Proceeds of Crime Act 1997 (POCA) and for making applications under the POC (Amendment) Decree 2012 relating to unexplained wealth.
- **Fiji Revenue and Customs Authority (FRCA):** is established under s.3 of the FRCA Act 1998. FRCA is responsible for administering and enforcing the laws relating to taxation, customs and excise, as well as border control. Key functions of FRCA include revenue collection, facilitation of trade and border protection. FRCA also administers Part 5 of the FTR Act relating to border currency declarations.
- **Fiji Independent Commission against Corruption (FICAC):** is established under s.3 of the Prevention of Bribery Promulgation 2007. FICAC is responsible for investigating and prosecuting corruption and bribery cases; examining and advising government of its practices and procedures that are conducive to corruption; and educating and enlisting public support for combating corruption. The Deputy Commissioner of FICAC is an invited member of the NAMLC.

- **Ministry of Justice:** the Minister for Justice is responsible for the performance of the Director of the FIU, but has delegated this responsibility to the Governor of the RBF. The Permanent Secretary for Justice is the chair of the NAMLC. The Ministry of Justice is also responsible for:
 - **Registrar of Companies:** Responsible for registering companies, sole trader businesses and partnerships; and
 - **Registrar of Titles:** Responsible for registering religious organisations, not-for-profit organisations (NPOs) and charitable organisations.
- **Office of the Attorney General and Solicitor General (OAG):** the Attorney General is appointed by the Prime Minister and is the chief legal adviser to the government and the designated central authority for mutual legal assistance. The Attorney General is assisted by the Solicitor-General, who is also the Chief Executive Officer of the Attorney General's Office. The office has divisions which administer various statutes assigned to the Attorney-General.
- **Judiciary:** the judiciary is established under the Constitution and consists of the High Court, Court of Appeal, and the Supreme Court, and other lower (magistrates) courts. The High Court has primary jurisdiction for dealing with applications for forfeiture and confiscation orders under the POCA from the ODPP.
- **Legal Practitioners Unit (LPU), Office of the Chief Registrar:** administers the licensing process for lawyers in Fiji on behalf of the Chief Justice of Fiji, who has the authority under the Legal Practitioners Decree 2009 to admit any duly qualified person as a legal practitioner.
- **Ministry of Defence, National Security and Immigration:** is responsible for national security, including counter-terrorism policies and strategies. The Permanent Secretary for Defence is an invited member of the NAMLC.
- **Fiji Institute of Accountants:** is a self-regulatory body for the accounting profession in Fiji responsible for the following: determining the qualifications of persons for admission; registration of accountants; and regulation of their practice. The Institute is established under the Fiji Institute of Accountants Act.
- **Real Estate Agent Licensing Board (REALB):** is established under the Real Estate Agent Act 2006. Its functions include licensing real estate agents, approving salespersons and regulating the activities of both.

36. Although Fiji considers cooperation and coordination to be one of its strengths, coordination between operational agencies in relation to the investigation of ML and recovery of proceeds of crime lacks coordination. Coordination in terms of policy and strategy is developing.

Terrorism Financing

37. Aside from the initiatives of the NAMLC on AML/CFT, the Ministry of Defence, National Security and Immigration is leading initiatives to review Fiji's National Security Strategy, including counter terrorism measures. The National Security Council, consisting of high-level officers from relevant government agencies, determines and directs the actions to be taken in respect of matters affecting the sovereignty, integrity and security of Fiji and its people. The National Security Council reports directly to Cabinet.

38. The Fiji Security Council Advisory Committee includes counter terrorism officials and advises the National Security Council on security issues including countering terrorism. While there

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is a designated agency responsible for policy and operational issues pertaining to counter terrorism, there is no dedicated authority responsible for formulating policies relating to counter terrorism financing measures and implementation of targeted financial sanctions relating to terrorism and terrorism financing. The authorities responsible for counter terrorism policy focus on terrorism issues alone and do not consider counter terrorism financing as part of their policy responsibilities. There are no plans to include counter terrorism financing issues in the detailed national defence policy even though a specific chapter will be dedicated to terrorism.

39. Fiji's TF offence is not fully consistent with the international standards. No LEA has been designated with operational responsibility to deal with terrorism financing issues. The mandate of FPF's Counter-Terrorism Unit is limited to carrying out intelligence gathering and surveillance in relation to terrorism and terrorism financing activities. The FPF's AML Unit has responsibility for investigating TF activities.

40. Fiji does not have a comprehensive legal framework enabling implementation of targeted financial sanctions relating to terrorism and terrorism financing and there is no designated authority responsible for the implementation of targeted financial sanctions.

Proliferation financing

41. Fiji has not established a legal framework to implement targeted financial sanctions related to proliferation of weapons of mass destruction. No authority has been designated with responsibility for implementation of the United Nations Security Council Resolutions (UNSCRs) relating to proliferation of weapons of mass destruction.

42. Fiji has trade relationships with Iran and the Democratic People's Republic of Korea (DPRK). The assessment team was permitted to view confidential figures on Fiji's trade with those two jurisdictions and were advised that, although general customs prohibitions apply to all imports and exports with respect to these two countries, there are nevertheless no special licences, conditions or pre-approved permits applicable to imports and exports to, and from, these destinations.

43. Fijian authorities do not screen or review commercial transactions with Iran and DPRK for compliance with relevant UNSCRs, although CDD is undertaken at the stage of the financial transaction.

Overview of the financial sector and DNFBPs

The Financial Sector

44. The table below list the types of financial institutions in Fiji 's financial sector:

Table 1 Fiji financial sector: institution types and number as at October 2015

Financial Sector Institution Type	Number of institutions
Commercial Banks	6
- Branches	71
- Agencies and Agent Banking	104
- ATMs	280
- EFT-POS	5 340
Credit Institutions	3

Superannuation fund - Fiji National Provident Fund (FNPF)	1
General Insurance Companies	7
Life insurance companies	2
Insurance Brokers	4
Insurance Agents	356
Foreign Exchange Dealers	9
Moneychangers	2
Securities Exchange	1
Unit Trusts	2
Investment Advisers	11
Stockbrokers	3
Dealers	3
Managed Fund Representatives	12
Stockbroker representatives	15
Investment Advisers Representatives	19

45. The financial institutions listed above (table 1) are licenced and supervised by the RBF. Fiji's financial sector also includes cooperatives and credit unions. The Department of Cooperatives and the Registrar of Credit Unions, respectively, supervise these financial institutions.

46. The two statutory lenders (Housing Authority of Fiji and Fiji Development Bank), cooperatives and credit unions are specifically exempted under ss.69 and 70 of the Banking Act 1995 from oversight and supervision by the RBF, except by order of the Minister. However, they are listed in Schedule 1 of the FTR Act as 'financial institutions' and, therefore, they are subject to supervision by the FIU.

47. Fiji's financial sector grew by 8.2 percent in 2014, compared to a 10.7 percent in 2013. The financial sector is dominated by banks and Fiji National Provident Fund, which make up 50.6 percent and 33.6 percent of the financial sector respectively.

DNFBPs

48. The FIU is Fiji's AML/CFT regulator for DNFBPs and the lead agency for AML/CFT policy formulation and enforcement. Part 4 of the FTR Act sets out the establishment of the FIU as the agency responsible for administering and enforcing the Act. The FIU is responsible to the Governor of the Reserve Bank in the exercise of its powers and functions.

49. DNFBPs consist of casinos, accountants, lawyers, real estate agents and dealers in precious metals and stones. All of these DNFBPs are covered under the AML/CFT framework but the requirements under the FTR Act have not yet been implemented for dealers in precious metals and stones.

Table 2 DNFBPs subject to the FTR Act

DNFBP type	No. of institutions
Casinos – onshore	0
Real estate agents (Jan 2015)	133
Dealers in precious metals/precious stones (Oct 2015)	41*

Lawyers/other legal profession (Apr 2015)	563
Accountants (Dec 2013)	787
Trust and company service providers	**
Pawnbrokers	**
Dealers in antiques/art dealers	**
Travel agencies	**
Dealers in motor vehicles/aircrafts/other	**

* One gold-mining company and forty jewellers, including second-hand gold import/export

** Numbers for these FTR Act-listed institutions were not provided by authorities

50. At the time of the on-site visit, there were no land-based casinos in Fiji (although a licensing mechanism is in place). The government has plans to develop the casino sector and invitations have been issued to attract casino-related foreign investment. The government is planning to amend the Gaming Decree 2009 to improve the legal regime on gaming and to incorporate requirements in accordance with FATF standards. FRCA enforces the Gaming Decree's licence requirements with respect to cruise ship casinos. Without a licence, those casinos are required to discontinue operations while in Fiji. As of the date of the assessment, no cruise ships had the required licences. On-site (in-ship) compliance inspections by FRCA officers ensure that cruise casinos do not operate while in Fiji territorial waters.

51. As at 10 April 2015 there were 563 licenced lawyers in Fiji. Legal practitioners are licenced by the Office of the Chief Registrar (Legal Practitioner's Unit). According to the Legal Practitioner's Unit, the client base of legal practitioners is primarily local residents, but there are an increasing number of offshore clients. Legal practitioners may act as TCSPs.

52. As at December 2013, there were 787 members/accountants registered with the Fiji Institute of Accountants. There are 38 chartered accountants in public practice, organised into 20 accounting firms. There are also 275 accountants not in public practice. Accountants must be licensed and registered with the Fiji Institute of Accountants under the Fiji Institute of Accountants Act. The Institute monitors firms and has disciplinary processes. Accountants serve mainly the commercial and financial interests of residents and a small number of offshore clients. Accountants may also act as TCSPs and operate trust accounts, which, although constituting a comparatively small part of their business, are considered the main ML/TF vulnerability for accountants.

53. There are 133 licenced real estate agents licenced by the Real Estate Agents Licensing Board of Fiji under the Real Estate Agents Act 2006. That Board has disciplinary powers including the cancellation or suspension of licences in situations such as misconduct and criminal convictions. The housing market has experienced a rapid growth over recent years due to large foreign investment and increase in local demand in the property market. As a consequence, there has been an increase in housing prices, particularly in Suva City, followed by other urban centres. In response, the government has introduced policies to address and slow down foreign investment in designated municipalities.

54. The following table lists all financial institutions in Fiji as well as DNFBPs together with the vulnerability rating assigned to each under the NRA:

Table 3 Fiji NRA rated vulnerability of sectors to ML/TF risk

Financial Institutions	Vulnerability rating
Banks	Very High
Credit Unions	Medium
Micro-finance institutions	Low
Money Lending - credit institutions (finance companies)	Medium
Life Insurance	Medium
General Insurance	Very low
Insurance Brokers	Low
Financial leasing	Low
Foreign Exchange Dealers	High
Money Changers	Medium
Money Transmission Services	Medium
Securities Exchange	Very Low
Stock Brokers	Low
Credit card/debit card issuers	Medium
Issuers of financial guarantees	Low
Investment/Safe Custody	High
Trading in Money Market Instruments	Low
Portfolio Management	Low
Superannuation Funds Management	Low
Unit trusts - Trustees and Managers	Low
Trust or Company Service Providers	Low
DNFBPs	Vulnerability rating
Legal practitioners	Medium
Accountants	Medium
Real estate agents	High
Pawnbrokers	Medium
Dealers in bullion - Gold export	Low
Collection of Money	Medium
Gaming	Medium
Bookmakers	Medium
Dealers in art, antiques, precious metals, precious stones or jewellery dealers	Medium
Travel agencies	Medium
Dealing in high value assets (cars, aircraft, vessels)	Medium

55. Although the NRA gives a medium rating to the operation of dealers of precious metals and precious stones, Fiji officials clarified with the assessment team that the sector is very small and mainly deals with home-made products of low value (value actually does not exceed the FATF threshold of USD/EUR15,000). The assessment team was provided with a list of jewellers/shops and informed there were no bullion dealers in Fiji.

Overview of preventive measures

56. The FTR Act and the FTR Regulations 2007 are the principal legal instruments for combating ML/TF in Fiji. The RBF and the FIU are the supervisory authorities that monitor and supervise financial institutions' compliance with the FTR Act and Regulations. As identified in the technical compliance annex, there are areas in the FTR Act that lack enforceable means. All of the requirements in the FTR Regulations are unenforceable.

57. The RBF has also issued Banking Supervision Policy Statement No. 6 setting out the minimum requirement for licenced financial institutions to manage ML/TF risk. Other supervision policies are also in place in relation to fit-and-proper requirements for licensees.

58. The FIU has carried out a number of awareness training programmes on ML/TF risk and published a number of policy advisories/guidelines to ensure that financial institutions comply with ML/TF requirements. As detailed in the Technical Compliance Annex, there are some deficiencies in the FTR Act and Regulations, including that some relevant measures are not enforceable, and some preventive measures are yet to be put in place.

59. Section 29(3) of the FTR Act provides that the FIU, through the Attorney-General, may apply to a judge of the High Court for an order compelling a financial institution, and any or all of its officers or employees, to comply with a FIU directive to implement an action plan in order to ensure compliance with Part 2 or 3 of the Act. However, as certain requirements in the Act, and all the requirements in the FTR Regulations, lack penalties or sanctions for non-compliance, those requirements lack enforceable means and, therefore, lack effective preventative measures.

60. As indicated above, while the two statutory lenders (the Housing Authority of Fiji and Fiji Development Bank), cooperatives and credit unions fall within the definition of 'financial institution' under the Banking Act 1995, they are not supervised by the RBF for compliance with the FTR Act. This responsibility is delegated to the FIU. Supervisory oversight of cooperatives and credit unions (other than in relation to compliance with the FTR Act) is entrusted to the Department of Cooperatives and the Registrar of Credit Unions respectively.

61. DNFBPs are required to comply with all the requirements of the FTR Act and Regulations. However, requirements have not yet been implemented for dealers in precious metals and stones.

Overview of legal persons and arrangements

62. The Companies Act 1985 provides for the following types of companies: (a) companies limited by shares; (b) companies limited by guarantee; and (c) unlimited companies. Of these, the main types of companies in Fiji are: (i) private companies, (ii) public companies, and (iii) foreign companies. While limited partnerships cannot be formed in Fiji, foreign limited partnerships may register under the Companies Act 1985 to undertake business in Fiji.

63. As at 23 March 2015, the total number of companies registered in Fiji was 135 446, however, there are no statistics available on the numbers of each type of registered company, including foreign companies and foreign limited partnerships.

64. The Companies Act does not require the collection, recording and disclosure of information on beneficial ownership, beyond the direct legal owner of shares, either by the company itself or by the Registrar of Companies. Where a financial institution deals with a company, or other legal

person, the FTR Act (s 4(2)) only requires those institutions to collect information on “the principal owners, directors and beneficiaries” and not beneficial owners as defined in the FATF standards.

65. While the FTR Regulations 2007 requires financial institutions to take reasonable measures to understand and document the ownership and control structure of legal persons, including the name and permanent residential address of the natural person who ultimately owns or controls the legal person, none of these obligations and other CDD obligations under those regulations are enforceable. Lawyers, accountants and real estate agents are defined as ‘financial institutions’ under the FTR Act Schedule. The CDD requirements for lawyers, accountants and real estate agents in relation to beneficial owners of legal persons are the same as for other financial institutions under the FTR Regulations 2007. However, the obligations in those regulations are not enforceable as no sanctions are provided for their non-compliance (as required by the FATF methodology).

66. Fiji can provide international cooperation in relation to basic ownership information but cannot provide wider beneficial ownership information as defined in the FATF standards.

67. Express trusts in Fiji may be formed under common law and subject to limited statutory measures provided in the Trustees Act. There is no requirement in Fiji law (common law or statute law) requiring trustees of express trusts to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust. Trustees are also not required to hold information on other regulated agents as provided in this criterion.

68. Information available on trusts is limited. Beneficial ownership information is not available.

Overview of supervisory arrangements

69. There are two AML/CFT supervisors in Fiji designated under the FTR Act and FTR Regulations:

- The RBF, for financial institutions including banks, insurance, credit institutions, foreign exchange dealers, moneychangers and capital market intermediaries, and
- The FIU, for other reporting entities, primarily DNFBPs (lawyers, accountants, real estate agents, and precious metal and gem dealers) and non-RBF licenced and regulated financial institutions included in the Schedule 1 of the FTR Act.

70. Financial Institutions (FIs) regulated by the RBF are licensed by that authority under the Banking Act 1995, the Capital Markets Decree 2009, the Companies Act 1985, Exchange Control Act 1985, Insurance Act 1998, and FTR Act 2006 as the case may be.

71. The FIU was established under the FTR Act in 2006 and is Fiji’s AML/CFT regulator for DNFBPs and non-RBF licenced/regulated financial institutions included in Schedule 1 of the FTR Act. The FIU is also the lead agency on AML/CFT policy formulation and enforcement in Fiji. Part 4 of the FTR Act sets out the establishment of the FIU as the agency responsible for administering and enforcing the FTR Act.

72. The FIU is a designated competent supervisory authority for AML/CFT under s.34 and Schedule 1 of the FTR Regulations. Section 28(1) of the FTR Act provides that the FIU may examine the records and inquire into the business and affairs of any “financial institution” (defined under the Act to cover DNFBPs). However, the FIU has limited powers to enforce compliance with the FTR Act

1

and its Regulations as there are limited sanctions available under the Act and none under the relevant Parts 2 and 3 of the Regulations.

73. Cooperatives are supervised by the Department of Cooperatives. Credit Unions are supervised by the Registrar of Credit Unions under the Credit Unions Act 1954. Notwithstanding future arrangements planned, neither of these institutions is supervised for AML/CFT.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

74. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1 and 2.

Key Findings

- Generally, Fiji has a reasonable understanding of most of its ML/TF risks. However, there are gaps in the demonstrated level of understanding of primary ML and TF risks faced by Fiji, and the extent of such risks. The level of understanding or risks across ministries, government agencies and law enforcement agencies varies. In relation to the private sector, financial institutions (except for banks) and DNFBPs lack an awareness of Fiji's ML/TF risk profile, either within the context of the NRA or outside of it.
- The Fijian authorities have assessed, among others things, criminal activities that produce illicit funds for ML; vulnerabilities that may facilitate ML/TF activities; and the vulnerability of specific sectors to domestic and transnational illicit funds flows.
- The NRA outlines Fiji's ML/TF risks in terms of identifying significant crimes which generate illicit funds for ML (drug-related offences and fraud on government (tax related offences)), vulnerability of high-risk sectors (banking, foreign exchange dealers, real estate, companies, charities and not-for-profit organisations (NPOs)), and other significant vulnerabilities that may facilitate ML/TF (cash economy, technical resources, geographical factor and technology).
- The findings of the NRA were based on limited data and statistical information, which has impeded a thorough assessment of ML and TF risks. The vulnerability of certain sectors has been assessed based on assumptions, due to lack of statistics and consideration of other factors.
- The NRA does not cover specific ML and TF risks associated with foreign elements and all types of legal persons.
- Based on interviews with private sector representatives, it appears that Fijian authorities sought only statistical input from the private sector during the NRA process. Moreover, authorities did not consult the private sector on the findings of the NRA before its finalisation and adoption by the government even though authorities indicated that close consultation had been carried out with key private sector stakeholders.
- While certain authorities have started to focus strategically on key risk areas, Fiji has not implemented a comprehensive risk-based approach to allocating resources and implementing measures to prevent or mitigate the ML/TF risks identified, due mainly to the fact that the NRA was adopted in June 2015, a few months before the on-site assessment.
- More effective operational coordination and cooperation between key law enforcement agencies in the investigation of ML offences is required.
- Cooperation and coordination is required in relation to measures against the financing of terrorism and financing of weapons of mass destruction, especially with respect to development and implementation of relevant TF and financing of proliferation of weapons of mass destruction (PF)

policies.

Recommended Actions

• Even though Fiji has established a mechanism through NAMLC to undertake NRAs, improvements are required in the methodology, scope and process for future risk assessments. Future NRAs should:

(a) be based on reliable data and statistics and these should be maintained by both public and private sector agencies, including a wider range of private sector stakeholders;

(b) include more active involvement of law enforcement agencies, including the transnational crime unit and the counter terrorism unit of the FPF in development of future NRAs or updates of the current NRA;

(c) include more active involvement of the private sector in future NRAs or updates of the current NRA;

(d) be more comprehensive in the assessment of Fiji's ML/TF risks; including a more in-depth assessment of the key risks and analysis of the interconnectedness between the risks; and

(e) give increased focus to assessment of TF risks in future national risk assessments.

• Findings of the NRA and any future updates to the NRA should be communicated to the public and private sectors in an effective and timely manner. NAMLC should spearhead initiatives to conduct programmes to ensure that officials from various levels of both the public and private sectors are able to develop an appropriate understanding of Fiji's ML/TF risks.

• Detailed and coordinated national AML/CFT policies should be developed, based on the findings of the NRA; and a comprehensive risk-based approach should be adopted to guide resource allocation in order to address the identified ML/TF risks.

• Coordination between LEAs in relation to investigation of ML offences and forfeiture of criminal proceeds and instrumentalities of offences should be significantly improved.

Establish mechanisms for coordination of policies and activities to combat the financing of proliferation.

Immediate Outcome 1 (Risk, Policy and Coordination)

75. Fiji exhibits some of the characteristics of an effective system. However, major improvements are needed across ministries, government agencies and law enforcement agencies to enhance its understanding of ML/TF risk, as well as to increase the awareness of ML/TF risks by financial institutions and DNFBCs. Furthermore, Fijian authorities and self-regulatory bodies need to cooperate and coordinate in the development and implementation of policies and activities to combat PF.

Country's understanding of its ML/TF risks

76. Prior to the 2015 NRA, agencies such as FPF and RBF conducted their own risk assessments. However, no evidence of these assessments was provided to the assessment team prior to, during or

after the on-site assessment. The 2015 NRA is the first formal and structured assessment of ML/TF risk in Fiji.

77. During the NRA process, a number of meetings were held between key agencies such as the FIU, NAMLC, AML compliance officers, FRCA, ODPP, FPF, RBF, FICAC, the joint NRA coordinators consisting of representatives from the FIU and Solicitor General's Office and the consultant who assisted with the preparation of the NRA from 9 to 13 February 2015. During these meetings, key stakeholders were briefed on the NRA process and requested to provide preliminary data to use in the development of the NRA document.

78. Another series of meetings was held between key government agencies (Registrar of Companies, Ministry of Defence, Exchange Control Unit of RBF, Titles Office, Investment Fiji) and representatives from the private sector (in particular, compliance teams from a number of private entities especially banks), Fiji Institute of Accountants, Fiji Law Society and accounting firms, as well as the FIU and the consultant to discuss the NRA data and finalise the findings on risks.

79. The NRA Task Force produced three versions of the NRA:

- (a) a detailed classified version to which access was restricted to the NAMLC and the NRA Task Force;
- (b) a second classified version which was available to all government agencies as well as financial institutions and DNFBCs; and
- (c) a brief five-page version published online for the general public.

80. The evaluation team had limited, but sufficient, access to the detailed classified version during the on-site visit and permanent access to the second version. The detailed classified version contains an estimation of the extent of ML (in terms of the total dollar value of laundering) in Fiji.

81. The NRA identified the ML/TF threats and vulnerabilities in Fiji and used a number of assumptions in determining the risk of ML/TF, among others:

- (a) the higher the value of the funds laundered, the greater the threat for ML;
- (b) the value of funds derived from predicate offences may be at a much lower level for both domestic TF and the financing of offshore terrorism and possibly the threat level will be higher at much lower funds level;
- (c) while TF may only involve licit funds or the co-mingling of licit and illicit funds, when it involves illicit funds, most likely the funds have been generated from predicate crimes that are related to ML; and
- (d) significant amounts of funds derived from predicate crimes are available for ML/TF.

82. Fiji has indicated that it is committed to constantly monitor its ML/TF risks, and to review and update the NRA accordingly, whenever new or emerging ML/TF risks are identified. The next NRA process will be conducted within the next two to five years.

83. The NRA exercise identified the most significant criminal activities producing illicit funds. The following ML predicate crimes are identified as high risk (in order of priority):

(a) Drugs and drug trafficking: Fiji is not only used as a transshipment point for illicit drugs, but domestic manufacture and use of drugs in Fiji is also increasing;

(b) Fraud on the government: fraud related to direct and indirect VAT and evasion of duties and licence fees is widespread within Fiji, with large sums of uncollected tax outstanding; and

(c) The risk of laundering funds generated from corruption is rated as medium. Bribery and corruption across some government agencies is reported in the Fiji media.

84. Many officials from government agencies and the private sector met by the assessment team during the on-site visit were of the view that, as far as predicate crimes were concerned, drug offences and fraud on the government are major concerns consistent with the findings of the NRA. Private sector stakeholders were also of the view that corruption among civil servants is a serious issue. However, this was not a uniform view by all private sector entities.

85. Although Fiji undertook a comprehensive analysis of vulnerabilities in a number of sectors for ML/TF risks, there are gaps in the assessment of ML/TF risks.

86. The NRA contains a brief discussion on the ML/TF risks in relation to companies; however, the NRA does not assess, nor do the government and the private sector understand, the ML/TF risks associated with various forms of legal persons (including companies and foreign limited liability partnerships registered in Fiji) and legal arrangements (including express trusts).

87. The NRA does not reflect an informed analysis of the extent of ML risks associated with foreign investment, even though during the on-site assessment law enforcement agencies and private sector entities expressed some alarm associated with the large influx of foreign investors and funds, especially in the form of cash from high-risk jurisdictions. The NRA estimates that foreign direct investment inflows to Fiji were FJD2.09 billion (~USD992 million) or 26% of Fiji's GDP in 2014.

88. Foreign investment in real estate has increased. The NRA rated Fiji's programme for foreign investment at medium vulnerability for potential ML because of controls under the Exchange Control Act and Foreign Investment Act and recognized limitations in ascertaining the beneficial owners of foreign funds and the source of those funds. However, real estate agents have been rated as having high vulnerability to ML risks, among others, due to alleged use of large amounts of cash currency in purchasing of real estate. Concern over ML risks associated with foreign investment - in particular the perceived risks associated with both the nature and source of foreign investment - was a recurring theme throughout the on-site assessment visit. However, the NRA does not reflect these concerns, nor was there any specific and in-depth knowledge and understanding of those risks demonstrated in discussions with the assessment team by government officials and private sector representatives.

89. Fiji has generally considered the ML/TF risks pertaining to illicit cross-border currency movements arising from non-reporting of currency and negotiable instruments at the airport and seaport to be in medium range. Even though the NRA acknowledges that a major concern is that passengers and crew are treated as "in transit" and are not subject to immigration checks, cross border cash or bearer negotiable instruments declaration system or screening in relation to cross border cash or BNI declaration system, the potential for unreported and illicit currency is ranked as medium.

90. Fiji has not considered the effect of one sector's vulnerability on another sector's vulnerability. For example, (i) the vulnerability of the real estate sector was considered in isolation,

without proper identification and assessment of the ML risks associated with legal practitioners facilitating the real estate transactions; and (ii) the vulnerability of the portfolio management sector is considered to be low, as portfolio management is mainly conducted by legal practitioners, however, legal practitioners are rated as having medium level of vulnerability to ML.

91. The NRA comments on the operation of illegal businesses in Fiji, e.g., the likelihood of unauthorised moneychangers, but does not assess, nor does there seem to be an understanding of, the overall risks associated with operation of illegal money changing businesses in Fiji should this occur/be occurring. The LPU and a number of private sector stakeholders, including Law Society, interviewed during the on-site visit expressed concerns regarding activities of ‘unlicensed lawyers’, i.e., persons holding themselves out as licenced legal practitioners but without legal qualification and individuals practising after having their law practitioner’s licenced revoked. Statistics on illegal businesses are not available.

92. The assessment of risk for the purposes of the NRA was based on limited data and statistical information. This has impeded a thorough assessment of ML and TF risks. Due to the lack of statistics, the vulnerability of certain sectors has been assessed based on assumptions, and consideration of other factors was not evident. This is apparent in the analysis of risks for sectors such as ‘pawnbrokers’, ‘bookmakers’, ‘art, antique, precious metals and jewellery dealers’, ‘trading in money market’, where the NRA recognizes that very little is known about these sectors.

93. The NRA does not pay sufficient attention to the vulnerabilities of specific sectors to TF risks, except in the case of the NPO sector. Even though the NRA took the approach of referring collectively to ‘ML/TF’ risks throughout the report, the NRA focuses primarily on ML risks. NPOs in Fiji were regarded as having “high” ML/TF risks because of the lack of supervision and globally NPOs are of concern for potential involvement in TF activities. The NRA did not assess TF risks in relation to foreign terrorist fighters. Neither did the NRA take into consideration the global issue of ISIL finance. A key senior ministry official responsible for formulation of Fiji’s anti-terrorism policies was not aware of the risk rating for terrorism financing in Fiji’s NRA.

94. Based on the interviews with private sector during the on-site visit, the assessment team formed the view that private sector stakeholders had a limited role in the NRA process. The NRA Task Force required a select and limited number of private sector stakeholders to provide statistics to the taskforce. There was no consultation with key private sector stakeholders during the process to ascertain the vulnerability levels of relevant sectors. For example, the banks were required to analyse their internal data in accordance with the methodology determined by the NRA Task Force and submit that information to the NRA Task Force. The authorities used the information gathered from the private sector stakeholders to determine the vulnerability level of the specific sectors. Nevertheless, banks, restricted foreign exchange dealers and real estate agents concurred with the ratings for vulnerabilities of their specific sectors reflected in the NRA. However, contrary to the findings made by the assessment team during on-site visit, Fijian authorities advised that it did consult key stakeholders of the private sector throughout the process and prior to finalizing the NRA and those stakeholders actively participated in the NRA process.

95. The NRA Task Force relied upon a range of data sources and information obtained from government agencies and financial institutions through interviews and workshops. The FIU and the consultant played a key role in collecting statistics from law enforcement agencies and key private sector stakeholders. The Task Force also gathered data available from media reports and other public sources. The NRA acknowledges that the values allocated to ML predicate crimes listed in the

NRA are estimations based on the following: known values of illicit funds; the experience of the Fijian government authorities; and experts in AML/CFT.

96. LEAs, such as FPF, do not maintain comprehensive statistics on crime. During the on-site assessment visit, those LEAs, on a few occasions, cited difficulties in consolidating data from individual files when the assessment team requested specific data.

97. During the on-site visit law enforcement agencies and some other government agencies agreed that:

- (a) sectors most vulnerable to ML/TF are banks, real estate and legal practitioners, and
- (b) vulnerabilities that may assist or facilitate ML/TF are economic factors (cash economy), geographic factors (porous borders), limited expertise among relevant agencies and limited technology (facilitating cybercrime).

98. Fijian authorities have a reasonable, general understanding of Fiji's main ML/TF risks. However, there are gaps in the understanding of overarching risks, or the extent of key risks at the national level across public authorities, for example:

- (a) FPF was of the view that the offences relating to drugs (import, transshipment, cultivation and manufacturing of drugs) ranked the highest in terms of illegal proceeds as compared to other crimes mainly due to one particular seizure of drugs that involved a large amount of money;
- (b) FICAC was of the view that corruption should rank higher as a risk than other predicate crimes (such as fraud on the government) due to the severity of corruption issues in Fiji;
- (c) The Counter Terrorism Unit (CTU) of FPF was of the view that TF risks are understated as a risk in Fiji in view of gaps in the implementation of targeted financial sanctions; and
- (d) FRCA and FICAC were of the view that legal persons could be used to facilitate ML and TF but most other government ministries and agencies could not, or did not, understand how legal persons could be exploited for these purposes. For instance, FPF was of the view that senior managers and directors of companies were the sole persons responsible ML and TF when companies were involved and could not understand what a company's role would be in ML or TF given that companies are not natural persons.

99. Considering the varying levels of understanding among the relevant agencies, especially law enforcement agencies, on the overarching ML/TF risks in Fiji (in particular the extent of such risks) the assessment team is of the view that Fiji's understanding of ML/TF risks requires further development and improvement.

National policies to address identified ML/TF risks

100. Fiji is committed to ensuring its risk management plans are up-to-date, regularly reviewed, evaluated and relevant to its objectives. The NRA expressly states that the determination of priorities of the ML/TF risks will contribute to the development of strategies to address the ML/TF risks and the top priority should be given to areas with a combination of the highest-level risks and highest level of vulnerabilities with the greatest consequences.

101. The NRA also clarifies that it is likely that the ML/TF threats and vulnerabilities that pose the highest risk will be given highest priority when considering which strategies should be implemented over a designated period to mitigate or address the ML/TF risk identified. The NRA does not rule out

the possibility that a threat or vulnerability with a high level of risk may not be considered as a top priority risk but will be watched and managed over time. The highest-level ML/TF risks, however, should all have mitigating strategies that should be implemented over a designated period and in accordance with a specified priority listing. The NRA makes it clear that the risks that are rated as 'very high', i.e., illicit drug activities and tax evasion would be urgent priorities for Fiji.

102. The NAMLC, a body legislated pursuant to s.35 of the FTR Act, is a mechanism responsible for formulating Fiji's policies and strategies to prevent ML and TF and to assist the FIU in coordinating implementation by the various domestic authorities. The NAMLC has developed and published a formal National AML/CFT Strategy, a product of collaboration between relevant agencies in Fiji. The revised AML/CFT Strategy, dated February 2015, sets out a number of overarching strategies to achieve an effective AML/CFT regime including:

- (a) compliance with international standards and strong political commitment;
- (b) undertaking of risk assessments by the relevant stakeholders and implementation of risk-based approach;
- (c) laws, regulations and policy framework in line with international requirements;
- (d) institutional and networking systems including overseeing of AML/CFT framework by the Minister of Justice, coordination of AML/CFT efforts by the NAMLC, three AML working groups with overall objectives to provide support and advice to NAMLC and to facilitate networking and information sharing amongst relevant national agencies;
- (e) regulatory, compliance and enforcement mechanisms;
- (f) prosecution and forfeiture framework;
- (g) private sector engagement and consultation process; and
- (h) proactive education and awareness of AML/CFT

103. As the NRA was recently adopted, detailed national policies to address the identified ML/TF risks have not, as yet, been developed and implemented. However, individual government agencies indicated that they may rely on existing measures based on internal departmental ML and TF assessments prior to the adoption of 2015 NRA. The assessment team had no access to pre-NRA 2015 internal risk assessments.

104. Further policy work to address the specific issues and risks outlined in the NRA has not started and in particular, there is a lack of policy development in relation to CFT (both prior to and subsequent to the NRA).

Exemptions, enhanced and simplified measures

105. The findings of the 2015 NRA have not led to any implementation of enhanced or simplified AML/CFT measures or to any exemptions from AML/CFT requirements for higher or lower risk activities.

Objectives and activities of competent authorities

106. Fiji is committed to implementing a risk-based approach. However, since the NRA has only recently been adopted, the Fijian authorities are in the midst of reviewing the resource requirements to focus strategically on the key risks and vulnerable sectors identified in that assessment.

107. Nevertheless, several authorities have already initiated action plans to align their objectives and activities to be consistent with the ML/TF risks identified in the NRA:

2

- (a) FPF has increased its focus on combating drug-related offences, in particular cannabis cultivation and drug trafficking, as well as fraud-related offences. Efforts are underway by FPF to acquire equipment that is more sophisticated in order to facilitate efficient surveillance in drug related investigations. FPF has also commenced reorganization of its human resources to investigate more efficiently significant predicate crimes related to ML, such as cybercrimes, as well as other economic crimes.
- (b) RBF has slightly increased the number of AML/CFT on-site supervision conducted in respect of the banking sector, which was given a “very high” vulnerability rating in the NRA. Restricted foreign exchange dealers are already subject to annual licensing scrutiny and inspections prior to renewal of licence even though the scope of inspection is limited to prudential, “Know Your Customer” (KYC) and transaction reporting obligations.
- (c) FIU (as DNFBP supervisor) has taken steps to engage with the Real Estate Agent Licensing Board (which was given a “high” rating in the NRA in terms of vulnerability to ML/TF) to ensure that the real estate agents implement the AML/CFT obligations imposed on them.

National coordination and cooperation

108. As part of Fiji’s efforts to establish an effective AML/CFT regime, an institutional framework has been established that encompasses various agencies, including the FIU, supervisory authorities, law enforcement agencies and other government agencies. The NAMLC plays a key role in the formulation of Fiji’s AML/CFT policies and strategies. The responsibilities of the NAMLC are provided under s.35 of the FTR Act. Those responsibilities include the following: providing advice and recommendations on the prevention of ML and TF to the FIU and Minister of Justice (who is responsible for overseeing Fiji’s national AML/CFT framework); assisting the FIU and Minister of Justice in the formulation of AML/CFT policies and strategies; and assisting the FIU in coordination between various government departments and statutory corporations. The representation of heads of relevant government departments on the NAMLC facilitates inter-agency decision-making and coordination.

109. The NAMLC has three AML working groups:

- (a) **AML Legislation Working Group** facilitates the review of the relevant legislation to ensure Fiji’s legislative framework is effective and in compliance with international standards. It also facilitates the ratification of relevant international conventions, administers the forfeited asset fund and facilitates international assistance, including extradition;
- (b) **Investigators of Proceeds of Crime and Money Laundering Working Group** promotes networking among enforcement agencies to facilitate better sharing of information; effective investigation and prosecution of ML and other related financial offences; and sharing of technical expertise and resources. The working group advises NAMLC on issues relating to investigation and prosecution of ML and related predicate offences; and
- (c) **Anti-Money Laundering Supervisors and Regulators Working Group** promotes networking among regulators in relation to supervision of financial institutions on compliance with the FTR Act and conduct of joint AML compliance programmes. The working group also advises NAMLC on financial institutions’ compliance with AML/CFT requirements.

110. The FIU performs a variety of functions including working closely with the NAMLC and advising relevant agencies on AML/CFT matters, aside from performing other the roles of an FIU. The FIU has signed a number of MOUs with domestic law enforcement agencies to promote greater collaboration and obtain greater access to government information for the purposes of performing its functions. The RBF and the FIU are the two main agencies responsible for supervision of financial institutions and DNFBPs with respect to AML/CFT requirements, while law enforcement agencies such as FPF, FRCA and FICAC investigate all ML, TF and predicate offences respectively. The ODPP is responsible for prosecuting ML and TF offences and various predicate offences provided for under Fiji laws. The ODPP also facilitates international requests for extradition and mutual legal assistance. However, cooperation and coordination between enforcement agencies, especially in investigation and prosecution of ML and TF, should be strengthened.

111. In the past, the NAMLC has played a significant role in Fiji's efforts to undertake legislative reforms through the formulation of the Crimes Decree, anti-corruption laws and the offences relating to unexplained wealth. The institutional framework currently in place is designed to promote collaboration between relevant agencies. There is, however, a lack of coordination and cooperation in pursuing ML investigations and prosecutions in relation to corruption offences. This arises from FICAC's failure to refer these offences to FPF as the authority responsible to investigate ML offences.

112. Fiji has no established policies, procedures or mechanisms for handling and identifying TF offences and the implementation of targeted financial sanctions relating to terrorism and terrorism financing. The Ministry of Defence is the key policy maker for terrorism-related matters but formulates policies for terrorism only , not for TF and in doing so approaches these connected issue in a fragmented way. . Currently, no specific authority is designated with the responsibility for formulating measures to prevent TF.

113. There is no cooperation and coordination in the development and implementation of policies and activities to combat proliferation financing (PF). While the FIU has issued notices for commercial banks and money remittance service providers to apply special attention and EDD to transactions with Iran and DPRK, these are not currently enforceable. Furthermore, no measures are in place to ensure Fiji's compliance with the UNSCRs relevant to PF to ensure the application of targeted financial sanctions without delay.

Private sector's awareness of risks

114. Generally, banks are knowledgeable of the risks and vulnerabilities of ML and TF in their sector, as well, and more generally, the overall risks and vulnerability levels in other sectors. The banking sector and insurance sector are aware of the findings of the NRA. However, most other private sector entities interviewed during the on-site assessment were not aware of the risks within their own sectors and were not familiar with the NRA and its content. When informed by the assessment team of the conclusions in relation to their own sectors, many (with the exception of banks, restricted foreign exchange dealers and real estate agents) generally disagreed with the findings in that document.

115. The RBF and the FIU made public statements explaining the purpose of the NRA identifying the vulnerabilities and risks for ML and TF across various sectors. Despite the public information most of the private sector stakeholders were either unaware of the NRA or if aware of it they were unfamiliar with its content and conclusions.

116. **Fiji has a moderate level of effectiveness for Immediate Outcome 1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

117. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Key Findings

Immediate Outcome 6

- The FIU has a central coordinating role as the lead agency responsible for the detection and prevention for ML and TF activities in Fiji. Engagement between the individual agencies and the FIU is ongoing and includes permanent secondment of officers from both the FPF and FRCA into the FIU.
- The FIU provides quality financial intelligence and other relevant information to various law enforcement agencies. However, the intelligence is not appropriately used by these agencies to maximise ML/TF investigations and proceeds of crime outcomes as those agencies lack the resources and capacity to act on it.
- The FIU has the power to access relevant information including electronic funds transfer reports (EFTRs) and cash transaction reports (CTRs) in order to undertake operational and strategic analysis of suspicious transaction reports received and disseminate intelligence reports to LEAs.
- The FIU provides useful strategic analysis reports with typologies and case studies, made public and shared with relevant government agencies.
- LEAs in general have not made effective use of information provided by the FIU. They mainly use the information for profiling purposes rather than taking a proactive approach to carrying out parallel financial investigations on the predicate and related ML offences.

Immediate Outcome 7

- Only occasionally has intelligence provided to the FPF by the FIU been investigated, resulting in a small number of successful prosecutions. However, FPF capacity/capability and resource limitations undermine and limit the ability of the FPF to actively pursue ML and proceeds of crime cases.
- There is multi-agency collaboration in terms of developing intelligence within the FIU, but investigators in other agencies that focus on evidence collection conduct their work in isolation. Consequently, ML investigations aligned to the identified threats and risk profile are not pursued.
- Most ML convictions obtained in Fiji have related to domestic offending, Money laundering convictions have also been obtained for self-laundering, third party laundering and stand-alone ML offending.
- Effective, proportionate and dissuasive sanctions have been applied to natural persons; however, there have been no prosecutions of legal persons.
- Other criminal justice measures are available; civil processes have been used on four

occasions, but the unexplained wealth provisions have never been used.

- Additional training and commitment of resources is required to build the experience and capacity needed to deliver higher quality investigation outcomes consistent with the Fiji's risk profile and the reporting regime.

Immediate Outcome 8

- Fiji's legal framework for confiscation is generally sound and Fiji has taken some action to pursue forfeiture of criminal proceeds. However, confiscation efforts to date have been concentrated on lower level (minor) drug crimes as well as two matters associated with fraud.
- The (apparently) low value of criminal proceeds recovered within the context of Fiji's ML risks indicates that enforcement agencies are not focused or resourced to target and recover criminally acquired property, income generated from crime, or property of equivalent value.
- The legal framework for the confiscation of falsely declared, or undeclared, cross-border transportation of currency/BNIs is sound. However, the effective use of these mechanisms is low. Efforts need to be improved significantly with additional resources and improved operational co-ordination.
- There have been detections of unreported currency movements resulting in a number of successful prosecutions. Cruise ship passengers (treated as in transit) are not subject to immigration checks or to the border cash/BNI declaration system, which is an identified and acknowledged risk (in the NRA).

Recommended Actions

Immediate Outcome 6

- Fiji should increase focus on using financial intelligence to trace criminal proceeds related to ML and TF.
- The FIU and FPF should increase the feedback exchange on the use of financial intelligence information, keeping statistics on investigations and convictions arising from STRs and other FIU information for reference and direction in further developing these as an investigatory tool.
- Direct access to the FPF computer systems should be available within the FIU.
- The FIU should have more financial analysts with experience in the financial sector and areas of higher vulnerability to ML/TF risks.
- The planned case management system (CMS) will greatly enhance the capacity of IT systems and should be given high priority in the resource planning of the FIU; in general the FIU should continue enhancement of IT systems to provide for more meaningful compilation of data to further strengthen the FIU's strategic analysis and development of typologies.
- The FIU should increase and broaden its feedback to reporting entities to include commentary on specific use of information, such as that of STRs.
- The LEAs should provide the FIU with feedback on intelligence received from the FIU, in turn, to improve its performance.
- The LEAs should provide the FIU with feedback on the dissemination reports of intelligence

for the FIU to, in turn, improve its feedback system to reporting entities.

- Fiji should increase the staffing resources available to the FIU.

Immediate Outcome 7

- Additional capability and capacity is required within FPF to investigate more effectively suspicious financial activity. This should include additional training and the development of technical skills, as well as the recruitment or secondment of analytical capability.
- The lack of operational coordination between agencies has resulted in missed opportunities to pursue prosecutions for ML. Active measures should be taken to improve this.
- FICAC should have a mandate to pursue and prosecute money laundering derived from acts of bribery and corruption.
- FPF and FICAC require the legal authority and capability to intercept private communications in support of ML, corruption, bribery and serious crime investigations.

Immediate Outcome 8

- The establishment of a multi-agency task force to target and recover criminal proceeds is recommended. Considerable opportunity exists to recover criminally derived property and coordination between agencies is required to share skills and expertise.
- Authorities should 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 FPF of ML cases in parallel with their investigations of predicate offences would also increase the possibility of related confiscation action being taken.
- Fiji needs to mitigate the risks associated with border entry points. In particular, the risk posed by the exemption of cruise ship passengers from border cash reporting needs to be addressed.
- FICAC should be given the mandate and the necessary resources to pursue ML and recovery of criminal proceeds, as they are complimentary strategies.

Immediate Outcome 6 (Financial intelligence ML/TF)

118. All LEAs can access a broad range of financial intelligence and other relevant information from a variety of government agencies, including the FIU. The FIU has extensive information within its own database and has access to many databases in other domestic agencies. Other sources of information are also utilised through commercial databases such as Data Bureau, World Check, etc.

119. LEAs can access directly various information and public databases that may be relevant for their investigation of ML/TF and/or associated predicate offence.

120. LEAs have direct and indirect access to various databases and information as follows:

Table 4 Law enforcement access to government databases and information, October 2015

Database/Information Type	Type of Access for Intelligence Purposes
Motor vehicle registration and ownership information (Land Transport Authority);	<ul style="list-style-type: none"> • Direct access
Passport and travel database (Immigration Department)	<ul style="list-style-type: none"> • Direct access
INTERPOL database	<ul style="list-style-type: none"> • Direct access
Tax and customs information	<ul style="list-style-type: none"> • Indirect access via TCU officers and FIU for (via phone, email , memo to contact person)
Birth, death and marriage information/database	<ul style="list-style-type: none"> • Direct access at Registrar office • Access via phone, email , memo to contact person at Registrar of Company • Indirect access via FIU (via phone, email, memo to contact person)
Company information	<ul style="list-style-type: none"> • Direct access at Registrar of Company office • Access via phone, email , memo to contact person at Registrar of Company • Indirect access via FIU (via phone, email, memo to contact person)
Foreign investors information (Investment Fiji)	<ul style="list-style-type: none"> • Indirect access (via phone, email , memo to contact person at Investment Fiji)

121. Through the TCU network, Fiji Police investigators have access to the databases of other TCUs in other regional countries and the AFP International Network in 27 countries.

122. FICAC can directly access online certain government databases. This includes the vehicle registration database (Land Transport Authority), Ministry of Justice - BDM database, and the Data Bureau database (credit database). FICAC can also access company information held with the Registrar of Companies Office.

123. The police and FICAC can both also access tax information with a search warrant for evidence purposes. Through the TCU arrangement, FPF and FRCA can directly share information for the purpose of investigating transnational predicate crime and related ML or TF offences. For tax and custom investigations purposes, FRCA can access a wide range of information such as company information, vehicle registration and ownership information and financial records of taxpayers held by FIs.

124. All LEAs can access a broad range of financial intelligence and other relevant information through the FIU. As part of their investigations, LEAs often request the FIU for financial and other intelligence they need.

125. The FIU has direct and indirect access, without prior judicial authorisation, to a wide range of information that may be used to develop evidence for ML/TF and predicate offences and trace proceeds of crime.

Table 5 FIU access to counterpart agency information, October 2015

Agency	Type of Access	Type of information accessed by FIU
Immigration Department	Direct online access	• Passport; citizenship and travel information
Fiji Revenue and Customs Authority	Direct online access	• Tax and customs information
Fiji Police Force	Indirect access	• Criminal records, INTERPOL database,
Investment Fiji	Indirect access	• Information on foreign investors
Ministry of Justice	Direct online access	• Companies records • Birth, death and marriage records of Fiji citizens • Property ownership records (Titles office)
Land Transport Authority	Direct online access	• Vehicle registration and ownership information
Fiji Independent Commission Against Corruption	Indirect access	• Corruption investigation records
Data Bureau	Direct online access	• Defaulting client credit information
Reserve Bank of Fiji	Direct online access & indirect	• Exchange control information; information on RBF licensed financial institutions

126. The FIU generally responds to requests from LEAs in the form of an information dissemination report (IDR) within five working days. For urgent requests, the FIU is able to respond within the same day via email or telephone. IDR responses are in hard copy but for urgent requests, IDRs may be provided electronically via secure emails.

Table 6 Requests for information from LEAs & attended by the FIU, 2012 – 2014

	Requesting Agency	Dept. Immig'n	FICAC	Fiji Police Force	Foreign FIUs	FRCA	RBF	Others	TOTAL
2012	No. of Requests/IDRs	7	20	66	4	17	3	16	133
	No. of Checks on Entities	-	32	20	1	25	1	4	83
	No. of Checks on Individuals	9	73	138	28	14	5	34	301
2013	No. of Requests/IDRs	4	36	77	10	27	1	5	160
	No. of Checks on Entities	-	2	19	7	97	0	5	130
	No. of Checks on Individuals	6	111	151	47	32	1	14	362
2014	Np. of Requests/IDRs	1	17	45	7	48	2	3	123

	No. of Checks on Entities	1	8	21	423	23	0	3	479
	No. of Checks on Individuals	1	64	131	81	24	11	7	319

127. Authorised officers from FRCA (two officers), FICAC (one officer), RBF (two officers) and FPF (two officers) also have direct access to the FIU database, which holds a large number of reports of financial transactions⁸. This arrangement enables LEAs to have instant and direct access to financial intelligence maintained by the FIU's database, subject to confidentiality provisions under the MOU with these respective agencies.

Use of financial intelligence and other information

128. According to statistics on the number of investigations and convictions of cases initiated from STRs, over the ten years from 2005 to 2015, there were 21 cases involving approximately 40 STRs. LEAs receiving case dissemination reports and information dissemination reports from the FIU carry out investigations on the suspects of every STRs and use that information for profiling as well as investigating predicate offences. FICAC also routinely uses intelligence from the FIU in their investigation of corruption cases. The assessment team was provided with a list of 21 successful cases of investigations and convictions. The FIU indicated that this list was not complete and there were other cases. Half of the cases were either initiated from STRs or made use of the intelligence in STRs.

129. During the on-site meetings, the assessment team was also advised that FPF, FICAC and FRCA seek other sources of information through informal information exchange channels. However, the information sought was primarily for the investigation of predicate offence, not for tracing criminal proceeds or developing ML/TF cases. LEAs generally expressed the view that the intelligence from the FIU was of good quality, involving comprehensive analysis.

130. The data on investigations of ML crimes and predicate offences as mentioned above do not provide adequate evidence to prove that the agencies receiving the FIU's intelligence products have effectively used that information to investigate ML and TF and to trace criminal proceeds. As discussed under IO.7, FPF capacity/capability and resource limitations undermine and limit the ability of the FPF to actively pursue ML and proceeds of crime cases. In addition, the low number of money laundering investigations may be due to investigations of predicate offences bringing higher rates of successful prosecutions than those of money laundering. Money laundering investigations undertaken in Fiji relate to fraud offending where victims have complained to the FPF. For example, a commercial bank may have reported thefts conducted by an employee, which was identified through internal bank audits to both the FPF and the FIU. The subsequent investigation was not initiated as a result of the submission of an STR but it was initiated as the result of a complaint made to the Police.

⁸ This arrangement is provided under MOUs signed between the FIU and the relevant LEAs. DDRs are accessible from within the FIU premises on a dedicated computer.

STRs received and requested by competent authorities

131. The FIU receives transaction reports from financial institutions and DNFBPs as required under the FTR Act. These reports consist of STRs, cash transaction reports of FJD10 000 (~USD4 700) and above, and EFTRs covering reports of all international fund transfers into and out of Fiji regardless of the value of transaction.

132. The FIU also receives border currency reports (BCRs) from FRCA (Customs) consisting of declarations of currency or bearer-negotiable instruments (BNI) of FJD10 000 (~USD4 700) and declared at the borders by travellers.

Table 7 Financial Transaction and other Reports Received by the FIU

Transaction/Report Type	2010	2011	2012	2013	2014
STR	629	728	579	522	383
CTR	133 487	144 191	200 404	380 430	1 042 074
EFTR	315 634	450 849	830 959	1 147 728	1 308 633
BCR	223	194	477	459	557
Total	449 973	595 962	1 032 419	1 529 139	2 351 647
Monthly Total Average	37 498	49 663	86 035	127 428	195 971

Table 8 STRs Received by the FIU

Financial Institutions and Persons Reporting	No. of STRs Received				
	2010	2011	2012	2013	2014
Commercial Banks	538	650	477	425	267
Money Remittance Service Providers	75	39	68	42	43
Finance Companies	1	-	-	5	4
Members of the Public	6	24	22	40	58
Regulatory Authorities	4	1	3	3	3
Law Firms	1	5	4	0	1
Accounting Firms	1	2	1	2	1
Insurance Companies and Superannuation	3	1	2	3	2
Securities, Unit Trusts					1
Real Estate Businesses	-	2	1	1	1
Others	-	4	1	1	2
TOTAL	629	728	579	522	383

133. The decrease in the number of STRs since 2012 was due primarily to the improving quality of STRs and declining defensive reporting by reporting entities. In the past, financial institutions reported all transactions related to the same suspects following the first report. The FIU can also request FIs and DNFBPs whether or not they provided the initial STR to provide additional financial and other information needed to analyse those STRs.

134. The following table of information is relevant:

Table 9 Number of requests from FIU to private sector for additional information, 2012 to 2014

Year	Total number of queries to FIs for additional information
2012	735
2013	856
2014	689

135. In addition to providing intelligence reports in response to specific financial activities, the FIU produces a comprehensive intelligence product generated from its own, and other, databases. These reports are generated and disseminated in response to routine enquiries from LEAs. The quality, accuracy and content of the reports produced and disseminated by the FIU is high, however no evidence was provided on the extent to which this information assists competent authorities to perform their duties.

Operational needs supported by FIU analysis and dissemination

136. The FIU analyses suspicious transactions and other financial transaction information in order to develop intelligence. The results of the analysis of the different types of reports received are disseminated to relevant LEAs in the form of “case dissemination reports” (CDRs). CDRs provide financial intelligence to assist the operational needs of LEAs to investigate predicate and ML offences. The majority of the CDRs are disseminated to FRCA.

Table 10 Breakdown of Case Dissemination Reports to Law Enforcement Agencies

Law Enforcement Agency & Reason for Dissemination	2010	2011	2012	2013	2014
FRCA- Inland Revenue Services Possible violations under the Income Tax Act and VAT Decree.	125	195	168	176	155
Fiji Police Force Possible violations under the Proceeds of Crime Act and serious offences under the Crimes Decree.	44	89	61	58	43
Immigration Department Possible violations under the Immigration Act and Passport Act.	1	6	4	0	1
FRCA-Customs Division Possible violations under the Customs Act.	0	4	0	19	6
Transnational Crime Unit Possible criminal involvement of foreign individuals and business entities; involvement of regional or international organised crimes.	83	15	8	9	26
Others RBF Possible violations under the Exchange Control Act.	14	9	5	22	10
Foreign LEAs					
Total	267	318	246	284	241

137. A significant part of the FIU's analysis work relates to STRs. The FIU uses tactical analysis procedures, as set out in its standard operating procedures (SOP), to analyse STRs and develop intelligence on possible ML and other serious offences. The FIU reported that it is currently withholding STRs that it considers suitable for investigation by an unexplained wealth taskforce. However, the reports should be disseminated to relevant authorities while the intelligence is current.

138. Despite the fact that the FIU has heavy burdens arising from multiple functions including intelligence analysis and AML/CFT supervision of DNFBPs but with limited resources, high priority is placed on the development of its IT systems. The FIU has a self-developed database with search engines to identify transactions needing follow-up action. The FIU takes a proactive approach; with analysis undertaken on all STRs received using the search engines to crosscheck all the related parties in the FIU's database. The FIU then prepares value-added analysis reports for dissemination to LEAs. Enhancement of the IT system is underway, including the development of the CMS to allow for meaningful compilation of data. That data will enhance the FIU's strategic analysis for ML trends and typologies.

139. For its intelligence reports, the FIU uses a variety of pieces of information and systems including:

- STRs, CTRs and EFTRS
- BCRs (collected by FRCA)FIU for data mining and analysis for possible currency smuggling, money laundering and related criminal offences
- An FIU Information Management System Online (FFIMSO)
- An alert/monitoring system
- A data mining system to analyse financial transaction data captured in the FFIMSO database; the data mining system identifies links, relationships and patterns of suspicious financial activities. The Alert and Monitoring System and the data mining system identify and report suspicious transactions in weekly and daily reports to the FIU analysts for further analysis.

140. The FIU can also request further information from FIs and DNFBPs as supplementary information. With the above information and available systems, the FIU carries out analysis to track links between parties and related financial transactions.

141. The FFIMSO allows financial institutions to report the transactions (STR; CTR; EFTR) electronically to the FIU on-line. As at the end of 2014, 84 financial institutions had registered on FFIMSO. In addition, as at the end of 2014, the FFIMSO database had received over 6.5 million financial transaction reports from financial institutions since going live in 2008.

142. There are five intelligence analysts within the FIU. Two analysts are seconded on a full-time basis from FRCA (Tax and Customs) and one from the FPF. The seconded officers have access to the FIU's database and provide expertise to the FIU, which enables the FIU to formulate intelligence reports. This secondment arrangement enhances the alignment between the FIU's intelligence product and the operational needs of the other agencies. In addition, through the FRCA secondments, the FIU is able to have direct access to customs and tax-related information via a computer terminal located within the FIU office. Other analysts in the FIU have financial expertise. All FIU analysts have received training on financial investigation techniques related to AML/CFT.

143. In addition to the secondments, specialist investigators can attend the FIU and have authority to access the FIU database for operational needs. The secondments and the ability for specialist investigators to have access to the FIU database are designed to enhance inter-agency cooperation and information sharing. Regular inter-agency feedback, clarification, and information exchanges occur, assisting investigations.

Cooperation and exchange of information/financial intelligence

144. The FIU has a central AML/CFT coordinating role in Fiji. This coordination is a strength and there is an open and willing commitment to exchange and support the respective components of the AML/CFT system.

145. The FIU has, over the past five years, provided numerous intelligence and information reports to various LEAs and other government agencies for their operational investigative and intelligence needs as follows:

Table 11 Intelligence/Information report type per year, 2010 - 2014

Intelligence/Information report type	2010	2011	2012	2013	2014
Case Dissemination Reports (case reports on STRs received)	267	318	246	284	241
Information Dissemination Reports (case reports in response to information requests from LEAs)	147	194	133	160	123
Due Diligence Reports (case reports on background checks conducted on persons or entities of interests)	43	49	122	46	20

146. Direct access to the FIU database is provided to partner agencies like FRCA, FPF, FICAC, RBF and the FIU has direct access to various government databases indicating the good co-operation and easy exchange of information between the FIU and their partner agencies.

147. The FIU observes strict protocols to protect the confidentiality of information. These protocols are part of the FIU's standard operating procedures. The FIU's SOP on receipt, analysis and dissemination of STRs also incorporates processes aimed at safeguarding STR information received and disseminated by the FIU. There are also IT controls inbuilt within FFIMSO to safeguard the confidentiality of data maintained on FFIMSO. Authorised officers from FRCA, FPF, RBF and FICAC are subjected to strict control measures when they access the FIU database and extract information from the database.

148. All CDRs, IDRs and due diligence reports are disseminated by the FIU to relevant competent authorities using secure channels, as outlined in the FIU SOP. The reports are subject to confidentiality caveats that safeguard how information contained within them is to be used by the receiving LEA/other agency and restricts the further sharing of any information in these reports to third parties.

149. Overall, the FIU produces good quality financial analysis that is disseminated in the form of intelligence to LEAs. The Fiji Police and FRCA also have seconded staff to the FIU who can access the database and link information back to their agency. However, as mentioned, LEAs use the intelligence primarily in profiling rather than tracing the proceeds that may be generated from the predicate offences already under investigation, or developing ML/TF cases.

150. The FIU is effective in providing *general* feedback in the form of typologies reports in their annual reports and e-bulletins. Briefing sessions are organized by the FIU quarterly for all financial institutions and DNFBPs, although the attendance rate from the DNFBPs tends to be low.

3 151. Private sector representatives met by the assessment team gave constructive comments on the *general* feedback provided by the FIU. However, comments on *specific* feedback from the FIU (e.g., on the use of specific STRs filed) disclosed that this type of feedback is not regularly received, and in some instances with specific private sectors entities, not at all.

152. No barriers have been identified that would inhibit or obstruct information flows. Intelligence data is securely protected and is disseminated through processes that respect its confidential nature. The relationship with competent authorities is excellent and trust and confidence associated with the management of disseminated intelligence is high.

153. The FIU faces severe resource constraints and challenges in delivering its functions. Aside from collection, analysis and dissemination of intelligence, the FIU is also the AML/CFT supervisor for DNFBPs but with its limited staff its supervision function interferes with full delivery of its FIU functions. While these challenges do not affect the operational independence and autonomy of the FIU (as assessed under R.29), in practice it is primarily reflected in a lack of supervision of DNFBPs (see analysis of IO.3 below). Without further staffing resources the FIU will continue to face real impediments to delivering all of its required objectives.

154. **Fiji has a moderate level of effectiveness for Immediate Outcome 6.**

Immediate Outcome 7 (ML investigation and prosecution)

155. The FPF is responsible for investigating ML and TF. All suspected ML matters, including those referred by the FIU, are reported to the Director CID, who directs those reports to the appropriate FPF departments for investigation as appropriate. ML investigations can also be initiated by investigators involved in predicate offence investigations. CID investigators are trained to investigate ML and predicate offences. The specialist ML/Criminal Proceeds Recovery Unit has the responsibility for investigating complex ML matters and for supporting serious financial crime investigations by the FPF. Although the FPF has a range of investigation powers, the power to intercept private communication extends only to serious drug crime investigations. Consequently, FPF lacks an effective investigative power in relation to ML, TF, corruption, bribery and other predicate offences.

Money laundering identification and investigation

156. The AML Unit has had a small number of ML investigations resulting in successful prosecutions and convictions as follows:

Table 12 ML investigations, prosecutions and convictions

Year	Potential ML Investigations	ML Investigations	ML Prosecutions	ML Convictions (by Count)
2005-2011				8
2012	55 cases	44 cases	7	8
2013	53 cases	25 cases	12	7
2014	57 cases	14 cases	11	1

2015 (Jan-May)	25 cases	1 case	4	10
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157. Successful ML investigations and prosecutions (as detailed in table 12) have related almost exclusively to fraud and deception-related offences. For the most part, these offences have been reported to FPF directly by victims of the offences. On occasion, successful stand-alone ML prosecutions have been undertaken. The following table represents some of those predicate offences:

Table 13 Types of ML predicate offences, value and sentence imposed.

Year Investigation/charge	Predicate Offence	Offence Risk (NRA)	Value	Conviction	Sentence
2004	Fraud on Gov't	Very large	\$44,611.82	30/07/2014	4 Years
2007	Fraudulently altering FRCA cheques	Medium	\$272,219.57	29/10/2010	2 Years
2007	Fraud / Theft	Medium	\$472,466.47	17/02/2012	7 Years
2007	Fraud	Medium	\$88,006.94	10/04/2012	2 Years
2009	Fraudulently alter FRCA cheques	Medium	\$186,561.65	01/11/2013	5 Years
2009	Fraud /Theft	Medium	\$157,423.94	1/11/2012	6 Years
2009	Fraud	Medium	\$17,420	12/04/2012	7 Years
2010	Fraud / Theft	Medium	\$11,398.67	27/09/2012	3 Years (suspended)
2010	Fraud on Gov't	Very large	\$349,870.63	11/09/2013	12 Years
2013	Fraud / Theft	Medium	\$356,702.36	12/04/2015	8 Years

Figure 1 Case example: Fijian money laundering investigation

Between May 2006 and May 2007 an accountant misappropriated FJD848 855 (~USD400 000) that was credited to bank accounts controlled by the accountant, five family members and associates. On 14 April 2011, all six were convicted for money laundering along with various predicate offences. Sentencing outcomes of between six and two years' imprisonment were imposed against the six persons. An application made under the Proceeds of Crime Act resulted in the forfeiture of a parcel of land, six vehicles and FJD5 191 (~USD2 500) seized from a bank account.

158. During 2014, 43 reports, which referenced 82 STRs, were forwarded by the FIU to FPF, involving suspicious transactions totalling FJD8.45 million (~USD4 million). In spite of these results, the AML Unit has insufficient capacity and capability to undertake thorough investigations on matters reported. A number of ML investigation files submitted by FPF to the ODPP had to be returned to the FPF for further investigation, and there have been lengthy delays in the completion of the work. These time delays are at times excessive and at the time of the onsite visit some of these outstanding matters were historic which reflects a capacity limitation to address evidential issues identified by the ODPP on current investigations.

159. FICAC routinely obtains intelligence from the FIU in support of their investigations. STRs have provided the foundation for investigations that have resulted in successful prosecutions. However, FICAC does not extend their investigations to the offence of ML or the identification and

recovery of proceeds of crime, despite having a legal framework to restrain criminal proceeds. Neither does FICAC refer ML and proceeds of crime matters to FPF for parallel investigation. Similarly, there have only been a small number of referrals to FPF linked to tax crimes.

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160. Some of the current work undertaken by both FRCA and FICAC could result in ML investigations and in criminal proceeds recovery action, however FICAC cannot extend its responsibility beyond simply addressing the predicate offences of bribery and corruption in order to 'follow the money.' In cases where ML is linked to predicate crimes FICAC does not refer them to FPF for investigation.

161. In a recent example, a businessperson convicted of corruption involving FJD3 million (~USD1.4M) is yet to be subject to proceeds of crime action. FICAC is not focussed on targeting criminal proceeds. The lack of referrals from both FICAC and FRCA to the FPF reflects a disconnection between agencies at an operational level. FRCA (in relation to the tax and revenue function) have auditing and financial skills, but lack investigation skills to pursue criminality associated to tax crime. FPF have the investigation skills, but lack the financial auditing skills to efficiently process and pursue ML associated with tax crime.

162. As referred to above, there is multi-agency collaboration in terms of developing intelligence within the FIU. However, for investigations, the respective agencies conduct their work in isolation. Consequently, ML investigations aligned to some of the identified ML/TF risks (income generating drug crime, tax and duty evasion, and VAT fraud) are not pursued as a priority.

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

163. Six persons were convicted in Fiji between 2004 and 2015 (11 years) for laundering the proceeds of deception and tax crimes committed against the government. Two matters related to deliberate false representations to FCRA from which was derived criminal proceeds. This reflects a low number of successful ML convictions obtained in relation to predicate tax crimes which are identified as high risk in Fiji.

164. The NRA identified drug-related offences in Fiji as having high risk for ML, however, there have been no convictions for ML associated with drug offences. The majority of convictions relate to non-government fraud and deception categorised as having medium risk. Fiji is not focussed on its highest risk crimes identified by the NRA.

Types of ML cases pursued

165. Fiji lacks a clear strategy to focus on high risk predicate offending and lacks capacity and resources to investigate and prosecute ML. Operational coordination between agencies is also lacking. Most ML convictions obtained in Fiji are related to domestic offending. There have been two cases involving foreign predicate offences.

Figure 2 Case example: Fijian money laundering investigation

During August and September 2009 the accused (a foreign national) deceptively obtained FJD17 420 (~USD8 200) credited to his personal bank account and then remitted those funds to the United States. The accused was charged and convicted on two counts of money laundering. He was not charged with a predicate offence (because the predicate offence occurred in a foreign jurisdiction). Upon conviction, the accused was

sentenced to seven years imprisonment.

166. ML convictions have also been obtained for self-laundering, third party laundering and stand-alone ML offending as follows:

Table 14 ML convictions by type

Year	Number of Persons Charged	ML Convictions (by Count)	Self-Laundering Convictions	Third Party Laundering Convictions	Stand-alone ML Convictions
2005-2011	10	8	3	5	0
2012	5	8	6	2	4
2013	2	7	4	3	4
2014	1	1	1	0	0
2015 (Jan-May)	3	10	10	0	10

Effectiveness, proportionality and dissuasiveness of sanctions

167. Effective, proportionate and dissuasive sanctions have been applied to natural persons. Sentences imposed for ML range from two to twelve years. In the case of *State v. Monika Monita Arora* (2010) the High Court ruled that the sanctions applied to natural persons for ML should be in the range of eight to twelve years imprisonment to reflect the seriousness of the offence.

168. There have been no sanctions applied against legal persons, as no legal persons have been charged with ML. Whether proportionate and dissuasive sanctions would be imposed against legal persons cannot be determined. The penalty range determined by the High Court above (imprisonment) relates only to natural persons.

Other criminal justice measures

169. Other criminal justice measures are available. Fiji has the ability use civil and unexplained wealth provisions to forfeit property as an alternative to ML prosecution. The civil process has been used on four occasions and the unexplained wealth provisions have not yet been used.

170. **Fiji has a moderate level of effectiveness for Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

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

171. The POCA contains both criminal and civil forfeiture mechanisms complemented by “unexplained wealth” provisions introduced in 2012. Fiji therefore has a full suite of forfeiture mechanisms in order to target property derived from crime.

172. Recovery and penalty mechanisms also exist in the Tax Administration Act to recover undeclared income and unpaid duty. For the period 2013 - 2015 FRCA collected FJD 170 million in unpaid taxes, duties and penalties. Data is not available to identify what percentage of this amount related to criminal tax evasion or other tax offences. Between 2012 and 2015 FJD2.6 million

(~USD1.23 million) was been recovered in the form of unpaid tax and penalties in direct response to the FIU's intelligence.

173. FICAC has, in addition to various custodial sentences, sought and obtained the imposition of fines as part of the sentencing process, against convicted persons to recover the monetary benefits obtained from bribery or corruption. Fines totalling FJD64 800 (~USD30 800) have been collected over the last five years from 18 prosecutions undertaken to reflect the recovery of the criminal proceeds derived. In some fraud cases, the courts have also ordered offenders to make reparation, or return property to victims to ensure that an offender does not retain the benefits of their offending.

174. Property subject to forfeiture orders is currently disposed of in accordance with the disposal procedures used by the Official Receiver. However, these procedures do not extend to management of restrained property. The Proceeds of Crime (Management of Assets and Disposal of Property) Regulations 2012 provide the legal framework for the effective management and disposal of restrained and forfeited property. The regulations delegate responsibility for management of restrained and forfeited property to the competent authority. Despite the regulations coming into force in December 2012, processes and policies associated with the management of property have not been issued.

175. Although Fiji has the mechanisms and laws in place to confiscate instruments and property of equivalent value there is limited knowledge among key agencies of these mechanisms and, in particular, in relation to seizure and confiscation of property of equivalent value. These mechanisms have not yet been used.

176. The following table shows the number of restraint and forfeiture actions since 2003:

Table 15 Number of Restraint & Forfeiture Orders Granted by the Courts

Year	Restraint Orders Granted	Forfeiture Applications Made	Forfeiture Orders Granted
2006	0		0
2007	0		1
2008	0		0
2009	3		3
2010	3		1
2011	1 Applied for but not granted		
2012		1	1
2013		3	3 pending judgment
2014			
2015(Jan-June)			1

177. In December 2011 the High Court ruled that property held in Police custody could not become the subject of restraint on the basis that the purpose of restraint was to prevent a suspect from disposing of property before the resolution of either criminal or civil proceedings. The use of search warrants to (de-facto) restrain property has limitations in terms of property management.

Search warrants do not provide authority to insure or take steps to preserve the value of property. Some forfeiture actions in Fiji have taken many years to resolve.

Table 16 Forfeiture Orders granted

Year	Offence	Type of forfeiture	Value
2007	Robbery	Civil forfeiture	FJD \$4,000
2010	Fraud	Civil forfeiture	FJD277,394
2010	Drugs (cannabis)	Civil forfeiture	FJD\$46,000
2013	Fraud	Foreign civil forfeiture	FJD \$88,975.79
2015	Drugs	Civil forfeiture	FJD \$8338.85

178. In addition to the above table, there are four matters which have not yet been heard by the High Court - three in 2013 and one in 2014. The matter of the foreign forfeiture order in 2013 was initiated originally in 2002 but resolved in 2013 when FJD \$89,000 was successfully forfeited and repatriated to Australia.

179. Confiscated assets are managed to varying degrees. Some physical property is held in storage while, on the initiative of the Police Commissioner, FPF has a policy to deposit physical cash into an account established for this purpose.

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

180. Drug-related crime is considered high risk in Fiji and two civil forfeitures have been successful with a combined value of FJD 53,338.85 (USD \$26,000).

Figure 3 Case example: Fijian civil forfeiture civil action HBM 20 of 2010

The respondent was found in possession of FJD46 000 (~USD21 800) and a commercial quantity of cannabis. An application was made by the ODPP prior to the criminal trial resulting in the successful forfeiture of the cash. Following this forfeiture the respondent was ultimately acquitted in relation to the drug charges.

Figure 4 Case example: Fijian civil forfeiture, civil action HBM 152 of 2014

In 2010, two respondents received a combined FJD9 000 (~USD4 300) for their involvement with the importation of 2.680 kilograms of pseudoephedrine hydrochloride, a precursor used to manufacture methamphetamine. The FPF recovered FJD8 383 (~USD4 000). This later became the subject of a successful civil forfeiture application, determined on 24 June 2014.

181. In addition, a fraud case involving money laundering (Turtle Island Resort – reported as *State v Prasad et al* 2010) resulted in seizure of significant assets, including real estate, motor vehicles, and cash. Further matters in relation to a drug operation were before the High Court at the time of the on-site visit. These matters involved a number of small marine craft and household items with a combined value of FJD 76,973. Three applications (separate respondents) seeking forfeiture have been filed in the High Court and currently await hearing (in relation to this drug matter). Fiji has recently initiated restraint of two properties in Fiji at the request of New Zealand. The properties are related to a New Zealand drug investigation during which relevant property in Fiji was identified. The Solicitor General of New Zealand made a mutual legal assistance request to the ODPP in Fiji to

register the foreign restraining orders. The ODPP processed the request through the Courts and the property was successfully restrained. These examples confirm that the necessary measures exist for an effective system. However, the evaluation team was not persuaded that a sufficient level of confiscation action is occurring given the levels of offending in high-risk predicate crimes – particularly drug-related predicate offending. Considering the ML risk profile outlined in the NRA, Fiji is under-utilising its restraint and forfeiture system to target these predicate crimes identified in the NRA.

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

182. According to the NRA, the illicit movement of cash across borders is a major concern in ML/FT. The use of couriers to facilitate illegal entry and departure is a distinct possibility at Fiji's porous borders.

183. All persons entering or leaving Fiji must declare border movements of currency. Since 2011 there have been 29 instances where non-reported currency has been detected at Nadi Airport. On each occasion a prosecution was initiated, resulting in fines ranging between FJD100 and FJD10 000 (~USD47 and USD4 700). The total combined value of fines obtained was FJD 80,500 (~USD38 200).

184. There have been no detections of undeclared BNIs.

185. Fiji's NRA identified "a concern" associated with cruise ships, which arrive at Fiji almost daily. According to the NRA, cruise vessels generally remain in Suva port for approximately 10 hours. A large number of passengers (more than 1 000 per ship – with up to two ships at a time in harbour) disembark from cruise vessels in a very short period shortly after docking. These passengers are treated as "in transit" and are not required to comply with the cash/BNI declaration process nor with passport identity checks. Many of these vessels are destined for, or originate from, New Zealand and Australia, which Fiji identifies as the ultimate destination point for a number of large drug seizures that have been made in Fiji in recent years.

186. Given the exemption for transit passengers on cruise ships there have been no seizures of cash in relation to cruise ship passengers.

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

187. Despite acknowledged increasing crime and associated ML/TF risks, and a comprehensive legal framework, the response to confiscation opportunities has been limited by the FRCA, FICAC and the ODPP, who lack a combined focus and interest in targeting criminal proceeds.

188. The exemption of cruise ship passengers disembarking in Suva from immigration and customs checks, and in particular border cash declarations, is not consistent with the ML risk profile stated in the NRA.

189. Additional resources are required, along with development of expertise within each of these agencies and a greater focus on coordination. The nature of the criminal environment warrants enhanced commitment to this by the appropriate law enforcement agencies.

190. **Fiji has a low level of effectiveness for Immediate Outcome 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

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

Key Findings

Immediate Outcome 9

- Fiji has a low level of understanding of its TF risks.
- There is a strategic policy disconnection between the national counter-terrorism policy framework and the issues associated with TF. Consequently, Fiji lacks a strategic mechanism to respond to TF risks.
- At the operational level, Fiji has not demonstrated the necessary skills and training to identify, investigate and prosecute TF.

Immediate Outcome 10

- Fiji does not have an effective legal framework to implement targeted financial sanctions relating to terrorism and TF:
 - a) No designated competent authority is responsible for the implementation of the targeted financial sanctions in Fiji;
 - b) No clear procedures and mechanisms exist for designation, freezing, unfreezing and delisting;
 - c) Authorities lack knowledge of the NPO sector, e.g., the nature of activities of NPOs, the size of the assets of the NPO sector and the extent of NPO exposure to international transactions; and
 - d) No strategic and operational monitoring of activities of the NPO sector occurs.
- The existing provisions under the POCA, which require the issuance of a restraining order to freeze property of designated persons and entities, may impede the effective implementation of targeted financial sanctions without delay.

Immediate Outcome 11

- Fiji does not have an effective legal framework or processes to implement targeted financial sanctions relating to proliferation financing.
- Fijian authorities do not systematically disseminate UN notices on PF to FIs including DNFBPs.
- There are insufficient controls on trade with DPRK and Iran, and no data to support assertions as to the authorities' monitoring of related transactions.
- There is limited understanding by FI and DNFBPs of their requirements regarding PF.

- There is no concerted effort amongst the appropriate authorities to address PF, nor is there a legal framework to support implementation.

Recommended Actions

Immediate Outcome 9

- Fiji needs a strategic approach to countering TF integrated within a broader counter-terrorism strategy.
- The FPF (CTU) lacks prioritising policies, procedures and/or mechanisms for identifying and handling TF cases.
- Closer operational coordination is required between the FPF-CTU and the FPF-AML Unit to ensure thorough and robust investigation in response to suspected TF activity.
- Fiji needs to devote more specialised officers and training to identify, investigate and generally counter TF.

Immediate Outcome 10

- Fiji should reform its legislative provisions to enable implementation of targeted financial sanctions relating to terrorism and TF without delay.
- A dedicated inter-agency group focusing on implementation of targeted financial sanctions should be formed to enable Fiji to formulate the necessary policies and operational framework for implementation of targeted financial sanctions.
- Law enforcement agencies should be educated on the importance of dealing with TF related issues in a timely manner.
- Further technical training should be provided to law enforcement agencies on the significance of targeted financial sanctions and the need to investigate any relevant violations.

Immediate Outcome 11

- Fijian authorities should immediately implement TFS on PF including development of a legal framework and processes for implementing UNSCRs concerning combating PF, in particular action of TFS 'without delay'.
- Authorities should implement and give effect to all other requirements of R.7.
- Authorities should take measures to raise awareness amongst government agencies and reporting entities of proliferation financing and the ability to detect funds or other assets of designated persons and entities.
- Authorities should record data on monitoring transactions and reporting entities for compliance in regards to TFS/PF and use the data to properly assess and respond to areas of risk for TFS/PF.
- The skills and resources of competent authorities should be strengthened to facilitate the identification, tracing, freezing and confiscating assets of PF.

Immediate Outcome 9 (TF investigation and prosecution)*Prosecution/conviction of types of TF activity consistent with the country's risk-profile*

192. The NRA rates TF risk as low. The FPF specialist CTU has the responsibility for the development of TF intelligence received from the FIU while the AML Unit of the FPF has the responsibility to investigate criminal allegations of TF. Prosecution of TF offences is the responsibility of the ODPP.

TF identification and investigation

193. The CTU has access to all FPF intelligence and has the full range of police powers available to develop TF intelligence.

194. According to Fijian authorities, to June 2015, 13 TF-related STRs were received by the FIU. The FIU has analysed these STRs and has disseminated these cases (13 CDRs) to the FPF for investigation of possible TF activities. In addition, since 2011 the CTU requested information from the FIU in support of intelligence investigations relating to persons who had suspected links to terrorist organisations as follows:

Table 17 Number of requests for information/intelligence from the CTU to the FIU

	2011	2012	2013	2014	2015 Jan-May
Requests from the CTU to the FIU	11	6	8	7	6

195. During the on-site visit it became apparent that the “investigations” referred to were in fact simply false-positive name similarities with persons listed by the UN. There were no criminal investigations undertaken in respect of terrorist or TF offences in Fiji.

196. One (1) STR relating to TF that was referred to the CTU in 2010 had significant issues linked to UN SCR 1267 as follows:

Figure 5 Case example: UNSCR 1267 and Possible TF

A foreign national in Fiji was remitting funds to a recipient in a high-risk South Asian country. World Check database searches revealed that the sender and recipient had name matches to individuals listed as terrorists under UNSCR 1267. The sender was reportedly detained in the noted South Asian country in August 2009 and the recipient was reportedly detained there in 2001. The sender was granted a 6-month work permit in Fiji on 15 October 2010. Between 22 March 2011 and 17 December 2012 he remitted a total of FJD12 253.78 (~USD5 800) to the listed recipient in that country. Further checks revealed that FJD42 713.47 (~USD20 200) was remitted using the same address as that occupied by the sender during his time in Fiji.

197. The FIU utilized the TRAQ database and its network with commercial banks to obtain financial information on the subject (noted in Figure 5 above) suspected of involvement in TF and other individuals. The immigration database was also used to establish the travel details of the sender. International databases such as World Check were consulted to verify the information provided in the STR. The intelligence collected was submitted as a CDR to the Fiji Police Force Counter Terrorism Unit.

198. The assessment team reviewed the response to this intelligence. While the review identified that it had substance, analysis of the FPF response identified that the investigation was inadequate. The individual(s) involved have since left Fiji and returned to their home country. Fiji acknowledges that should future instances of TF be identified, a more robust investigation would occur, including drawing on the resources of regional jurisdictions.

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199. At the operational level, identification and investigation of TF within law enforcement (CTU in particular) is limited, along with the availability of specialist skills to undertake a TF investigation if identified. There also appears to be a lack of focus on financial investigations or insufficient interest in following the money in relation to TF.

TF investigation integrated with, and supportive of, national strategies

200. Fiji does not have a strategic approach to counter the financing of terrorism within a broader counter-terrorism strategy. The Ministry of Defence, National Security and Immigration is the lead policy agency in relation to terrorism. However, as noted elsewhere in the report, Fiji does not consider that terrorist financing is linked to terrorism issues and consequently the Ministry of Defence does not consider, or coordinate, TF issues.

201. The lead agency for investigating TF issues in Fiji is the FPF's CTU. The CTU is a member of the Counter Terrorism Officials Working Group (CTOG) and is expected to contribute to the development of national counter-terrorism strategies and investigations as required.

202. The CTU does not conduct strategic analysis of the threats posed to Fiji by TF. Moreover, with limited intelligence to develop, the CTU has not had any significant opportunities to demonstrate that it is effective.

Effectiveness, proportionality and dissuasiveness of sanctions

203. Under the POCA, natural persons convicted of a TF offence are subject to a maximum fine of FJD120 000 (~USD56 900) or maximum imprisonment for 20 years or both. Fines only are applicable to legal persons convicted of TF offences up to a maximum of FJD600 000 (~USD284 700).

204. There have been no prosecutions for TF in Fiji and accordingly no sanctions imposed.

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

205. Fiji has not taken steps to achieve the objective of IO9 by employing other criminal justice, regulatory or other measures to disrupt TF activities where it was not practicable to secure a TF conviction.

206. Fiji has a low level of effectiveness for Immediate Outcome 9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

207. Fiji lacks effective mechanisms related to targeted financial sanctions.

208. Fiji's legislative framework in the FTR Act and FTR Regulations provides for the designation of persons and entities under UNSCR 1267 and its successor resolutions, as well as UNSCR 1373. Fiji's legal framework contemplates automatic adoption of the 1267 list of designated persons and entities through the definition of "terrorist group" in the FTR Act read together with the FTR Regulations. There are, however, significant technical gaps that undermine effective implementation of targeted financial sanctions as follows⁹:

- a) sanctions cannot be implemented without delay as the relevant authority has to first obtain an ex-parte restraining order from the court by establishing that the property to be frozen is terrorist property and for this purpose must satisfy the standard of proof required for proceedings of such nature. This requires authorities to conduct an investigation to establish the grounds for the belief that property is terrorist property; and
- b) restraining orders will not automatically extend to all properties of designated persons and entities. They are limited only to properties identified in the restraining order.

209. Based on its experience in obtaining restraining orders from courts, the ODPP confirmed that a temporary restraining order can be obtained within 3 days to one week in urgent cases, subject to completion of required documentation and sufficient justification supporting the application for the restraining order. Targeted financial sanctions cannot therefore be effectively implemented without delay.

210. The banking sector (in particular foreign banks) has a high-level of awareness of the requirements related to UN Al Qaida/Taliban sanctions and is taking action to implement measures in response to their group/home supervisor obligations in addition to the measures in the FTR Act and FTR Regulations. Five of the six banks operating in Fiji are part of global banking groups and generally adopt AML/CFT policies and programmes set by their parent entities. The internal procedures of these banks require screening of customers, vis-à-vis various sanctions lists. The commercial databases subscribed by the global banks includes list of designated persons and entities under various sanctions imposed by the UN Security Council, as well as specific countries. The remaining bank (the only domestic bank) is in the midst of establishing corresponding relationships with various banking institutions from foreign jurisdictions and has embarked on initiatives to strengthen its internal AML/CFT policies to facilitate business relationships with foreign counterparts; however the extent of implementation of targeted financial sanctions of these banks is not known.

211. Other financial institutions indicated that they screen names of their customers against some lists but were unclear which lists. Some screened only against the list published by the Office of Foreign Assets Control (OFAC) in the United States, while others screen only the World Check list.

212. Implementation of targeted financial sanctions relating to terrorism and TF by other reporting entities, including DNFBPs, is lacking. Many of the other reporting entities were unclear what to do to ensure compliance with the UN 1267 obligations incorporated within the legislation and could not state how they would manage false positive name matches against those lists.

⁹ It is noted that in April 2016 (ie since the date of the on-site visit), the Public Order (Amendment) Bill 2016 ('Bill') was tabled in Parliament to amend the Public Order Act (Cap. 20) and includes provisions designed to bring Fiji into compliance with the requirements under UNSCR 1267/1989/1988 and UNSCR 1373 (and UNSCR 2178).

213. While the FIU has issued alerts to commercial banks, foreign exchange dealers, finance companies and other financial institutions informing them of changes to the UN Sanctions List, the measures taken by the FIU are not sufficient to demonstrate effective implementation of targeted financial sanctions across all financial institutions. The FIU issued alerts only to these limited categories of financial institutions. Moreover, alerts have been issued only on few occasions and there is no clear indication of measures employed by the FIU to ensure that any changes to the UN Sanctions List are monitored and communicated accordingly to the relevant entities without delay. Nor has the FIU issued any alerts to any DNFBPs. Relevant UN Security Council Resolutions require implementation of targeted financial sanctions by all natural persons and entities within a jurisdiction.

214. It appears that there is no formal communication channel for financial institutions to raise issues pertaining to implementation of targeted financial sanctions especially on actions that must be taken should there be a name match with a designated person and entities. No specific outreach programmes have been conducted by relevant authorities in relation to implementation of targeted financial sanctions.

215. Consequently, across all financial institutions in Fiji, there is no uniform or consistent approach to understanding and applying critical elements of the requirements to implement targeted financial sanctions, including the application of name screening against UN lists.

216. With the exception of RBF, other relevant authorities - including supervisors and the FIU - do not seem to monitor financial institutions' and DNFBPs' compliance with targeted financial sanctions. However, it is not clear which authority is primarily responsible for monitoring and supervising compliance with the targeted financial sanctions, investigating suspected violations of restraining orders, and pursuing appropriate sanctions pursuant to the relevant laws. RBF's supervision manual does not contain any information pertaining to supervision of targeted financial sanctions in respect of its institutions - that responsibility has not formally been delegated to RBF.

217. Nonetheless, the RBF does check whether the banks' screen their customers' against relevant UN lists and showed the assessment team a sample document demonstrating that during on-site inspections it randomly checks customer files (among others things) to ensure that banks screen their customers against those lists prior to customer account opening.

218. To date relevant authorities have not sought any restraining orders from the court prohibiting natural persons and/or entities from disposing of or dealing with the terrorist property or interest in terrorist property. It is not clear, however, whether the absence of any restraining orders against property of the designated persons or entities is due to the non-existence of any such property in Fiji, or the inability of the authority to detect the existence of any such property.

219. There has been one known case involving remittance of funds on several occasions by a foreign national in Fiji to an individual designated pursuant to UNSCR 1267/1989 residing outside Fiji. While the case was detected through a STR filed by a financial institution, it is not clear why the financial institution proceeded to process the transactions. No follow-up action was taken against the financial institution that processed the transactions and no investigation was conducted in respect of the person who remitted the funds to the designated person (see Figure 5 case example in this section).

220. Fiji has not proposed any designations to the relevant UN Sanctions Committees, in particular in relation to the UNSCR 1267 and its successor resolutions and has not made any designation in relation to UNSCR 1373. However, given Fiji's risk and context for terrorism and TF,

absence of any submissions proposing designation of persons or entities to the relevant UN Committees, or failure to make any domestic designation, cannot be categorised as a deficiency from the aspect of effectiveness.

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

221. The NRA states that NPOs (including charities) have a high vulnerability to TF and ML and that TF involving NPOs is 'likely'. The NRA did not draw any distinction between the threats and vulnerabilities of ML and TF risks faced by NPOs.

222. There are approximately 1 718 registered NPOs with an unknown number of unregistered NPOs. The unregistered NPOs are likely to be community-based NPOs. Charitable trusts under the Charitable Trusts Act and trusts under the Religious Bodies Registration Act account for a significant portion of the financial resources under the NPO sector. While FRCA requires registration for tax purposes in order for the NPOs to have access to financial services, the existence of a large number of unregistered NPOs is a concern in view of the risk rating for TF and the threats and vulnerabilities faced by the NPO sector.

223. There is a lack of information with regard to the other sources of funds that could be obtained by NPOs (other than contribution from the public), whether there are any safeguards or restrictions imposed by the authorities on the ability of NPOs to seek funding from the public and other sources and restrictions imposed on the use of such funds.

224. Fiji has not taken any supervisory action with the NPO sector. When NPOs seek access to services offered by financial institutions (including DNFBPs), NPOs would be subject to limited preventive measures at the point of establishing a business relationship or engaging in any financial transactions with the financial institutions. However, those measures have serious deficiencies related to unenforceability of many of the measures in the FTR Act and Regulations.

225. There has been no outreach or AML/CFT awareness training for NPOs in Fiji.

226. The FIU has taken some limited measures in relation to NPOs, including issuing advice to religious organisations through a press statement and public notices. In a press statement dated 12 December 2013, the FIU advised the religious organisations that collect and receive funds on behalf of their organisations to comply with the applicable laws and regulations following reports of diversion and abuse of funds by officials of religious organisations (especially funds collected outside Fiji). However, the misuse of funds by NPOs appears to be linked to ML offences involving the NPO officials absconding with funds belonging to NPOs, rather than abuse for purposes of terrorist activities or TF offences. These limited measures are not effective to address TF risks in the sector.

227. While a basic governance-related regulatory regime for NPOs is in place, there is no evidence that NPOs are subject to oversight and scrutiny to prevent abuse of the NPO sector for terrorism and TF activities. There are no controls on collection of funds by NPOs and persons representing such NPOs.

228. Taking into consideration the risk rating in relation to TF and the NPO sector and the TF threats and vulnerabilities faced by the NPO sector, Fiji was unable to demonstrate effectiveness in implementing a targeted approach, conducting sufficient outreach and exercising oversight in dealing with NPOs at risk of terrorist abuse. Fiji did not demonstrate that it has taken any effective measures to protect NPOs from the threat of terrorism and TF, or to prevent the NPO sector from

being misused for terrorism and TF purposes. The NPO sector lacks an understanding of its vulnerability to TF.

Deprivation of TF assets and instrumentalities

229. As noted above (with the exception of banks), there is no evidence of financial institutions and DNFBPs, or any other persons and entities, performing name checks to ascertain whether they are in possession of terrorist property or any property of persons associated with terrorists, terrorist organisations or terrorist financiers including those acting on behalf of or at the direction of terrorists, terrorist organisations or terrorist financiers.

230. Similarly, the CTU, which is empowered to trace movements of funds in terrorist or TF-related investigations, and could seek the FIU's assistance in determining the money trail, has not referred cases for forfeiture or confiscation of any property of terrorists, terrorist organisations or terrorist financiers.

Consistency of measures with overall TF risk profile

231. Notwithstanding the "low risk" rating of terrorism financing in the NRA, Fiji has minimal measures to implement targeted financial sanctions relating to terrorism. While the legal framework empowers designation of persons and entities as per the requirements of the relevant UNSCRs, there is no outright prohibition on disposing of or dealing with terrorist property, terrorist organisations and terrorist financiers unless the court issues a restraining order identifying the specific assets to be frozen following an ex-parte application by the authorities. This makes it impossible for targeted financial sanctions to be implemented without delay. There is a lack of evidence on the extent of implementation of targeted financial sanctions in Fiji, including by the financial institutions and DNFBPs. There is also a lack of supervision and guidance by the relevant authorities.

232. While Fiji has in one case (referred to in IO.9) identified funds as having possible links to terrorism, authorities took no action to investigate the individual who remitted the funds nor did they seek assistance from, or provide information to, authorities in the jurisdiction where the funds were remitted. Fiji only conducted intelligence gathering and a brief surveillance in that case.

233. In relation to the NPO sector, even though NPOs are rated as highly vulnerable to misuse for terrorism and TF, significant technical deficiencies, coupled with lack of supervision and outreach, raise concerns on the effectiveness of Fiji's regime in dealing with NPOs.

234. **Fiji has a low level of effectiveness for Immediate Outcome 10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

235. Fiji has not implemented measures against PF and does not have a legal framework or processes for implementing UNSCRs 1718 and 1737. Fiji has stated that the framework for implementing UNSCR 1267 could be used to give effect to the requirements related to PF, however this framework is deficient (R.6 and IO.10). Neither has Fiji taken any steps to use that framework to implement measures against PF. While the FIU has issued notices for commercial banks and money remittance service providers to apply special attention and EDD to transactions with Iran and DPRK, these are not currently enforceable, and, furthermore, do not refer to the need for targeted financial sanctions to be implemented without delay.

236. Fijian authorities do not systematically disseminate UN notices on PF to financial institutions or DNFBPs. Authorities are not well-informed on the use of TFS in general, as identified in the analysis of IO.10 and have little understanding of PF risks in the country. The risk of PF in Fiji is rated as low, however, low levels of awareness of the risk, coupled with low capacity to prevent or address instances of PF, increase Fiji's vulnerability.

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

237. There is no data to show the extent of funds and assets of designated entities and persons identified, or of prevented financial transactions related to proliferation. Neither is there sufficient data to support a low risk regarding PF.

238. Fiji has trade relationships with Iran and DPRK. The team viewed confidential figures on Fiji's trade with those two jurisdictions.

239. FRCA maintains data on the trade amounts and goods traded with Iran and DPRK. No licence is required to trade with either country, although licences are required for any trade of particular 'restricted' items (arms, explosives etc.) with any country. Nor is any other special scrutiny required of individual commercial relationships or shipped items.

240. Fiji is not effective in identifying designated persons and entities (or those acting on their behalf) at the trade stage of the transaction. It relies on capture of information of these persons or entities when the transaction crosses into the financial system.

FIs and DNFBPs' understanding of and compliance with obligations

241. Despite Iran and DPRK being included in the list of countries whose transactions should attract enhanced due diligence (EDD), EDD requirements are not enforceable, nor are there sufficient statistics to measure the compliance of financial institutions and DNFBPs with EDD requirements in general.

242. The awareness of financial institutions regarding their obligations with respect to TFS/PF is low. This is consistent with RBF supervisors having found general deficiencies in understanding and collecting complete customer information, and a lack of managerial oversight of AML functions and obligations, pointing to a lack of oversight on PF. DNFBPs also have a low awareness of their TFS/PF obligations. Neither are they applying EDD, or focusing on transactions with high-risk countries.

243. As no guidance has been issued by authorities on TFS related to PF, financial institutions and DNFBPs cannot be found to be effectively complying with requirements as communicated to them by the government. Those financial institutions with an international presence appear to often follow global compliance policies with respect to the requirements for PF. However, their understanding of the risks is largely related to compliance, not specifically PF.

Competent authorities ensuring and monitoring compliance

244. The FIU states that it actively monitors transactions with Iran and DPRK, although there was no statistical data provided to support this.

245. As described in Chapter 5, Fiji has not adopted any specific measures for monitoring and ensuring the compliance of financial institutions and DNFBPs with the requirements related to TFS for PF. There is no coordination between authorities on the issue, as evidenced by (1) the lack of

supervisory data related to PF compliance, (2) the absence of any other compliance-testing framework, (3) the absence of implementation feedback from the financial sector, and (4) the lack of freezing actions. Competent authorities do not have adequate skills or resources to focus on identifying, tracing, freezing and confiscating assets PF.

246. **Fiji has a low level of effectiveness for Immediate Outcome 11.**

4

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

247. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Key Findings

Immediate Outcome 4

- Some of the requirements in the FTR Act and all of the FTR Regulations lack sanctions for non-compliance and are therefore unenforceable. In this regard, key and detailed preventive measures (including CDD, recordkeeping) in the FTR Regulations are ineffective.
- Banks, insurance companies and the RFED companies have implemented AML/CFT measures to comply with their AML/CFT obligations. Except for banks and money remittance services that are branches and agents of global service providers there are varying levels of understanding of AML/CFT obligations among the other financial institutions. Capital market intermediaries for example are less familiar with ML/TF risk and their obligations under the FTR Act. Credit unions are currently not monitored or supervised for compliance with the FTR Act and do not understand the requirements in the FTR Act and their obligations therein (credit unions currently represent only 0.8% of Fiji's financial sector, however they are interested in expanding their financial services).
- The DNFBP sectors have very low levels of awareness of ML/TF and the obligations under the FTR Act and Regulations. Some DNFBPs have no understanding of their obligations at all.
- There is no evidence of adequate preventive measures in place in the DNFBP sectors to mitigate risks, especially in the high-risk areas identified in the NRA such as the real estate sector or the legal professionals who provide trust services. The FIU is unable to demonstrate that the DNFBPs it supervises have implemented internal controls to meet their obligations under the FTR Act, as it has not conducted any on-site inspections of those entities. Given this, there is no compelling evidence demonstrating effective implementation.
- The supervisory authorities and self-regulating organisations (SROs) have not issued any guidelines specific to the different DNFBPs and there are no adequate training or outreach activities to raise the awareness of the DNFBPs.

Recommended Actions

- Fiji should amend the AML/CFT legislation to ensure sanctions are available to increase compliance with FTR Act and FTR Regulations. This should include coverage of enforceable means by the supervisory authority.
- Supervisory authorities should be given adequate human and technical resources to enable them to ensure that the institutions that have obligations to implement internal controls and preventive measures are identifying and managing ML/TF risk.
- The FIU supervisory resources should be expanded to include adequate human resources

and qualified examiners.

- The FIU should work with SROs to issue AML/CFT guidelines specific to different DNFBP sectors. The guidelines should highlight the high-risk areas and risk mitigation measures required.
- There should be regular training and awareness programmes for the DNFBPs, especially for those real estate agents and legal professionals that have higher ML/TF vulnerabilities.

The FIU should carry out risk-based supervision on DNFBPs with both off-site and on-site examinations to ensure implementation of adequate preventive measures to mitigate ML/TF risks.

5

Background and Context

Financial sector

248. As at 31 December 2014, the size (gross assets) of Fiji's financial services sector (excluding RBF) was FJD14.4 billion (~USD6.83 billion). Details of Fiji's financial system are given in Chapter 1.

249. The RBF is the prudential supervisor of Fiji's financial institutions and has responsibility for monitoring compliance by financial institutions with the FTR Act and Regulations.

250. The FIU is administered and funded by the Reserve Bank of Fiji (RBF) and is responsible to the RBF Governor in the discharge of its powers and functions which include supervision of reporting entities other than those supervised by the RBF.

251. Cooperatives and credit unions in Fiji are not supervised for compliance with AML/CFT obligations. Supervisory oversight of the cooperatives and 21 credit unions is vested in the Department of Cooperatives and the Registrar of Credit Unions respectively.

DNFBP sectors

252. Fiji has adopted a sequential approach in applying the National AML/CFT Strategy: the formal financial sector undergoes compliance checks as a priority, after which DNFBPs are to be checked.

253. For DNFBPS, based on an initial risk assessment conducted in conjunction with the International Monetary Fund (IMF), Fiji has placed priority on setting up AML/CFT controls for the real estate sector and the legal and accounting professionals, taking into consideration the high risks involved. Casinos (when licenced), gaming houses, lotteries, dealers in bullion, and dealers in precious metals/stones/jewels will be considered in the next two to five years due to the low ML/TF risk associated with these sectors.

254. The FIU has issued policy guidance to financial institutions and DNFBPs to strengthen their understanding on ML/TF risks. FIU Policy Advisory 5 of 2007 also applies to DNFBPs and provides for the use of a risk-based approach in implementing the AML/CFT requirements of the FTR Act. However, none of these policy guidelines has enforceable means. According to the meetings with the different DNFBP sectors, there is generally a low level of understanding of the FTR Act and the main elements, especially on the CDD of beneficial owners, establishment of risk management systems with internal control systems and enhanced CDD for high-risk customers, products and services.

Immediate Outcome 4 (Preventive Measures)*Understanding of ML/TF risks and AML/CFT obligations*

Financial sector

255. Representatives from the banking sector appear to understand their own ML/TF risks. The foreign owned banks' understanding of ML and TF risk (in comparison to other sectors) results from higher degrees of environmental awareness, more sophisticated analytical tools, as well as in-depth training and instruction, primarily from their overseas parent companies.

256. The RBF has issued Banking Supervisory Policy Statement No. 6 (Revised 2014) in line with its responsibility under the Core Principles for Effective Banking Supervision, requiring financial institutions to have measures in place to manage ML/TF risk and comply with the FTR Act. Banks are aware of their obligations under AML/CFT legislation and although some key preventive measures in the FTR Act are not enforceable (no sanctions stipulated), banks nevertheless treat these non-enforceable measures as if they were enforceable, and banks do not consider those measures unduly onerous.

257. Other financial institutions supervised by the RBF, have varying levels of understanding of ML/TF risk and their obligations. Credit institutions, insurance companies and RFEDs have a reasonable understanding of ML/TF risks and agree with the ML/TF vulnerability rating in the NRA. Capital market intermediaries are less familiar with ML/TF risk and their AML/CFT obligations under the FTR Act.

258. The RBF Capital Markets Supervision Policy No. 6 provides guidelines on 'fit-and-proper requirements' only. No AML/CFT operational policies have been issued for this sector. There is a mixed understanding among these entities of ML and TF risk and generally that understanding is low. The entities were also concerned that 'over-regulation' would stifle development of the capital market sector. However, the capital market is small, with only 18 listed companies with one of the listed companies having a managed investment scheme.

259. The RBF has assessed three stockbrokers. It was determined that all three had not fully obtained and verified the necessary identification information of their clients, occupations and source of funds. One of the stockbrokers was found not to have maintained any CDD records.

260. Credit unions have no understanding of ML/TF risks, nor do they understand their AML/CFT obligations. Credit unions are not licensed and regulated by the RBF for compliance with the FTR Act. The Registrar of Credit Unions is the supervisory authority for credit unions, however, it does not monitor or supervise credit unions for compliance with any AML/CFT obligations. Credit unions however currently only form 0.8% of the financial sector in Fiji.

261. None of the major industry bodies for banks and insurers were involved directly with the NRA process. Some of the practitioners working on the boards of industry bodies were consulted or involved in the NRA exercise, but only in their capacity as employees of their own banks/insurance companies. They were not consulted in their industry-body capacity in order to reflect wider, sector-related, points of view.

DNFBP sectors

262. From 2007 to 2010, the FIU held regular combined meetings with AML compliance officers from DNFBPs to explain the requirements of the FTR Act and to update those officers on new AML/CFT guidelines as well as to address AML/CFT implementation issues. Representatives from DNFBPs were also invited to the National AML Conference from 2009 to 2011 and in 2013, which provided an opportunity to learn more and discuss AML/CFT requirements and issues. Fourteen staff members from DNFBPs attended this conference. The FIU held two forums for AML compliance officers of the accounting and legal sector in 2009 and 2010, which aimed to raise awareness of obligations under the FTR Act. The FIA and Fiji Law Society held seminars in 2013 and 2014 in which the FIU was invited to give presentations on the AML/CFT requirements and ML/TF risks and trends. The FIU provides training upon request from the DNFBPs and held one-to-one meetings with the AML compliance officers of law firms and accounting firms to raise their awareness of AML/CFT requirements and to discuss implementation issues.

263. In meetings with representatives of DNFBPs and regulating bodies it was clear to the assessment team that the general understanding of ML/TF risks among all DNFBPs, including the SROs and individual entities, is low. According to the representatives from the Legal Practitioners Unit, the Lawyers Society, the FIA and the Real Estate Agents Licensing Board and some individual firms, the FIU's outreach to DNFBPs has been inadequate. Neither the SROs nor individual DNFBP entities were consulted during the NRA process and they were only invited to attend one short briefing session relating to the NRA after it was adopted. Some practitioners working on the boards of the SROs were consulted or involved in some way with the NRA but not in their SRO capacity. Moreover, many of the SROs met during the on-site visit only received the NRA report a few hours before they met with the assessment team, not having seen it, been briefed on it, or aware of its contents, prior.

264. Authorities were not able to provide data on several DNFBP 'financial institutions' listed in the FTR Act, namely trust and company service providers, pawnbrokers, dealers in antiques/art dealers, travel agencies, or dealers in motor vehicles/aircrafts/other.

Application of risk mitigating measures

265. The FIU has issued several advisory policies and guidelines to financial institutions and DNFBPs on how to apply the risk based approach stipulated in the FTR Act and Regulations. The banking sector was well aware of the measures in the Act and Regulations, but other sectors are not as aware of and/or did not understand those measures to the same degree as banks. The FIU has not conducted face-to-face assessments or reviews of the institutions it supervises, and therefore can only obtain limited knowledge on the level of implementation of its policies and guidelines.

Financial sector

266. Four of the six commercial banks in Fiji are branches of foreign banks; one is a subsidiary of a foreign bank. There is one locally owned bank. The banks have AML/CFT policies and procedures in place. Representatives of the banks advised the assessment team that they have implemented risk mitigation measures. The RBA has monitored banks, credit institutions, insurance companies, Restricted Foreign Exchange Dealers (RFED) and stockbrokers to ensure those institutions have ML/TF risk frameworks to mitigate risk. However, credit unions have not implemented ML/TF risk measures required under the FTR Act.

267. Representatives from banks described difficulties in obtaining information from the company registrar's office due to delays caused by not having the records current or non-availability of the information.

DNFBP sectors

268. DNFBPs confirmed that the FIU has not carried out any on-site inspections and supervision. They have been monitored by the FIU via their submission of various reports on electronic wire transfers, large cash transactions and suspicious transactions and this monitoring is considered the only risk mitigation measure available. The FIU makes use of its IT alert system and intel function to monitor compliance of DNFBPs. Through such systems, the FIU is able to detect deficiencies in the recordkeeping or CDD carried out by the reporting entities when following up on the STRs, ETRs and CTRs. However, this supervisory approach is seriously deficient, as many entities not reporting STRs and CTRs will escape from the offsite review by the FIU.

269. As noted above, awareness of CDD requirements under the FTR Act, Regulations and Guidelines is very low across all DNFBPs. The DNFBP sector mainly complies with Exchange Control Act requirements, due to the close monitoring carried out by the FIU and the RBF. However, other required measures on CDD, especially on risk management and internal control systems, are not in place.

270. There is a lack of risk-based approach or application of risk mitigating measures among DNFBPs. A survey on lawyers and accountants carried out by the FIU between 2011 and 2012 reached a similar conclusion, consistent with the assessment team's view during the on-site visit of a low level of understanding of ML/TF risks among DNFBPs.

Application of CDD and record-keeping requirements

271. The number of inspections of financial institutions' and DNFBPs' compliance with CDD and record-keeping requirements have been insufficient for Fiji to generate meaningful statistics to determine how well CDD and record-keeping measures are applied.

272. The RBF's 2014 on-site assessment scope indicates it will 'sample test newly opened deposit accounts to check for compliance with documentation and requirements and recordkeeping requirements'. The RBF's scoping document also indicates that the RBF will review material from financial institutions prior to the on-site assessment, including documents in relations to CDD, and all related policies that address the requirements of the FTR Act. The FIU, however, does not have a similar supervisory plan for the institutions it regulates.

Financial sector

273. The FIU has issued FIU-Guideline No. 4 on CDD to assist institutions to understand their obligations. Both the RBF and the FIU take telephone queries from financial institutions on CDD requirements. Some financial institutions reported refusing business in cases where customers refused, or were unable, to meet the CDD requirements.

274. Banks are aware of CDD requirements and, in the case of the five international banks, they have implemented group-wide policies on CDD. Several of the banks cited general and ad hoc CDD training, on-going staff training, computer-based training facilities and role-specific CDD training. With respect to the international banks that the team met, the banks advised that CDD processes and implementation are being assessed during regular internal audits. The one locally-owned bank only

recently entered the market as a full-service bank in March 2014, having previously existed as a home loans operation only. The locally-owned bank was also aware of CDD requirements, which it integrated into its business systems as it transitioned from home loans into banking. This was achieved with advice and support from the RBF. The locally-owned bank placed particular focus on simplified due diligence policies to encourage banking by traditionally excluded sectors.

275. From interviews with representatives in the foreign exchange/MVTS companies, the institutions appear to conduct CDD in line with the FTR Regulations, including collecting company registration information. Credit unions, on the other hand, which are not supervised for AML/CFT compliance and only have customers who qualify as members, collect only very basic “Know Your Customer” (KYC) information.

276. The foreign exchange/MVTS companies appear to conduct CDD in line with the FTR Regulations, including collecting company registration information. Credit unions, on the other hand, (which are not supervised for AML/CFT compliance) with a limited customer (member) base, simple deposit taking, a lack of AML training and unsophisticated financial products use very simple KYC mechanisms.

277. The on-site assessments of banks conducted by the RBF to date have identified occasional deficiencies in the following areas:

- Weakness in the institutions’ transaction monitoring
- Lack of ML/TF risk awareness training
- Lack of management oversight of AML functions and obligations
- Incomplete collection of know your customer information – mandatory details of customer and source of funds not recorded
- Transaction report details incomplete
- No screening for politically exposed persons (PEPs)
- AML policy not amended to meet new requirements
- Source of funds for bulk payments of loan not recorded

278. The deficiencies noted above include weaknesses in CDD and recordkeeping. The RBF requires institutions to report the assessment findings to their Board. Remediation must be carried out by the institutions with quarterly update reports to the RBF.

279. In 2014, RBF carried out on-site assessments of three stockbroker firms to assess the effectiveness of each firm’s risk management framework with regard to the inherent ML risks. None of the firms was fully compliant in the area of CDD. Client identification information was not obtained and not verified; occupation information was not collected; and source of funds not obtained. One of the stockbrokers was found not to have maintained customer records. All three firms were rated ‘needs improvement’.

280. Of the four recent assessments of RFEDs, the compliance issues were not in relation to customer due diligence requirements but the keeping of all identification records. The assessments also identified that there were transactions not reported on, or not reported within the required timeframe, and lack of ML/TF awareness by staff.

DNFBP sectors

281. The FTR Act and FTR Regulations require CDD and recordkeeping of the CDD information. The FIU has issued FIU Guideline 4 on CDD, and various other policy advisories, to provide guidance on the CDD and recordkeeping requirements. No information was provided regarding the overall compliance level of the DNFBPs in applying the CDD and record-keeping requirements. The information may not be available, as the FIU has not had the resources to conduct on-site inspections of the institutions.

282. As noted above, the FIU has carried out a survey on the compliance of lawyers and accountants. The scope of the compliance questionnaire was to assess:

- (a) policy and procedural measures in place within the entity to comply with the FTR Act and Regulations
- (b) appointment and functioning of an AML compliance officer, and
- (c) staff recruitment and training for staff on AML issues and requirements

283. The results of the survey were not provided to the assessment team.

284. As stated above, the assessment team met SROs in order to ascertain how AML/CFT preventive measures were being applied by DNFBPs. According to the Institute of Accountants, accountants are generally complying with the CDD and recordkeeping requirements, but there is a gap between the large and small firms in their application of the preventive measures on risk management and internal control systems required under the FTR Act and Regulations. There are also risks with unregistered tax agents that may carry out financial services illegally.

285. In a meeting with the Legal Practitioners Unit and the Law Society it was confirmed that there is a gap between the large law firms and small law firms in applying the CDD measures in compliance with the FTR Act.

286. The Real Estate Board did not identify any issues related to the compliance of the CDD and recordkeeping requirements. Further information, data and statistics were not available to support this view.

Application of enhanced or specific CDD and recordkeeping requirements

287. Even though some entities indicated their concerns relating to PEPs or high-risk countries identified by the FATF (mainly from the ML perspective, rather than TF), there is no evidence indicating that they have enhanced CDD in place in regard to high-risk customers, products, services and new technologies.

Financial sector

288. The FTR Act has requirements for institutions to identify and conduct specific due diligence on PEPs, however the definition for PEPs under the FTR Act do not include domestic PEPs and do not include persons who are or have been entrusted with a prominent function by an international organisation. Fiji Supervisors therefore are unable to enforce the requirements of the international standards for financial institutions to conduct due diligence on domestic PEPs and persons entrusted with a prominent function.

289. Banks are aware of their obligations in relation to screening and carrying out enhanced due diligence for foreign PEPs. Although other financial institutions appear to be aware of the requirements in relations to foreign PEPs, not all of those institutions were aware of the source of information they need in order to comply with all the PEPs requirements. In the interviews, Insurance companies advised that they screen for domestic PEPs as pay-outs are only payable to Fijian citizens or residents with a three-year visa.

290. Foreign banks' correspondent services are mainly to their foreign branches and are monitored by internal controls. The new local bank, which has 6% of the banking market, is building on this capability.

DNFBP sectors

291. No information was provided on how DNFBPs, especially lawyers, accountants and real estate agents, apply enhanced or specific measures for PEPs and there was no common understanding of the requirements in this regard. Real estate agents generally lack any understanding of their requirements in relation to PEPs. There was also no common understanding amongst lawyers and accountants in this regard. One of the law firms spoken to was of the view that the PEP requirements related only to domestic PEPs and not to foreign PEPs.

292. In meetings with SROs and accounting, legal and real estate firms (two real estate firms, one law firm and one accounting firm), only the accounting firm (a global firm) had a well-established AML/CFT policy and risk management system in place to mitigate ML and TF risks. The balance of the entities did not have risk management systems or apply enhanced CDD or specific measures for PEPs; new technologies; wire transfers rules; targeted financial sanctions relating to TF; or higher-risk countries identified by the FATF.

Reporting obligations and tipping off

293. The following table outlines the STR reporting profiles for the different sectors in Fiji:

Table 18 Suspicious transactions reported by sectors

Financial Institutions and Persons Reporting	No. of STRs Received				
	2010	2011	2012	2013	2014
Commercial Banks	538	650	477	425	267
Money Remittance Service Providers	75	39	68	42	43
Finance Companies	1	0	0	5	4
Members of the Public	6	24	22	40	58
Regulatory Authorities	4	1	3	3	3
Law Firms	1	5	4	0	1
Accounting Firms	1	2	1	2	1
Insurance Companies and Superannuation	3	1	2	3	2
Securities, Unit Trusts	0	0	0	0	1
Real Estate Businesses	0	2	1	1	1
Others	0	4	1	1	2
TOTAL	629	728	579	522	383

294. There is significant variation across sectors in the filing of STRs, some of which does not match with the risk profile of each sector. Assessors are concerned that there are very low numbers of STRs in the real estate sector (assessed as high risk for ML) and legal sector (assessed as medium risk for ML). This appears to be a function of the low levels of awareness of the risk in each sector and the lack of supervisory oversight of these DNFBPs.

295. There is also a concern that the numbers of STRs in the banking sector has declined significantly in 2014 compared to previous years. As explained by the FIU in IO.6 this is the result of improving STR quality and tightening reporting policy of financial institutions. The FIU indicated that they have examined reporting levels and continue to monitor variations. Feedback from the FIU over a number of years has sought to ensure increasing quality of STRs.

296. Aside from the banks, whose routine training provides for institutional awareness of reporting requirements, understanding of the tipping-off provision varied across financial institutions and the DNFBPs met with during the on-site. While one reporting entity was able to advise of a case whereby a suspicious transaction was handled as an ordinary transaction at the front counter, with an STR submitted after the customer had left, another entity advised that it would in fact request further information or senior management intervention at the counter should a transaction appear suspicious, demonstrating a fundamental lack of understanding of the tipping-off principle.

Internal controls and legal/regulatory requirements impeding implementation

Financial sector

297. Banking Supervision Policy Statement No. 6 requires financial institutions licensed by the RBF to develop effective internal policies, procedures and controls that identify, measure, manage and monitor ML/TF risks. It also requires the financial institutions to comply with the FTR Act and Regulations. Through this instrument, the RBF can impose sanctions for failure to comply. The foreign banks (five of the six banks) have implemented internal controls to comply with AML/CFT requirements. The local bank was in the process of implementing internal controls for all its operations, in particular in relation to wire transfers.

298. Besides the banks, during the on-site, the other financial institutions advised that they have implemented controls and procedures to ensure compliance with AML/CFT requirements. From the on-site meetings with entities in the private sectors, it appears that the entities are not aware of the technical deficiencies in the FTR Act and Regulations in relation to the enforceability (or lack of enforceability) of the requirements in those instruments.

DNFBP sectors

299. DNFBPs are required to implement internal controls and procedures under the FTR Act and Regulations. There are also FIU guidelines and policy advisories that explain the obligations under the FTR Act. How well these institutions have implemented the requirements is not known, as the FIU has not yet assessed the institutions compliance with their obligations in this area.

300. The only information that can provide some idea about the systems in place to detect suspicious transactions by DNFBPs is the statistics on STRs reported. Despite the fact that all DNFBPs have reported STRs to the FIU, the level of reporting, particularly within the legal and the real estate sectors, is low.

301. LEAs are able to access all information held with DNFBPs, under a court order (warrant), for the purpose of investigating ML/TF or relevant predicate offences. The RBF is able to access all information held by its supervised financial institutions in order to assess AML/CFT compliance. The FIU likewise is able to access information held with financial institutions and DNFBPs for the purpose of performing its functions, including assessing AML/CFT compliance.

302. During the on-site visit, the assessment team confirmed that the FIU has not carried out any on-site examinations of DNFBPs and all the findings on non-compliance issues have been detected from the trigger of suspicious transactions from the Alert and Monitoring System and follow up actions in which they requested further information from the reporting entities. The FIU did not look into the risk management or internal control systems of the DNFBPs unless they detect such deficiencies when following up on the STRs, CTRs or ETRs received. According to the statistics on breaches and supervisory actions taken in the past few years, all findings were mainly related to breaches of the Exchange Controls Declaration or Tax Law. No information was provided or knowledge evident regarding the compliance level of the DNFBPs and how they apply the required internal controls and procedures.

303. **Fiji has a moderate level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

304. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 and R.34 and 35.

Key Findings

Immediate Outcome 3 (Supervision)

- Some of the characteristics of an effective supervision system are present in Fiji.
- Fiji has a legal framework in place to implement fit-and-proper testing for market entry and ongoing management within the financial sector and for DNFBPs (with the exception of dealers in precious metals and stones).
- The FIU is the designated supervisor for DNFBPs but has limited information regarding the size and actual operation of the DNFBPs under its supervision. Except for visits relating to STR reporting obligations, the FIU has not conducted any on-site supervision examinations of the institutions it is responsible for due to severe resource constraints.
- A risk-based approach to monitoring and supervising DNFBPs is not evident. Sectors identified in the NRA as vulnerable to high ML/TF risk, such as real estate agents, have not been subjected to on-site inspections.
- The FIU is unable to provide assurance on whether those institutions have adequate systems and controls in place to identify and manage ML/TF risk and whether they have internal controls and procedures to comply with the requirements of the FTR Act and Regulations.
- The RBF is the designated supervisor for banks, credit institutions, insurance, foreign exchange dealers, moneychangers and capital market intermediaries, and has sufficient legislative powers to supervise those institutions. The RBF has a good understanding of the risks in the sector and uses information from the FIU when supervising banks and other financial institutions.
- The RBF's supervision activities in the past have been largely related to its prudential responsibility, however since 2014 the RBF has conducted AML/CFT-focused compliance assessments on three banks, one credit institution, two unit trusts, nine Restricted Foreign Exchanged Dealers (RFEDs) and two moneychangers and provided feedback in this regard.
- The FIU lacks a clear and comprehensive sanctioning power for obligations under the FTR Regulations, the Advisory Policies and Guidelines as required by the FATF standards. The FIU's power to sanction is limited to some of the CDD and reporting obligations under the FTR Act (Parts 2 and 3).
- Generic DNFBP guidelines do not take into account different business contexts and risks of the various DNFBPs (discussed in Chapters 2 and 5). Therefore, the Guidelines are not effective in assisting DNFBPs to understand adequately, and to effectively respond to, ML/TF risks related to their specific sector.

- Although the RBF and the FIU understand ML/TF risks, and have promoted AML/CFT obligations to their responsible sectors, the FIU lacks adequate resources to carry out its supervisory functions effectively. The FIU has serious staff shortages, with no available resources to undertake on-site inspections of DNFBPs. The FIU has to rely on off-site monitoring of EFTRs and CTRs in order to screen out irregular transactions for further compliance follow-up. Additional financial resources have been allocated to build an intelligence case management system to provide a central database to monitor and disseminate timely reports automatically.
- The FIU has not adopted any risk-based supervision, or prioritised resources for the high-risk areas such as real estate or trust and company services provided by legal and accounting professionals.
- Although supervisors have issued guidelines and ongoing advice on AML/CFT obligations, there is a need to improve further in this area by updating guidelines (see R.34 in TC annex) and in particular, to raise awareness of ML/TF risks and trends, and to provide more feedback to supervised entities.

Recommended Actions

Immediate Outcome 3 (Supervision)

- The FIU should apply a ML/TF risk-based approach to supervising their institutions ensuring an appropriate frequency and intensity of AML/CFT supervision across all sectors. This would contribute to a more effective management of ML/TF risk in Fiji.
- The FIU powers to enforce compliance with FTR Act and Regulations are severely limited due to deficiencies in legislation. Fiji should amend the relevant legislations to ensure that they have enforceable powers to allow the FIU to be effective.
- Additional human resources and technical skills are required for the FIU. Specifically, the FIU needs significantly more resources to commence on-site inspections of the institutions it has responsibility for and to meet the FIU's supervisory obligations. With the current staffing levels, the FIU have been able to carry out analysis of its data but cannot fully perform its supervisory functions across all of the sectors for which it is responsible.
- Fiji's NRA rated the ML/TF risk vulnerability for the Securities Exchange should be re-evaluated and subject to an appropriate supervision strategy.

Immediate Outcome 3 (Supervision)

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

305. The RBF is the licensing and supervisory authority for banks, credit institutions, insurance companies and intermediaries, securities intermediaries, RFEDs, moneychangers and unit trusts. The Banking Act (1995), the Insurance Act (1998), the Capital Markets Decree (2000) and the Exchange Control Act (1985) provide the RBF's regulatory authority over these sectors. Institutions licensed, regulated or supervised by the RBF are also supervised for AML/CFT obligations under s.36 of the FTR Act and Schedule 2 of the FTR Regulations.

306. Institutions that are licensed, regulated or supervised by the RBF must meet fit-and-proper requirements to obtain and renew their licence. At the annual renewal of a RFED licence, the RBF reviews the RFED's compliance with the Exchange Control Act and the FTR Act.

307. The RBF provided evidence of four (4) licence applications that had been refused or revoked, demonstrating that controls are in place and being implemented to prevent criminals and associates from entering the market. For example, in 2009 the licence of Galaxy International Limited (a forex dealer) was revoked due to the company's serious breaches under the Exchange Control Act and Financial Transactions Reporting Act, and non-compliance with its conditions of licence. Galaxy International Limited had been issued with a restricted foreign exchange dealer licence in 2004, and was since supervised by the Reserve Bank of Fiji.¹⁰

308. On two occasions, the RBF objected to proposed appointments. In one instance, the RBF required the Board of Directors to provide oversight of the applicant and in the other, the appointment was approved on the basis that the applicant does not hold a position that significantly influences the operation of the institution.

Figure 6 Case example: Failure of responsible person to meet fit-and-proper test, 2014

During an evaluation of a financial institution licence application received in 2014, the RBF found that the proposed Chief Executive Officer did not meet the 'financially sound criteria of the fit-and-proper assessment. The RBF conducted further credibility checks with the Data Bureau, Office of the Liquidator, Official Receiver and a file review with the relevant commercial bank. RBF formally advised the applicant of the findings of the fitness and propriety assessment. The applicant conducted further credibility checks and submitted its assessment to the RBF in October 2014

309. With the exception of precious metals and gem dealers, there are measures in place to prevent criminals and their associates from operating within the DNFBP sectors as follows:

310. The Legal Practitioners Unit under the direction of the Chief Registrar of the High Court has the authority to issue practicing certificates to legal professionals under its licensing framework, which includes fit-and-proper tests. An applicant for a practising certificate must make a declaration on his or her character, including providing a certificate of police clearance, and pass health and fitness tests in order to practice law. The Unit carries out additional checks. So far no applications for practicing certificates have been rejected or suspended.

311. The Fiji Institute of Accountants is created under the Fiji Institute of Accountants Act. The Institute has a framework in place for licensing and checks on its members. Regarding the licensing and disciplinary function of the Fiji Institute of Accountants, the SRO has issued a code of conduct and continuous education programs are in place, as well as monitoring mechanisms through the Peer Review Committee, to ensure the ethical conduct of the members. So far, there has only been one case of a serious breach of the code of conduct, resulting in suspension of membership.

312. The Real Estate Agents Licensing Board of Fiji (REALB) is a statutory body and is responsible for licensing agents, and granting certificates of approval to salespersons and branch managers. While there are licensing requirements, the criteria are mainly experience-based, although

¹⁰ Arising from the facts of 2009, in 2012 the Fiji High Court convicted the owner/operator of Galaxy International of failing to file STRs in relation to the business and awarded a suspended sentence of six months imprisonment sentence (*State v. Raza* 2012 - HAC 200/2010).

background checks are undertaken to ensure that agents and sale persons with criminal records are not licenced. No evidence was provided to the assessment team of refusals of licences to agents and salespersons based on failure to meet fit and proper tests.

313. Under the existing Gaming Decree 2009, casino operators and their management are also subject to a fit-and-proper test, although currently there are no land-based casinos in Fiji.¹¹

Supervisors' understanding and identification of ML/TF risks

314. The RBF has good understanding of ML/TF risk in the banking sector. The RBF is a member of the National AML Council, which was responsible for identifying ML/TF risks and preparation of the Fiji ML/TF National Risk Assessment. The RBF has developed manuals on ML risk examinations to provide its compliance assessors with guidance on conducting compliance assessments. In 2000 the RBF issued Banking Supervision Policy Statement No. 6 in line with the Basel Core Principles for Effective Banking Supervision. Supervision Policy No. 6 was revised in 2014 requiring financial institutions to have a comprehensive ML/TF risk management framework in place. The RBF has also issued a set of minimum standards with which the financial institutions must comply.

315. The FIU has limited information regarding the size and actual operation of DNFBPs under their supervision. DNFBPs played a minimum role in the NRA consultation process. The assessment team was informed that the FIA, a law firm and an accounting firm have been consulted in the NRA process but this consultation seems to be not adequate as all the licensing bodies and DNFBP firms met indicated no awareness of the NRA, and only recently received the results of the NRA. Although the FIU invited DNFBPs to the NRA briefing sessions, the attendance of the DNFBP sectors was extremely low. The NRA may therefore not capture all of the necessary information and data from the private sector to fully support an accurate assessment, and understanding, of ML/TF risk. Given this, the supervisors do not have an adequate understanding of the ML/TF risks associated with the DNFBPs.

Risk-based supervision of compliance with AML/CFT requirements

Financial sector

316. The RBF has developed a financial institution work plan for 2014 that incorporates AML/CFT-related supervision into its prudential supervision framework. The Financial Institutions Group 2014 Work Plan sets out the RBF's supervision targets which includes a risk-based approach to prudential surveillance; a reference to reviewing AML policy; and participation in the AML Supervisors and Regulators Working Group.

317. Since 2014, the RBF has increased its focus on compliance with the FTR Act. The RBF provided an example of a scoping document in which it indicates that the RBF: (1) assesses the AML risk of an institution; (2) assesses the institution's AML framework; (3) reviews policy documents that enforce requirements of the FTR Act; and (4) tests processes and carries out an on-site assessment. Based on a review of the RBF's 2014 manuals and standard operating procedures for ML risk examinations, RBF is now attempting to identify ML risk in financial sectors for which it has supervisory responsibility, as well as assess compliance by financial institutions with the FTR Act and Banking Supervision Policy Statement No. 6 for banks.

¹¹ A revision of gaming legislation is underway to improve the regulatory regime.

318. The record of on-site compliance examinations for AML/CFT undertaken by the RBF is detailed in the table below.

Table 19 RBF AML/CFT on-site compliance examinations, 2007 - 2015

Year	Banks <i>Total sector: 2007-11: 5 banks 2012-15: 6 banks</i>	Credit Institutions <i>Total sector: 3 institutions</i>	Restricted Forex Dealers & Moneychangers <i>Annually – at licence renewal</i>	Insurance Companies <i>Total sector: 2 companies</i>	Capital Market Intermediaries & Unit Trusts
2007	1	1	-	-	-
2008	2	2	11	-	-
2009	1*	-	11	1	-
2010	1	-	11	-	-
2011	1	-	9	2	-
2012	1	-	8	1	-
2013	1**	1	9	1	-
2014	2	1	11	-	2 unit trusts 3 stockbrokers 1 stock exchange
2015	1	-	-	-	-

* Follow-up from 2007, ** Commenced operations November 2012

319. The banks advised that the on-site assessments carried out by the RBF take approximately three to four weeks. The RBF has advised that each assessment of banks for AML compliance is a comprehensive assessment of all obligations under the FTR Act. RBF's strategy to assess one bank a year on average when the sector is rated high for ML risk is not consistent with a risk-based approach to supervision.

320. Although RFEDs are inspected prior to the annual licence renewal, the inspection appears to be limited to the prudential requirements and 'spot checks' of Know-Your-Customer (KYC) and transaction reporting obligations only. Full review of the RFED's compliance with the FTR Act and Regulations is not evident even though the sector is rated high ML risk.

321. The NRA identified banks and the investment/safe custody to have very high vulnerability to ML risk.

DNFBP sectors

322. The FIU is responsible under the FTR Act and Regulations for supervising DNFBPs for compliance with Part 2 and 3 of the FTR Act (recordkeeping/CDD and STR reporting). There is no evidence, however, indicating that the FIU has developed a ML risk-based approach to supervising these sectors under their responsibility for compliance with FTR Act and Regulations, in particular the real estate sector which is identified under the NRA as having very high ML vulnerabilities. Those entities are as follows:

Table 20 FIU AML/CFT compliance examinations, 2007 – 2015

Year	Lawyers		Accountants		Real estate Agents		Precious metal and gem dealers	
	Off-site	On-site	Off-site	On-site	Off-site	On-site	Off-site	On-site
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0
2011	20	0	7	0	0	0	0	0
2012		0		0	0	0	0	0
2013	0	0	0	0	0	0	0	0
2014	0	0	0	0	0	0	0	0
2015	0	0	0	0	0	0	0	0

323. The FIU has not conducted any on-site compliance monitoring and only carried out limited (in time and scope) and voluntary off-site monitoring of lawyers and accountants, the most recent of which was in 2012. From 2011-2012, the FIU issued questionnaires to all law firms and accounting firms. Seven accounting firms (out of 20 surveyed) and 20 law firms (out of 112 firms surveyed) responded to the questionnaire. The scope of the compliance questionnaire was to assess:

- the policy and procedural measures in place within the entity to comply with the FTR Act and Regulations;
- the appointment and functioning of an AML compliance officer;
- staff recruitment, and training on AML issues and requirements.

324. As noted above this monitoring was voluntary in nature only. The FIU did not follow up with firms that did not respond to the questionnaire. Off-site supervision work by the FIU is carried out by one person (the manager of the supervision unit) with the support of two IT staff. This lack of resources seriously impedes effective DNFBP supervision and increases the vulnerabilities of DNFBPs to ML and TF.

325. As noted in the table above the FIU had not conducted any on-site inspections of institutions it supervises for AML/CFT compliance, noting that it lacks resources for this function.

326. The FIU does not conduct risk-based approach to supervision, primarily because of a lack of resources. In the current situation the FIU has no way to obtain a sound understanding of the ML and TF risks posed by each DNFBP, including their main business, average size, the main products and services and delivery channels used, in order to effectively set priorities for a risk-based approach to supervision.

327. The FIU activity in relation to supervision is in the analysis of STRs to look for instances of non-compliance of DNFBPs. When detected they report to the FIU's compliance team. The compliance team consists of one full-time staff member who conducts off- and on-site monitoring of STR compliance outside the scope of DNFBPs but within the supervisory ambit of the RBF.

Table 21 FIU intelligence team off- and on-site inspections of data quality on other financial institutions for reporting requirements

Year	Banks	Restricted Foreign Exchange Dealers
2009	0	6 (onsite)
2010	0	0
2011	0	0
2012	0	0
2013	3 (offsite IT compliance projects- completed 2014)	1 (offsite IT compliance projects commenced 2013 and completed 2014)
2014	1	1

328. Other than in 2009 for RFED (as noted in this table), the FIU has not conducted any on-site inspections for any of its responsibility reporting entities over the preceding six years.

Remedial actions and effective, proportionate, and dissuasive sanctions

329. Evidence was provided on remedial actions being required of banks following a compliance assessment by the RBF. There have been only two banks subjected to more than one assessment and the RBF has found that these banks undertook the required remedial actions.

330. The RBF has revoked three RFED licences and one licence for a moneychanger. Three institutions ceased operations when they could not meet the requirements of the notices issued. Four applications for RFED licences were rejected when they did not satisfy the fit-and-proper requirements.

331. There has been one successful case where the director of an institution was convicted and fined for breaching s.14 of the FTR Act (case example above). The identification of that breach was the result of a joint effort from the FIU and the RBF in 2009.

332. No information was provided confirming whether the FIU has issued any remedial actions to the institutions it regulates. Importantly, neither the FTR Act nor any other laws empower the FIU to impose sanctions in case of non-compliance with the Parts 2 and 3 requirements in the FTA Act and Regulations (CDD, recordkeeping and reporting). Moreover, these requirements are the only AML/CFT requirements that may be monitored by the FIU, limiting its AML/CFT compliance mechanisms as a result.

333. The FIU mainly monitors compliance through review of STRs, CTRs and ETRs received and follow up on any deficiencies in related to CDD and recordkeeping. However, this supervisory approach is not holistic, relatively passive and therefore very limited, as entities not reporting STRs or CTRs will not be captured. Moreover, this supervisory approach fails to obtain an adequate understanding on whether AML/CFT compliance is in line with the FTR Act and Regulations, and whether internal control systems are implemented properly or any enhanced CDD applied for those high-risk areas. The statistics on the findings in the offsite supervision also indicated that the findings were mainly related to the completeness and accuracy in information submitted in the ETRs and CTRs.

334. To date, in order to address instances of non-compliance authorities have issued warnings, engaged in discussions and provided explanations and follow-up training. The non-compliance issues cited were mainly in relation to reporting requirements but also cover CDD, staff training and record keeping.

Impact of supervisory actions on compliance

335. According to feedback from financial institutions, the RBF's supervisory activity has generally had a positive impact on the level of awareness and compliance in the banking and remittance sectors. Moreover, outreach by the FIU has also raised general level of awareness amongst many of the other regulated reporting entities.

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336. However, given the limited sanctions that have generally been imposed so far (none by the FIU) there does not appear to be evidence that sanctions to date have improved compliance behaviour.

337. With respect to the offsite, monitoring process undertaken by the FIU for STR reporting compliance, whenever an AML/CFT breach is confirmed the FIU notifies the financial institution or DNFBP of its findings. Following this, in many cases the FIU will meet with the relevant financial institution to discuss the breach, the reason for the breach, how it can be rectified, and the expected timeline for it to be rectified. In some cases, however, the financial institution or DNFBP will rectify the identified breach immediately, without any meetings with the FIU being required. After any consultation process, the FIU will inform the financial institution to rectify the breach within the agreed timeline.

338. However, the level of STR reporting continues to be low notwithstanding the FIU's actions for many sectors considered high risk of ML and TF (see IO.6) and on this basis, the assessment team was not persuaded that the supervisory visits of the FIU are effective in changing reporting entities behaviour, at least in the high-risk sectors.

339. The lack of enforceable means and resources in the FIU impedes effective supervision of DNFBPs and prevents the collection of accurate information on the impact of the FIU's supervision actions on DNFBP compliance.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

340. The RBF has issued Banking Supervision Statement No. 6 to promote understanding of AML/CFT obligations. From time to time the RBF also publishes press releases on matters relating to institutions' compliance obligations and clarification of compliance requirements.

341. The FIU promotes increased understanding of AML/CFT obligations and ML/TF risks and has developed a computer-based training centre for financial institutions and DNFBPs (free to use).

342. In addition, the FIU has issued:

- seven policy advisories on customer due diligence, cash transaction reporting requirements, recordkeeping requirements, suspicious transaction reporting requirements and risk-based approach to complying with the FTR Act and Regulations
- four guidelines on identifying and reporting suspicious transactions, reporting cash transactions and customer identification and verification requirements

343. The FIU has also provided training to financial institutions and DNFBPs on the requirements of the FTR Act and wider issues relevant to AML/CFT, as follows:

Table 22 FIU training to FIs & DNFBPs, 2010 - 2014

Year	2010	2011	2012	2013	2014
Number of employees of FIs and DNFBPs Present at FIU training	212	119	453	27	147
Number of FIs & DNFBPs	6	5	8	1	6
National AML Learning Centre- Number Completed Courses	2212	59	39	22	92

344. In addition one of the larger legal firms and accounting firms, provides some internal AML/CFT training to their staff, but this is very limited. The last training for the law firm was some years ago.

345. The real estate sector does not have any AML/CFT training – through either the Institute or in house real estate agents.

346. For larger commercial banks, internal AML/CFT training is computer-based and staff members are required to complete this type of training annually as part of their professional development.

347. The FIU also receives support from SROs and there is a mechanism in place for sharing information and the organisation of AML/CFT training. There has been some limited training and workshops held jointly with the Law Society and the Fiji Institute of Accountants, which was useful for raising awareness in the private sector.

348. Fiji has a moderate level of effectiveness for Immediate Outcome 3.

¹² National AML Learning Centre launched 2010

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

349. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 and R.25.

Key Findings

Immediate Outcome 5

- The NRA does not assess the risk of ML and TF arising from all forms of legal persons but does indicate generally that there is a high risk of ML and TF through the use of companies.
- Only basic shareholder information on companies is collected by the Registrar of Companies and made publicly available. Companies themselves are not required to collect and/or hold up-to-date beneficial ownership information beyond the immediate shareholder. Due to shortcomings in the ability to sanction for breaches of the FTR Regulations, financial institutions doing business with companies are not required by law to collect beneficial ownership information beyond basic information.
- Consequently, Fiji's ability to provide international cooperation on beneficial ownership information is severely limited. The risks posed by bearer share warrants for companies are not mitigated by any additional measures or requirements.
- Trustees are not required by law to collect beneficial ownership information. There is no information on domestic trusts unless the trust is incorporated under the Companies Act 1985 as a trust company. There is no information in Fiji on foreign trusts operating in the country.

Recommended Actions

Immediate Outcome 5

- Conduct ML and TF risk assessments for differing legal persons such as private companies, public companies, foreign companies, etc., to identify where the risks are and to address those specific issues.
- Conduct ML and TF risk assessments for differing forms of legal arrangements (domestic trusts, foreign trusts) and address those risks with mitigating measures.
- Ensure that information on the creation of legal persons, including those that are not registered with Registrar of Companies, is publicly available and updated on regular basis.
- Ensure that information on companies in the Registrar of Companies office is required to be up-to-date and accurate.
- Ensure that accurate and current beneficial ownership information on legal arrangements is available to competent authorities in a timely manner.
- Implement measures to mitigate the ML/TF risk posed by bearer share warrants or alternatively prohibit their issuance.

- Ensure that competent authorities have timely access to a company's shareholder register and ensure that information on the beneficial owner of legal persons is maintained and accessible to competent authorities in a timely manner.

Immediate Outcome 5 (Legal Persons and Arrangements)

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

350. Information on the creation and types of legal persons in Fiji is available through the Office of the Registrar of Companies. No information was provided on foundations (if any) in Fiji. Information on legal arrangements (including trusts) is not centrally located and not generally available.

351. There are no mechanisms in place to check or verify the authenticity of information filed with the Registrar of Companies and it appears the tax authorities have more information about legal persons (i.e., present directors and activity of the entity) and arrangements than the Registrar of Companies.

352. Legal persons are not required to collect and hold up-to-date beneficial ownership information beyond the direct shareholder. Due to shortcomings in the ability to sanction for breaches of the FTR Regulations, financial institutions doing business with companies are not required by law to collect beneficial ownership information beyond basic information.

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

353. The NRA does not assess the risk of ML and TF, nor does Fiji understand the same risks, arising from all forms of legal persons including public and foreign companies as well foreign limited liability partnerships registered in Fiji). However, it is generally understood by some law enforcement agencies in Fiji (including FPF) and reflected in the NRA, that there is a high risk of ML and TF through the use of legal persons including their use in foreign investments within Fiji. FPF and FICAC investigators also understand that legal persons created in Fiji can be used to facilitate predicate crimes.

354. Cases of corruption, involving companies have contributed to some understanding and awareness by authorities of the vulnerabilities and the extent to which companies may be misused for predicate crimes and ML. However, most other agencies (beyond FPF and FICAC) lack a clear understanding of the general risks and vulnerabilities associated with legal persons and trusts. There has been no concentrated effort to monitor those entities and understand the differing risks posed by the various forms of legal persons. Mitigating measures to prevent the misuse of legal persons and arrangements are minimal.

355. The FTR Act and Regulations include some requirements for preventive measures (CDD) to be applied to legal persons and arrangements. However, there is no mechanism to monitor these entities, other than via the FIU if a suspicious transaction report is generated.

356. As Fiji does not fully understand the risks of ML and TF posed by legal persons and legal arrangements, the mitigating measures that are in place cannot be considered adequate.¹³

¹³ A new Companies Act came into force in January 2016 (after the on-site visit).

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

357. The FPF and FICAC can obtain accurate and current basic information on legal persons in Fiji through the Registrar of Companies office, without a search warrant for intelligence purposes. There is no such mechanism in relation to legal arrangements given the lack of a central registry for trusts.

358. Under the Companies Act, beneficial ownership information is not required to be collected and maintained by the Registrar of Companies. LEAs can obtain basic and beneficial ownership information on companies from financial institutions and DNFBPs (such as lawyers and accountants) if collected and held pursuant to a search warrant.

359. CDD requirements in s.4 of the FTR Act provide that financial institutions and DNFBPs are required to obtain and maintain information on companies and their beneficial owners. However, due to lack of enforceability the CDD obligations in the FTR Regulations made pursuant to the FTR Act, FIs and DNFBPs are not required to collect the important information relating to ultimate ownership and control of legal persons (s.10(3) of the Regulation). LEAs can access information held with FIs and DNFBPs which is not required to go beyond the immediate beneficial owner, via a search warrant, if it is collected. Representatives of FIs and DNFBPs indicated during the evaluation on-site visit that beneficial ownership information beyond the immediate shareholder (in the case of a company), or direct beneficiary (in the case of a trust) is not always available if requested.

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

360. As noted above, FICAC and police investigators have the authority through search warrants to access information on trusts in Fiji held with trustees or other parties such as FIs and DNFBPs. The FIU can access information on trusts held with FIs and DNFBPs. Law enforcement agencies rely on the FIU to provide this information. However, available information is limited and beneficial ownership information other than direct beneficial ownership information is not always available.

361. Fiji's ability to provide international cooperation on beneficial ownership information beyond immediate shareholders is limited.

362. Fijian authorities are unaware of the extent to which bearer share warrants are actually issued in the country and are generally unaware of the risk they pose for ML and TF. Additionally, those risks are not mitigated by any additional, specific, measures or requirements - statutory, administrative or otherwise.

363. Trustees are not required by law (common law or statute law) to collect beneficial ownership information. There is no information on domestic and foreign trusts.

Effectiveness, proportionality and dissuasiveness of sanctions

364. No information has been provided by Fiji on sanctions applied to legal persons or trusts by any agency including the Registrar of Companies. The Registrar's office indicated generally that most action against companies initiated by the office relates to failure of companies to file annual corporate returns of information.

365. **Fiji has a low level of effectiveness for Immediate Outcome 5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

366. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The recommendations relevant for the assessment of effectiveness under this section are R. 36-40.

Key Findings

Immediate Outcome 2

- The use of formal and informal international cooperation does not match Fiji's risk profile, with the exception of international cooperation by the FIU.
- Fiji has a legal framework for mutual legal assistance but Fiji lacks legislative provisions allowing for interception of private communications beyond investigations involving narcotics offences, which may hinder Fiji's ability to cooperate in ML and TF investigations fully through MLA.
- MLA requests to other countries are limited and not in line with Fiji's risk profile. Fiji identifies Australia and New Zealand as primary destination countries for illicit drugs using Fiji as a transshipment point. But while large drug seizures have recently been made, the use of MLA is minimal. Fiji instead prefers to utilize informal mechanisms. While informal cooperation can be useful, it does not substitute for formal mechanisms if evidence is required.
- Fiji has a legal framework for extradition but deficiencies remain which affect Fiji's ability to effectively cooperate through the extradition process: namely Ministerial decision-making processes may cause delays; there is no system for prioritising requests based on ML/TF offences; and Fiji is able to refuse extradition of a national without being compelled to prosecute domestically.
- Fiji has not made any extradition requests in the last seven years. Fiji has received three requests in the same period, with varying times for response.
- Fiji engages with Australia and New Zealand effectively with respect to law enforcement. The support of these two countries and the effectiveness of the TCU network has supported the FPF in obtaining law enforcement outcomes associated with organised and transnational crime.
- Fiji readily utilises INTERPOL for law enforcement information exchanges. Requests made to Fiji are responded to within 24 hours to two working days for urgent requests. Fiji Police respond to non-urgent administrative requests within five working days.
- The Fiji FIU cooperates with other FIUs effectively within and outside the Egmont Group of Financial Intelligence Units (Egmont Group).
- Fiji does not, and cannot, exchange anything more than basic beneficial ownership information in relation to legal persons and trusts.

Recommended Actions

Immediate Outcome 2

- Fiji should prioritise the making of informal and formal cooperation requests in keeping with

its risk profile.

- Fiji should enact legislative provisions allowing for interception of private communications beyond investigations involving narcotics offences in order to facilitate MLA requests that seek relevant information and evidence.
- Fiji should address the deficiencies in its extradition law, namely: remove the ministerial process which may cause delays in rendering extradition with comity countries; establish a prioritisation process in relation to fugitive offenders involved in ML and TF offences; and institute an extradition or prosecution system.
- Fiji should streamline the extradition process to address the varying timeframes to address extradition requests from other countries.
- Fiji should more effectively utilize the formal MLA system for the exchange of information and to follow and restrain assets (including illicit assets) that have moved to other jurisdictions.
- Fiji should monitor response times for INTERPOL requests and put mechanisms (SOPs, guidance and/or other procedures) in place to address unreasonable delays when they occur.
- Fiji should monitor the response times associated with information exchanges between the TCU and foreign counterparts and put mechanisms in place (SOPs, guidance and/or other procedures) to address unreasonable delays when they occur.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

367. The Mutual Assistance in Criminal Matters Act 1997 (MACMA) s.8(1) designates the Attorney General (AG) as the central authority responsible for receiving MLA requests. MLA requests may be made directly to the AG or any other person authorized by the AG to receive such requests. MLA requests are forwarded to a dedicated team within the ODPP for execution and “where execution requires the performance by another agency the ODPP assists and monitors execution.”

368. Fiji has a legal framework that allows it to provide constructive mutual legal assistance (MLA). However, the number of MLA and extradition requests has been very limited. The table below indicates the number of requests made to and by Fiji from 2007 to 2015.

Table 23 MLA requests to & from Fiji 2007 – 2015

Mutual Legal Assistance	2007 - 2011	2012	2014	2015 Jan - Jun
Requests received from other countries	-	1	1	3
Requests sent by Fiji	-	1	-	0

369. For the three MLA requests received by Fijian authorities in 2015:

- One request was received from an Asian country in relation to fraud. No information has been provided as to the outcomes of that case as of the date of the on-site visit.

- Another request was received from New Zealand in relation to a request for Fiji to register a foreign restraining order in relation to drug offending in New Zealand. Feedback from New Zealand was that the matter was processed efficiently by Fiji resulting in the successful restraint of property. There is no information on the third MLA request in 2015¹⁴.

370. An MLA request in 2012 related to an Australian who was charged with failure to pay tax duty. The Fijian authorities registered an order in the Fiji High Court and paid funds to Australia.

371. The lack of MLA requests to Australia and New Zealand as destination countries for drugs transiting through Fiji is not consistent with the risk profile of Fiji being a transshipment point for drugs. Additionally there is a lack of MLA requests by Fiji to source countries for drug shipments transiting through Fiji.

372. The Extradition Act establishes the legal framework for extradition in Fiji, however, requests made to Fiji are not common; nor are requests made by Fiji to other countries. The following table outlines the numbers received and made since 1997. From the information received, Fiji responds to requests in a timely manner without overly restricted conditions. Fiji has received two extradition requests since 2009: both requests were processed by Fiji and the extradition of the persons of interest were completed. One request resulted in surrender in 2011 and the other within a year from when the extradition request was received by Fiji. All extradition requests made by Fiji in 2009 – 2013 have been denied by the requested countries.

Table 24 Extradition requests to & from Fiji 2007 - 2014

Extradition	1997 - 2007	2008	2009 - 2013	2014
Requests received from other countries	7	2	1	1
Requests submitted by Fiji to other countries	1	-	3	-

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

Law Enforcement Agencies

FPF

373. As noted above Fiji has particular risks as a transshipment and distribution point for illicit drugs destined for Australia and New Zealand. The FPF engages the assistance of foreign LEAs to pursue directly and through INTERPOL channels on the investigation of these predicate offences.

374. INTERPOL Fiji facilitates approximately 500 requests annually. The majority of the requests are made by FPF and the Department of Immigration. Requests are frequently sent to Pakistan, China (the majority), US, Australia, New Zealand, Korea, Japan, and Pacific Island countries including the Solomon Islands, Vanuatu, Tonga and Samoa. Fiji Police responds within 24 hours to two working days for urgent requests. For non-urgent administrative request, Fiji Police responds within five working days. However, no detailed information was stated in relation specific information requests to Australia and New Zealand in relation to illicit drugs.

¹⁴ Fiji provided information on the results of the MLA requests in April 2016 - (1) New Zealand: MLA for foreign restraining order registration, RO granted within 1 month; (2) Australia: foreign testing of drugs, request facilitated in approx. 2 months; (3) Republic of Korea: MLA request for statements and records, one month to facilitate request.

375. FPF also frequently received INTERPOL channel requests from Australia, New Zealand, China, Korea, USA, European countries and neighbouring Pacific countries. INTERPOL Fiji receives approximately 100 requests annually. The response time vary on a case-to-case basis. Usually response times are within twenty-four hours to two working days for urgent matters. Non-urgent matters are usually responded to by Fiji within a five-day period.

376. Police authorities provided no information on the number, frequency and timeliness of information exchange beyond INTERPOL channels.

377. The TCU (which includes FPF, Revenue and Customs) uses the TCU network to seek and provide timely law enforcement information to other TCUs in thirteen Pacific Island countries; however, statistical details were not provided.

378. Fiji has, on one occasion, sought assistance from a foreign jurisdiction in relation to a TF matter (discussed earlier in this report under IO9). The request was made via INTERPOL and while authorities advise that a reply was received, no detail was provided as to what that entailed, either an acknowledgement of the request or more substantive information. In this instance, the INTERPOL communication channel was ineffective. This was a significant matter and should have been followed up by Fiji using additional and more effective communication channels including a formal mutual assistance request.

8

FICAC

379. FICAC has not received any requests from foreign counterparts for information or intelligence relating to corruption investigations in foreign jurisdictions. Nor has Fiji made any requests to foreign counterparts.

FRCA

380. The FRCA seeks and provides information for tax purposes to its Double Tax Agreement (DTA) partners. FRCA has engaged in DTA exchanges with foreign counterparts as follows:

Table 25 Exchange of information between FRCA and DTA partners

	2012	2013	2014	2015	TOTAL
DTA requests received by FRCA	16	4	4	9	33
DTA requests sent by FRCA	10	1	0	2	13

381. Fiji has 11 double tax agreements (DTA) with foreign counterparts (Japan, UK, New Zealand, Australia, Korea, Malaysia, Papua New Guinea, Singapore, United Arab Emirates, Qatar, and India) enabling Fiji to request and provide tax-related information to partners upon request.

FIU

382. The FIU provided evidence of frequent exchanges of information between the FIU and its foreign counterparts in keeping with the risk profile. The table below shows the number of exchanges between 2012 and 2014. No evidence was provided on the timeliness of these exchanges.

383. To date the Fiji FIU has signed MOUs for exchange of information with 27 foreign FIUs, including many FIUs having strategic and operational significance for Fiji. Section 27 of the FTR Act empowers the Fiji FIU to pursue the widest range of information sharing.

384. The Fiji FIU is a member of the Association of Pacific Islands FIUs (APIFIU). The MOU for APIFIU allows for the exchange of information between member FIUs. APIFIU members are the FIUs of Cook Islands, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga and Vanuatu. Through this mechanism, the Fiji FIU has provided advice to other regional FIUs on AML/CFT-related policy issues.

385. As a member of the Egmont Group, and through its MOUs with foreign FIUs, the Fiji FIU frequently seeks information from other FIUs and responds to foreign requests to assist in the analysis of STRs that involve foreign nationals or entities (refer to table below for number of requests from Fiji FIU to foreign FIUs).

386. The tables below show the number of requests received by FIU from foreign FIUs.

Table 26 Exchange of information between Fiji FIU and Egmont Group FIUs

	2012	2013	2014
Requests received from foreign FIUs	4 (1 entity & 28 individuals)	10 (7 entities & 47 individuals)	7 (423 entities & 81 individuals)
- Requests executed	4	10	7
- Requests denied	0	0	0
Requests made by Fiji FIU to other FIUs	1	3	5
- Requests executed	1	3	5
- Requests denied	0	0	0

Table 27 Exchange of information between Fiji FIU and non-Egmont Group FIUs & other foreign law enforcement agencies

	2012	2013	2014
Requests received from APIFIU & other Foreign Agencies	4	15	10
- Requests executed	4	15	10
- Requests denied	0	0	0
Requests made by Fiji FIU to other FIUs	0	1	3
- Requests executed	0	1	2
- Requests denied	0	0	1

387. The Fiji FIU has also provided information to foreign FIUs and LEAs spontaneously, where analysis of STRs revealed the involvement of foreign nationals and entities in suspected ML/TF or predicate offences. This information is provided to the foreign FIUs as case dissemination reports.

Table 28 Fiji FIU spontaneous dissemination to foreign FIUs & LEAs

	2012	2013	2014
CDRs to Foreign FIUs	0	1	2
CDRs to Other Foreign LEAs	0	0	1

Supervisors

388. RBF has received assistance from, and provided assistance to, foreign supervisor counterparts for supervision and licensing purposes as follows:

Table 29 Exchange of information between RBF and other Supervisors

	2010	2011	2012	2013	2014	2015
Requests received from foreign supervisors	1	1	1	7	5	11
Requests sent to foreign supervisors	4	-	-	6	-	6

389. No information was provided by the other competent authorities on the extent to which they have sought other forms of international cooperation to exchange financial intelligence, supervisory, law enforcement or other information in an appropriate and timely manner with their foreign counterparts for AML/CFT purposes.

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

390. The Companies Act does not require the collection, recording and disclosure of information on beneficial ownership, beyond the direct legal owner of shares, either by the company itself or by the Registrar of Companies. Under FTR Regulations 2007, financial institutions are required to take reasonable measures to understand and document the ownership and control structure of legal persons including the name and permanent residential address of the natural person who ultimately own or control the legal person. Lawyers, accountants and real estate agents are defined as 'financial institutions' under the FTR Act Schedule. The CDD requirements for lawyers, accountants and real estate agents in relation to beneficial owners of legal persons are the same as for other financial institutions under the FTR Regulations 2007; however, as discussed in chapters 5 and 6, the CDD obligations under the FTR Regulations lack enforceability.

391. Given this, while Fiji may be able to provide international cooperation in relation to basic ownership information of legal persons and arrangements, competent authorities are impeded in making effective responses to requests to provide beneficial ownership information.

392. The FPF is able to provide basic information on legal persons to foreign counterparts and can obtain information from various sources (Office of the Registrar of Company; domestic company register; FIs and DNFBPs, trustee). In addition, the FIU has direct online access to the database of the Registrar of Companies and could provide basic information on legal persons and arrangements to foreign counterparts if requested. The FIU can also access trust information held with financial institutions and DNFBPs, so in principle this could also be provided in response to foreign requests.

393. No statistical information, or case studies, were provided detailing instances of Fiji's cooperation in providing and responding to requests to identify and exchange basic and beneficial ownership information of legal persons and arrangements.

394. **Fiji has a moderate level of effectiveness for Immediate Outcome 2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of technical compliance by Fiji with the FATF 40 recommendations. It does not include information on Fiji's ML and TF risks, and is limited to the analysis of technical criteria for each FATF recommendation. This annex should be read in conjunction with the mutual evaluation report.

Recommendation 1 – Assessing risks and applying a risk-based approach

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

2. *Criterion 1.1* - The Fiji Money Laundering and Financing of Terrorism National Risk Assessment Framework (NRA) was published in June 2015. The assessment was prepared by the National Anti-Money Laundering Council (NAMLC), through an NRA Task Force, and with technical assistance provided by the Asian Development Bank (ADB). While this is Fiji's first NRA, over 2009-2011 Fiji took part in a regional risk assessment study by the IMF. Information from this study provided Fiji with a general understanding of the ML/TF risks, both regionally and domestically, to inform policy direction. Fiji also conducts annual risk assessments as part of strategic analysis, based on emerging crime information.

3. Fiji's NRA exercise was guided by a comprehensive action plan, prepared by the NAMLC in March 2014. This action plan clearly set out the objectives, benefits, scope and coordination process, methodology, consultation process, collection framework, reporting process and the necessity for regular updating the NRA. The NRA acknowledges the report as a foundation document that broadly outlines the high-level ML/TF risks for Fiji. The NRA drew on data and information obtained through interviews and workshops, as well as from government agencies, financial institutions, media reports and other public sources and the opinions/value judgements of agencies contributing to data collection.

4. The NRA identifies Fiji's highest-level ML/TF risk results from illicit drug-related offences and fraud on the government in the form of tax evasion (including income tax evasion, VAT fraud and evasion of duties and licence fees). Other ML/TF threats arise from illicit funds resulting from deception, misappropriation, cybercrime, theft, bribery and corruption and the illicit cross-border movement of currency. Although financing of terrorism (TF) has not been identified in Fiji, the NRA acknowledges that it is possible TF threats may arise from these same illicit activities and given the global concern with widespread terrorism and terrorist activities, FT is rated more highly as a potential threat.

5. The high-risk sectors are identified as the commercial banks, restricted foreign exchange (FOREX) dealers, investment/safe custody facilities, the real estate sector, companies (based on global concern about the use of companies for ML/TF) and NPOs. There is no evidence of ML/TF involving NPOs in Fiji; however, it is included as a highly vulnerable sector based on the global concern about potential TF using NPOs. Other factors influencing the vulnerabilities arise from Fiji's geographic location and porous borders, significant use of the cash economy and capacity challenges with respect to human and technological resources.

6. The NRA does not identify any specific high-risk countries either as origins of proceeds of crime and TF with Fiji as a destination or as destination countries for proceeds and TF from Fiji. The

NRA draws reasonable conclusions on the main ML and TF risks for Fiji, using a range of reliable information sources. The NRA identifies companies as a highly vulnerable sector; however, there is no evidence that the ML/TF risks associated with all types of legal persons created in the country have been assessed, as required under R.24.

7. *Criterion 1.2* - As mentioned above, in 2014 the NAMLC adopted a comprehensive NRA action plan. The action plan designates the Ministry of Justice as the authority to lead and coordinate the exercise, with strategic advice to be provided by the NAMLC and the actual conduct of the NRA assigned to an NRA Task Force. The NRA Task Force consists of senior representatives of agencies that are key contributors to the exercise and, as a result, the NRA has been able to draw on a wide range of ministries, agencies and non-government players to conduct the risk assessment. Beyond the NRA, data collection strategies and resources have been adjusted to collect the additional information that will be necessary to support future assessment of risks.

8. *Criterion 1.3* - The 2015 NRA is Fiji's first risk assessment exercise; however, Section L of the NRA Action Plan states that Fiji will need to update the NRA on a regular basis. The authorities are therefore aware that the NRA is a dynamic process that will require ongoing monitoring, review and updating. The 2015 NRA indicates a further risk assessment is expected to be conducted within the next two to five years. Anticipating this, both the action plan and the NRA promote the need to maintain effective communication and consultation between all stakeholders to enhance collaboration and data collection processes across agencies.

9. *Criterion 1.4* - The NRA Action Plan outlines the process for providing information on the results of the NRA to all relevant competent authorities and self-regulatory bodies (SRBs), financial institutions and DNFBPs. The full version of the NRA report has been circulated to all the members of the NAMLC and a condensed version has been circulated to all other stakeholders including: other relevant government agencies, financial institutions, DNFBPs, domestic and foreign LEAs, for their internal use only. A de-classified version of the NRA report has been published. The results of the risk assessment have also been communicated to financial institutions and DNFBPs through a joint briefing session with their AML compliance officers, through issuance of summary, key NRA findings and recommendations, and a media release from the FIU.

10. *Criterion 1.5* - As the 2015 NRA has only recently been adopted (June 2015), Fijian authorities have not yet implemented a strategically focussed approach to allocating resources across all government sectors to address the identified risks in NRA. Fiji is, however, in the process of developing and implementing measures based on the understanding of the AML/CFT risks identified during other assessment exercises. At this stage, some agencies have commenced a review of resources to target risk and other agencies are in the process of review.

11. *Criterion 1.6* - Fiji has not utilised the exemptions provided under R.1.

12. *Criterion 1.7* - Fiji purports to require financial institutions and DNFBPs to take enhanced measures when dealing with higher-risk customers and transactions, however, these requirements are unenforceable. The FTR Act also does not require financial institutions and DNFBPs to ensure that high-risk information is incorporated into their individual risk assessments. (Refer R.10 and s.3, s.20, 21, 29 and s.35 of the FTR Regulations; FIU PA/5; and s.14 and s.2 of FIU Guideline 4).

13. *Criterion 1.8* - FIU PA/5/2007 (para 4) outlines the risk-based approach that financial institutions and DNFBPs should apply and allows simplified measures and controls for CDD and monitoring when dealing with lower risk customers and transactions. In addition, s.21 of the FTR Regulations allows financial institutions to undertake simplified CDD where a customer or

transaction is assessed as having a lower ML/TF risk. The requirements under a simplified CDD process are defined in s.21 (3) and (4). Sections 13 and 19 of FIU Guideline 4 also provide guidance on simplified CDD for lower risk customers or transactions. While the NRA has only recently been completed, the measures on the requirements for the risk-based approach have already been included in the relevant regulations, policy guidelines and advisories. Financial institutions are required to undertake RBA when managing ML/TF risks; however, this is not enforceable by supervisors (refer to R. 10).

14. *Criterion 1.9* - As reported in the analysis of R.26 and R.28, while financial institutions and DNFBP supervisors have adequate powers of supervision, the regulations and guidelines are not enforceable. Moreover, the supervisors are not ensuring that their sectors are implementing their obligations in accordance with the sectoral risks identified in the NRA.

15. *Criterion 1.10* - Section 29(2) of the FTR Regulations requires financial institutions and DNFBPs to have effective AML/CFT programmes in place that have regard to ML/TF risks, the size and nature of the business, and the types of products and services offered by the financial institution. Again, however, this is undermined by lack of enforceability. FIU PA/5/2007 sets out the steps that financial institutions and DNFBPs should undertake when applying the Financial Transactions Reporting Act 2006 (FTR Act) and regulations on a risk-based approach. Financial institutions and DNFBPs are required to: identify and assess their ML/TF risks (para 4i); consider relevant risk factors (such as country, customer type and product/services, geographical profile) to assess the magnitude of risks (paras 5-8); determine the appropriate AML/CFT measures and controls to treat/mitigate these risks (para 4ii); document their ML/TF risk assessment including the controls and measures to be adopted by the financial institution and DNFBPs (paras 4v; 13); and monitor their risk profile and keep this risk profile up to date to accommodate changes in the business environment and ML/TF trends (para 4iv; paras 9-12).

16. In addition, RBF Banking Supervision Policy Statement No. 6 requires banks and credit institutions to undertake a risk-based approach (para 3.1) in meeting their obligations under the policy. At a minimum this includes identifying, assessing and understanding its ML/TF risks (para 3.2). The relevant factors that the bank and credit institution should consider in the assessment are outlined (para 3.2) and the assessment process and techniques must be documented (para 3.3). Paragraph 14 of the FIU PA/5/2007 requires the policies procedures and controls to be approved by management and subjected to compliance testing by a financial institution's internal audit function as well as by the relevant supervisory authority and the FIU. Due to the deficiencies in the coverage of financial institutions and DNFBPs under the FTR Act, not all financial institutions and DNFBPs are required to take appropriate steps to identify, assess and understand their ML/TF risks.

17. *Criterion 1.11* - Section 21 of the FTR Act and s.29 of the FTR Regulations require financial institutions and DNFBPs to establish and maintain AML/CFT policies, procedures and systems, as well as have compliance management arrangements to ensure compliance with the measures (s.29 (1)(b) of the FTR Regulations refers). Section 29(2) of the FTR Regulations requires these policies, procedures and systems to have regard for the ML/TF risks. Paragraph 14 of FIU PA/5/2007 requires FIs and DNFBPs to determine and apply appropriate AML/CFT policies, procedures and controls to mitigate ML/TF risk identified (para 4ii). As mentioned above, these AML/CFT policies, procedures and controls should be approved by management (para 14), and be subjected to compliance testing to monitor its implementation (par 14). Under paragraph 4(ii) and (iii) of the FIU PA/5/2007 financial institutions and DNFBPs must undertake enhanced measures to manage and mitigate the risks where higher risks are identified, however, these regulations are not enforceable.

18. Banking Supervision Policy Statement No. 6 requires banks and credit institutions to establish an effective ML/TF Risk Management Framework consisting of systems, structures, processes and people to address the ML/TF Risk Management process (para 4.1). As part of this Framework, banks and credit institutions must develop and implement an AML/CFT Policy, which must include measures outlined in paragraph 4.2. The AML/CFT Policy must be approved by the Board or its proxy (para 4.4). Implementation of the controls and measures required under the AML/CFT Policy must be monitored by the AML compliance officer and internal audit section (para 7.1; 8.1). However, credit unions, jewellers and dealers in precious metals and stones are not required to measures stipulated in c1.11, as they are not subject to the FTR Act.

19. *Criterion 1.12* - Section 21(1) of the FTR Regulations, and ss.13 and 19 and of FIU Guideline 4, permit financial institutions and DNFBPs to undertake simplified CDD measures if the risk of ML/TF has been identified as lower. Some categories of customers that have been identified by the FIU as having a lower risk are outlined under s.21(2) of the FTR Regulations; and s.13.2i and s.19.2 of FIU Guideline 4 and these can be subjected to simplified CDD. Simplified CDD is prohibited or must be terminated when there is a suspicion of ML/TF risk (s.21(5) FTR Regulations refers – noting the lack of enforceability). There is no requirement that financial institutions and DNFBPs could only undertake simplified CDD measures if criteria 1.9 to 1.11 are met.

Weighting and Conclusion

20. The NRA has recently been adopted by the government, but has not yet been fully communicated across all sectors. While efforts are currently underway to implement the obligations of R.1 fully, further effort is required before Fiji meets all the requirements. Some sectors are not yet covered by supervisory requirements. **Fiji is rated partially compliant for R.1.**

Recommendation 2 – National cooperation and coordination

21. Fiji was rated compliant with the former R.31 in the 2006 MER. The report found that Fiji's formal national cooperation and regular informal cooperation both benefit from the limited size of the governmental sector, but resource constraints could affect negatively on the effectiveness of cooperation, particularly in relation to enforcement actions.

22. *Criterion 2.1* - While Fiji has a national AML strategy requiring stakeholders to either undertake their own risk assessment or utilise that of the NRA, Fiji lacks a national AML/CFT strategy informed by the risks identified in NRA. The latest version of the national strategy document was issued in February 2015 prior to the adoption of the NRA in June 2015 and is largely a description of the system in place, not of policy direction. Fiji's first NRA was carried out over 2014-15 and was completed in July 2015. The NRA has not yet contributed meaningfully to national AML/CFT policy directions, however prior to completion of the NRA, Fiji used publicly available risk information, for example from the World Bank or information on financial inclusion by the FATF, to provide general risk profiles and inform policy direction, Use of that material, however, was not informed fully by domestic factors in Fiji to produce tailored responses to identified risks. No information was provided on how regularly the national AML/CFT policies are reviewed vis-à-vis risk, although the NRA of 2015 is intended to provide a foundation for this purpose.

23. *Criterion 2.2* - The NAMLC is the designated authority responsible for national AML/CFT strategy and policies. The NAMLC was established in 2008 under s.35 of the Financial Transaction Reporting Act 2006 (FTR Act).

24. The functions of the NAMLC are to: (a) advise the Fiji Financial Intelligence Unit ('the FIU') and the Minister on any matters relating to the prevention of ML or the financing of terrorism; (b) make recommendations to the Unit and the Minister on any matter relating to the prevention of ML or the financing of terrorism; (c) assist the Unit and the Minister in the formulation of policies or strategies relating to the prevention of ML or the financing of terrorism; and (d) assist the Unit in coordination between various government departments and with statutory corporations.

25. The NAMLC is comprised of: Chief Executive Officer (Permanent Secretary) responsible for the Ministry of Justice, as Chairperson; Director of the FIU; Director of Public Prosecutions (DPP); Commissioner of Police; Governor of the Reserve Bank of Fiji (RBF), and Chief Executive Officer of the Fiji Revenue and Customs Authority. The NAMLC may invite other persons to attend the meetings. There are five regularly-invited members of the NAMLC, namely: Director, Immigration Department; Permanent Secretary, Ministry of Finance; Permanent Secretary, Ministry of Defence, National Security and Immigration; Permanent Secretary, Ministry of Foreign Affairs, International Cooperation; and Deputy Commissioner, Fiji Independent Commission Against Corruption.

26. *Criterion 2.3* - At the policy level, in addition to the NAMLC, the National Combined Law and Security Agencies Committee on security issues and Counter Terrorism Officials Working Group on counter terrorism activities (both driven by Ministry of Defence) also provide mechanisms that enable the FIU, law enforcement authorities (LEAs) and other competent authorities to coordinate domestically concerning the development and implementation of AML/CFT policy and activities. There are also three working groups of the NAMLC that have responsibilities in the areas of law enforcement, legal and supervisory.

27. At the operational level, there are MOUs amongst a comprehensive range of agencies enabling information exchange and cooperation, including secondments, both within fields, such as law enforcement or supervisors, and across them. There are several MOUs between agencies and major private sector institutions. Key law enforcement agencies have direct online access to relevant information held by other agencies, such as vehicle registration, immigration data etc., with authorised officers able to access intelligence information held on the FIU database. The arrangements between the FIU and RBF have enhanced engagement on AML/CFT supervision. The various MOUs have also enabled investigation taskforces to be used as needed, drawing members from multiple law enforcement agencies. The Transnational Crime Unit (TCU), hosted by FRCA, is a joint initiative by FRCA and Fiji Police Force (FPF).

28. *Criterion 2.4* - No cooperation and coordination mechanisms currently exist to combat the financing of proliferation of weapons of mass destruction. Fiji advises that the national coordination mechanisms outlined in c2.3 above will be used for combating proliferation financing, however such coordination has not yet been activated to develop and implement policies on this issue.

Weighting and Conclusion

29. Fiji lacks a national AML/CFT strategy and policies informed by the risks identified in NRA. Fiji has not implemented a coordination mechanism for proliferation financing. **Fiji is rated partially compliant for R.2.**

Recommendation 3 – Money laundering offence

30. In the 2006, MER Fiji was rated largely compliant with former R.1 and R.2. The criminalization of ML under POC Act (1997) was largely in line with the international standards, however many penal laws in Fiji were outdated and may have created obstacles to international

cooperation. The outdated definition of the predicate offence did not satisfy the requirements of dual criminality in some jurisdictions, which would have had an impact on Fiji's ability to receive international cooperation.

31. *Criterion 3.1* - Money laundering (ML) is criminalised under s.69 of the Proceeds of Crime Act (1997) as amended in 2005 (POCA) based on the Vienna Convention Article 3(1)(b) and (c) and the Palermo Convention Article (6). Section 69(3) of the POCA covers the receipt, possession, concealment, use or disposal of proceeds of crime. The conversion, transfer and disguise of proceeds of crime are covered in s.69(3)(a-d) of the POCA and s.69(3)(b) requires knowledge or constructive knowledge that the money or property is derived or realised, directly or indirectly, from some form of unlawful activity. 'Unlawful activity' is defined in s.3 as "an act or omission that constitutes an offence against a law in force in Fiji or a foreign country."

32. *Criterion 3.2* - The POCA applies a minimum threshold approach, with the predicate offences for ML covering all serious offences. Section 3 of the POCA defines 'serious offence' as "an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 6 months or a fine of not less than \$500", being FJD, and approximately USD240. A range of predicate offences is covered under various statutes, including most of the FATF designated categories of offences. The following offences are not criminalised, or do not meet the "serious offence" threshold:

- There are limited environmental (proceeds generating) crimes in Fiji, only for illegal fishing under the Offshore Fisheries Management Decree 2012. The Environmental Management Act 2005 contains many offences not contemplated as environmental crimes in the FATF standards.
- The range of penalties for indirect tax offences, for first offences, under the Value Added Tax Decree of 1991 (updated 2004) fall below the serious offence thresholds for fines and imprisonment under s.72(1)(a) of the Decree. The penalties fall below the "serious offence" threshold.

33. *Criterion 3.3* - Refer c3.2 above.

34. *Criterion 3.4* - Section 3 of the POCA defines property broadly, encompassing 'money or any other property, real or personal, things in action or other intangible or incorporeal property whether located in Fiji or elsewhere.' The Proceeds of Crime (Amendment) Decree 2012 extended this definition to include 'a legal or equitable interest therein.' The definitions do not, however, include, "legal documents or instruments evidencing title to, or interest in, such assets" (as required by the Methodology glossary definition of 'property'). The proceeds of crime definition in the decree does encompass property or a benefit that is wholly or partly derived or realized directly or indirectly by any person from the commission of a serious offence or a foreign serious offence. The POCA does not require a minimum value of property to be present to constitute proceeds of crime.

35. *Criterion 3.5* - Section 69(4) of the POCA confirms that the offence of ML is not predicated on proof of the commission of a serious offence or foreign serious offence.

36. *Criterion 3.6* - The definition of proceeds of crime extends to proceeds derived directly or indirectly from the commission of a foreign serious offence. "Foreign serious offence" is defined as a serious offence against the law of a foreign country. However, the definition does not provide that the foreign serious offence must also constitute a serious offence in Fiji if committed domestically. The offence of ML does not require proof of the commission of a foreign serious offence (s.69 (4)). Accordingly, the manner in which this offence is structured for foreign serious offences exceeds the

minimum threshold for this criterion and therefore cannot be said to not comply with the requirements of c. 3.6.

37. *Criterion 3.7* - Section 69(3) of the POCA allows for the prosecution of self-launderers. This has also been established in case law (State v Monica Arora [2010] FJHC Crim. Case No. HAC 125 of 2008 and State v Robin Shyam [2013] FJHC Crim. Case No. 146 of 2010) which confirmed the ability to prosecute for self-laundering. However, the Court also confirmed that the sentence for ML in relation to self-launderers should be commensurate and not disproportionate to the seriousness of the predicate crime.

38. *Criterion 3.8* - Section 69 (3) of the POCA provides that the intent and knowledge required to prove the ML offence can be inferred from objective circumstances. The knowledge requirement for ML necessitates “the person knows or ought reasonably to know, that the money or property is derived or realised, directly or indirectly, from some form of unlawful activity”. Section 70 of the POCA goes beyond the requirements of R.3 in which a person who possesses, conceals, disposes of or brings into Fiji any money that may reasonably be suspected of being proceeds of crime commits an offence of ML (otherwise known as negligent ML).

39. *Criterion 3.9* - The sanctions for natural persons convicted of ML are provided at s.69 (2)(a) of the POCA and include a maximum fine not exceeding FJD120 000 (~USD56 000) or a maximum term of 20 years imprisonment, or both. Negligent ML is punishable by a fine not exceeding FJD12 000 (~USD5 700) or imprisonment for two years or both. The Crimes Decree (2009) covers the offences of attempting, aiding, abetting, counselling, incitement, conspiracy or procuring. Under Part 7 of the Crimes Decree, conspiracy, attempting, aiding, abetting, counselling and procuring ML are all offences punishable as if the offence itself were completed. Under s.48 of the Crimes Decree, incitement of ML is punishable by imprisonment for seven years. These sanctions are proportionate and dissuasive. In the Fiji High Court case of State vs. Monika Monita Arora (2010) the court stated that in light of the maximum penalty permissible under law a “tariff” for money laundering should be eight to twelve years’ imprisonment reflecting the seriousness of the ML offence.

40. *Criterion 3.10* - Sections 69-70 of the POCA extend liability to legal persons for ML. It confirms that acts of ML could give rise to criminal, civil, administrative and disciplinary proceedings for both legal and natural persons involved. Nothing prohibits separate proceedings from running concurrently, or the concurrent criminal liability of natural persons. Section 69(2)(b) penalises body corporates that commit ML with a fine not exceeding FJD600 000 (~USD284 000). Section 71 of the POCA extends liability to body corporates (legal persons) for the ML offence for conduct engaged in by their directors, servants or agents or any other person at the direction of, or with the consent or agreement of, a director, servant or agent with the requisite authority. These sanctions are proportionate and dissuasive.

41. *Criterion 3.11* - Both the Crimes Decree No. 44 of 2009 and s.69 (3)(c) and (e) of the POCA cover appropriate ancillary offences to the ML offence, including conspiracy, aiding, abetting, inciting, assisting and attempts to commit offences.

Weighting and Conclusion

42. The money laundering offence largely reflects the international standards with minor deficiencies in the range of predicate offences required therein and in the definition of “property”. **Fiji is rated largely compliant for R.3.**

Recommendation 4 – Confiscation and provisional measures

43. Fiji was rated partially compliant for the former R.3 in the 2006 MER. The report confirmed that the legal framework was adequate and consistent with international standards, however, two deficiencies remained relating to the weak implementation of the confiscation framework and the restrictive timeframe imposed for the release of seized property if no forfeiture order is made within 14 days. Asset management is a new requirement under the revised R.4.

44. The Proceeds of Crime Act (POCA) provides the main legal framework for identifying, tracing, freezing/seizing and confiscating the proceeds of crime. The POCA provisions apply to the recovery of proceeds of “serious offences” as defined in the Act and not only to ML and TF offences. Under the legislative framework, there are five types of confiscation available:

1. Forfeiture order upon conviction
2. A pecuniary penalty order (PPO) upon conviction
3. Civil forfeiture without conviction
4. Automatic forfeiture on conviction relating to statutes that provide confiscation remedies for specific offences, such as s.31 of the Illicit Drugs Control Act and s.99 of the Offshore Fisheries Management Decree 2012
5. Forfeiture of unexplained wealth – added to the POCA in 2012

45. *Criterion 4.1:*

46. *4.1 (a)* - Section 5 and Division 2 of the POCA allow for a forfeiture order of tainted property. Property laundered is covered under the definitions of property able to be confiscated (tainted property (ss.3), benefits derived (ss.4), proceeds of crime (ss.4), and gifts (ss.4)).

47. *4.1(b)* - Section 3 of the POCA covers proceeds of, or instrumentalities used, or intended to be used in, the commission of the offence.’

48. *4.1 (c)* - Section 19F of the POCA allows property that is the proceeds of terrorist financing, acts, or organisations to be forfeited. Terrorist property has the same definition as that contained in s.2 of the FTR Act 2004, namely:

- a. Proceeds from the commission of a terrorist act;
- b. Property which has been, is being, or is likely to be used to commit a terrorist act;
- c. Property which has been, is being, or is likely to be used by a terrorist group;
- d. Property owned or controlled by or on behalf of a terrorist group; or
- e. Property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act.

49. *4.1 (d)* - Property of corresponding value is covered under s.16 of the POCA where the court can order the person to pay the State an amount equal to the value of the property, part or interest where the property or any part thereof cannot be made subject to an order. This applies to both conviction and non-conviction based forfeiture orders (s.19 (e)(5) refers). Sections 5 and 20 of the POCA allow the court to make a PPO against a person, on conviction of a serious offence, where it is satisfied that the person benefitted from the offence. The Court may order the person to pay to the

Court an amount equal to the value of their benefit or such lesser amount as may be realised at the time the PPO is made.

50. In 2012, Fiji amended the POCA to include unexplained wealth provisions. The reforms capture those individuals who live a lifestyle, or control pecuniary resources or property, disproportionate to their lawful emoluments. In the event that a satisfactory explanation is not provided to the Court as to how the individual is able to maintain that standard, they must pay to the Forfeited Assets Fund an amount relating to their unexplained wealth (Part VB, s.71 of the POCA). This initiative goes beyond what is required in R.4.

51. *Criterion 4.2* - These powers were covered in the 2006 MER (at paragraphs 163 and 164) where the legislative provisions for powers to identify and trace proceeds of crime were outlined. The 2006 MER concluded that the powers provided in the POCA are adequate and give the FPF and the DPP the powers needed to achieve recovery of assets.

52. The Proceeds of Crime Amendment Decree 2012 added the requirement for a person to deliver up forfeited property to the State on demand; and provides both a fine and/or imprisonment in the event of non-compliance with this section. Other legislative avenues to freeze or seize property include s.25 of the FTR Act that provides the FIU with wide ranging powers to collect information relevant to serious offences, ML or TF. For corruption-related offences, s.14(c) of the Prevention of Bribery Promulgation (2007) also allows for the restraining of assets of a person subject to an investigation or a third party holding it on their behalf. Paragraph 166 of the 2006 MER confirmed the power to void actions in the absence of a bona fide party acting in good faith (s.27A of the POCA). Further investigative measures such as monitoring orders (s.57), production orders (s.50) and directions to government departments to disclose information (s.64) assist the authorities to investigate proceeds of crime.

53. *Criterion 4.3* - Section 39 (3) of the POCA provides for the rights of bona fide third parties with regard to the powers available under the Act.

54. *Criterion 4.4* - The Proceeds of Crime (Management and Disposal of Property) Regulations were brought into force in 2012. On the making of a restraining order, responsibility is given to the Attorney General (AG) for the control and management of restrained and forfeited property (R.4). In practice, the FPF is responsible for all seized, restrained and forfeited assets and the Official Receiver is responsible for the sale of forfeited property.

55. Fiji has mechanisms in place, via the POCA, to prevent dealing with assets that are subject to restraining orders (s.39 of the POCA); to manage restrained property (s.35(1B)); and property can be money or other property located in Fiji or elsewhere, (s.35(1C)). The AG has wide powers with respect to the property under the AG's control in that the AG may exercise any power that the owner of the property could exercise to the exclusion of the owner (s.35(4) of the POCA). Section 39(2)(F) enables the AG to seek directions and ancillary orders from the court in relation to property in their control. Property subject to a forfeiture order vests in the State in equity on the making of a forfeiture order. The effect of this is that the State then has all power as the owner of property subject to forfeiture and documents may be executed to enable registration of the State as the legal owner of the property.

56. All monies paid under forfeiture orders, PPO's, proceeds of sale of restrained property, or monies paid in as a result of an MLA request, are paid into the Forfeited Assets Fund (s.71B of the POCA).

*Weighting and Conclusion***57. Fiji is rated compliant for R.4.*****Recommendation 5 – Terrorist financing offence***

58. In the 2006 MER, Fiji was rated partially compliant with SR.II. The main deficiencies identified were: (1) the Proceeds of Crime (Amendment Act) 2005, which legislates the terrorism financing offences, did not criminalize the collection or provision of property to ‘terrorist organizations’ and ‘individual terrorists’; (2) the offence of providing or making available financial or other related services to a person under s.70A (2)(a) of the POCA requires proof of an actual link to a specific terrorist act; and (3) it was not clear whether the financing of a terrorist group located outside Fiji would constitute an offence under s.70A (2)(b) of the POCA. These deficiencies are yet to be addressed, however, it is noted that Fiji is considering a counter terrorism decree to address the deficiencies.

59. *Criterion 5.1* - Fiji has criminalized TF through s.70A of the POCA. Section 70A(1) of the POCA states that it is an offence for a person to provide, collect or make available by any means any property either directly or indirectly intending, knowing or having reasonable grounds to believe the property will be used in full or in part for the purposes of terrorist act. The definition of ‘terrorist act’ refers to any act or omission in or outside Fiji Islands that constitutes an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, or ‘TF Convention’, and a number of other acts that generally correspond to the acts described in the relevant international conventions. While Fiji has criminalised most conduct referred to in the treaties set out in the TF Convention, the TF offence does not extend to certain conduct, e.g., offences relating to taking of hostages and physical protection of nuclear material.

60. *Criterion 5.2* - The POCA criminalizes the TF offence to a certain extent. However, the POCA does not expressly criminalize the act of collecting or providing property to terrorist groups and individual terrorists when there is no connection to a terrorist act.

61. *Criterion 5.3* - The terrorism financing offences extend to funds from both legitimate and illegitimate sources.

62. *Criterion 5.4* - The offence of providing, collecting or making available any property to be used in a terrorist act as provided under s.70A(1) of the POCA neither requires the property to be used in an actual terrorist act nor to be linked to a specific terrorist act.

63. *Criterion 5.5* - Even though there is no express provision in the law, based on past case law on other crimes it appears that intent and knowledge required to prove TF offences can be inferred from objective factual circumstances.

64. *Criterion 5.6* - Natural persons convicted of a TF offence under the POCA can be subjected to a maximum fine of FJD120 000 (~USD57 000) or maximum imprisonment for 20 years or both. The low amount of fine is mitigated by the ability of the courts to impose a combination of both fine and imprisonment in respect of a convicted offender. Persons convicted of ancillary offences are liable to the same penalty as TF offence.

65. *Criterion 5.7* - Criminal sanctions in the form of a fine are applicable. Legal persons that are convicted of TF offences under s.70A the POCA are subjected to a maximum fine of FJD600 000 (~USD284 000), which is proportionate and dissuasive for legal persons. Section 71 of the POCA

legislates a number of presumptions pertaining to the establishment of ‘state of mind’ of a body corporate in relation to conduct of its directors, servants and agents; and Part 8 of the Crimes Decree sets out the general principles and elements that need to be proved in relation to liability of legal persons for conduct of their directors, servants and agents. Even though there is no express provision to the effect that criminal prosecution, and therefore sanctions, could be pursued against both the natural person and the legal person (if any) in relation to the same offence, the applicable laws do not indicate otherwise.

66. *Criterion 5.8* - Fiji’s legislative framework contains a comprehensive range of ancillary offences in relation to TF offences.

67. *Criterion 5.9* - The TF offences are predicate offences for ML.

68. *Criterion 5.10* - The TF offences under section 70A(1) and (2)(a) of the POCA that refers to ‘terrorist act’ covers acts committed in and outside Fiji.

Weighting and Conclusion

69. Fiji’s TF offence has some significant technical deficiencies. The offence does not cover the provision of property to individual terrorists and terrorist organisations in the absence of a link to terrorist acts. There is also a deficiency in coverage of the offences referred to in the annex of the TF Convention. **Fiji is rated partially compliant for R.5.**

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

70. In the 2006 MER, Fiji was rated non-compliant for SR III. The factors underlying the rating included: (1) the scope of ‘terrorist property’ does not extend to property owned or controlled by terrorists or those who finance terrorism and property jointly owned by ‘persons targeted by the measures’ or third parties; (2) it was not clear whether ‘terrorist property’ covers property of individuals designated by United Nations Security Council or by other designation mechanisms; (3) Fiji had not implemented the United Nations Security Council Resolution (UNSCR) 1267 and 1373; (4) there was no system in place to communicate freezing actions to financial institutions; (5) no guidance was issued to the financial institutions; (6) it was not clear whether a restraining order issued under s.19B of the POCA can be challenged and it was not clear whether any protection is available to bona fide third-parties affected by restraining orders against terrorist property. There were also concerns that while the POCA creates a legal framework with regard to restraining and forfeiting of terrorist assets, the implementation of the relevant provisions had been put on hold until a comprehensive anti-terrorism law is enacted. There have been no significant developments in terms of applicable laws relevant to R.6 since the 2006 MER, except for the FTR Regulation 2007 that defines the term ‘terrorist group’ in the FTR Act. The other shortcomings are yet to be addressed.¹⁵

71. *Criterion 6.1:*

72. *6.1(a)* – Fiji has yet to identify a competent authority or a court as having the responsibility for proposing persons and entities to the 1267/1989 Committee and 1988 Committee for designation.

¹⁵ It is noted that in April 2016 (ie since the date of the on-site visit), the Public Order (Amendment) Bill 2016 (‘Bill’) was tabled in Parliament to amend the Public Order Act (Cap. 20) and includes provisions designed to bring Fiji into compliance with the requirements under UNSCR 1267/1989/1988 and UNSCR 1373 (and UNSCR 2178).”

73. 6.1(b) – Fiji has yet to establish a mechanism for identifying persons or entities for designation in accordance with the designation criteria set out in the relevant UNSCRs.

74. 6.1(c) – There is no evidentiary standard of proof that is applicable when deciding whether to make a proposal for designation. There is no restriction that a proposal for designation is conditional upon the existence of criminal proceeding.

75. 6.1(d) – Fiji has not adopted procedures to follow the UN procedures and standard forms for listing by the 1267/1989 Committee or 1988 Committee.

76. 6.1(e) – Fiji does not have any clear policies on the information that would be provided to the relevant United Nations committee to support a proposed designation and Fiji's stance on whether Fiji's status as a designating state could be made known in respect of a designation to 1267/1989 Committee.

77. *Criterion 6.2:*

78. 6.2(a) – Fiji has yet to identify the competent authority responsible for designating persons or entities that meet the specific criteria for designation including for purposes of UNSCR 1373.

79. 6.2(b) – Fiji does not have any mechanism(s) for identifying targets for designation based on the criteria for designation stipulated in UNSCR 1373.

80. 6.2(c) – There are no procedures for determining whether a foreign country's request for designation of a person or entity is supported by sufficient basis and meets the criteria for designation in UNSCR 1373.

81. 6.2(d) – The FTR Act and FTR Regulations even though not comprehensive could be used to make designations. The laws do not set out the evidentiary standard of proof that must be satisfied in deciding whether to make a designation. Fiji advised that the evidentiary standard of proof of "suspects or has reasonable grounds to suspect" would be applied. The FTR Act and FTR Regulations do not contain any restrictions to the effect a designation is conditional upon the existence of a criminal proceeding.

82. 6.2(e) – Based on ss.16(3) and 25(1)(f) of the FTR Act, Fiji is able to disclose identifying information supporting the designation to a foreign FIU or appropriate foreign authority, if the person or entity is a designated person or entity in Fiji.

83. *Criterion 6.3:*

84. 6.3(a) – The FTR Act and FTR Regulations do not provide any powers for the relevant authorities to collect or solicit any information to identify persons and entities where there are reasonable grounds or reasonable basis to believe or suspect meet the criteria for designation.

85. 6.3(b) – There is no legal authority, procedures or mechanism enabling the authorities to operate ex-parte in relation to a person or entity that has been identified and against whom a designation is being considered.

86. *Criterion 6.4* - Fiji does not implement targeted financial sanctions related to terrorism and terrorism financing without delay. Even though Fiji may rely on the provisions of POCA for implementation of targeted financial sanctions, such measures cannot be implemented without delay

due to requirements to obtain a restraining order from the court and to identify specifically each property to be frozen in the restraining order application.

87. *Criterion 6.5* - Fiji has yet to identify the competent authority responsible for implementing and enforcing targeted financial sanctions. Even though the Minister of Justice has utilized his power under s.42 of the FTR Act to make regulations for purposes of prescribing individuals and entities referred to in the consolidated list of individuals and entities issued by the bodies established pursuant to UNSCR 1267 and 1373 as terrorist group, the general power to make regulations does not provide sufficient legal authority to the Minister of Justice to implement and enforce targeted financial sanctions. The FTR Regulations are confusing in the following aspects: (i) the FTR Regulation refers to list of individuals and entities issued by UN bodies pursuant to UNSCR 1373, while designation under UNSCR 1373 is required to be made by countries; and (ii) individuals were prescribed as “terrorist group” pursuant to power to prescribe an organisation as “terrorist group” as provided in s.2 of the FTR Act. In any event, the applicable laws do not clearly set out powers relating to designation of entities and persons for purposes of implementation of targeted financial sanctions.

88. *6.5(a)* - There is no legal provision requiring natural and legal persons within the country to freeze the funds and other assets of designated persons and entities. An order made by the court upon application by the DPP pursuant to s.19B (1)(a) of the POCA may prohibit natural persons and entities within Fiji from disposing of, or dealing with, the terrorist property or any part of the property or interest except in the manner specified in the order made by the court. The application to the court can be made ex-parte. The legal framework only requires freezing of the property that is identified in the restraining order and not all funds or other assets of designated persons and entities. However, it should be noted that the court may make a restraining order in respect of funds or other assets in Fiji or outside Fiji.

89. *6.5(b)* - The obligation to freeze the funds or other assets of designated persons and entities is only applicable in respect of the property that is identified in the restraining order issued by the court. The definition of ‘terrorist property’ covers both property that is proceeds from a terrorist act or a property that has been, is being, or is likely to be used to commit a terrorist act or used by a terrorist group or a property that is owned or controlled by a terrorist group. With regard to property that is jointly owned with the designated persons or entities, it is not clear whether the entire property can be frozen.

90. *6.5(c)* - Section 70A(2)(b) of the POCA to a certain extent prohibits provisions of financial or related financial services for the benefit of a terrorist group. However, there is no specific prohibition imposed on persons and entities within Fiji from making available any funds, other assets or economic resources to the designated persons and entities, entities owned or controlled directly or indirectly by designated persons and entities and persons and entities acting on behalf of, or at the direction of, the designated persons and entities.

91. *6.5(d)* - The designation of a person or entity as a terrorist group for purposes of implementing targeted financial sanctions related to terrorism needs to be prescribed by regulation, which is published in the Gazette. A copy of a restraining order would be faxed to the relevant financial institutions/DNFBPs and subsequently hand delivered and a similar mechanism would apply to restraining orders obtained to implement targeted financial sanctions. No guidance has been issued to the financial institutions and DNFBPs in accordance with this sub-criterion.

92. 6.5(e) - There is no requirement for financial institutions and DNFBPs to report on assets frozen or actions taken in relation to the relevant UNSCRs.

93. 6.5(f) - Section 20(1) of the FTR Act provides protection from civil, criminal or disciplinary action for disclosures made to the FIU whether the persons or entities are in possession or control of the terrorist property or transactions involving terrorist property. The protection under s.16 of the FTR Act is not sufficient to protect the rights of bona fide parties acting in good faith when implementing targeted financial sanctions.

94. *Criterion 6.6:*

95. 6.6(a) - There are no publicly known procedures for submission of de-listing requests to the relevant UN Committee for those designated persons and entities who no longer meet the designation criteria.

96. 6.6(b) - The mechanism to de-list is not publicly available. While the court would be in the position to revoke the restraining order, it is not clear whether the mechanism to de-freeze the funds or other assets is published.

97. 6.6(c) - Fiji does not have a system whereby a designation of an individual or entity under UNSCR 1373 may be reviewed by a court. Judicial review may be available to ensure that the "process" of designation is undertaken in accordance with the rules in place, but there is no publicly known procedures providing for a substantive review of a particular designation.

98. 6.6(d) - There are no procedures to facilitate review by the 1988 Committee including those Focal Point mechanisms with regard to the designation pursuant to the UNSCR 1988.

99. 6.6(e) - There are no procedures informing the designated persons and entities on the availability of the United Nations Office of the Ombudsperson to accept de-listing petitions.

100. 6.6(f) - There are no procedures to unfreeze funds or other assets of innocent third parties who are inadvertently affected by the freezing.

101. 6.6(g) - There is no mechanism for communicating de-listings and unfreezing to financial institutions and DNFBPs. No guidance has been provided to financial institutions and DNFBPs on de-listing and acts of unfreezing.

102. *Criterion 6.7* - The court that is empowered to make freezing orders has the discretion to allow access to the funds or other assets. The court may allow access to frozen funds or other assets for purposes of basic expenses, payment of certain fees, expenses and service charges or extraordinary expenses, however, this is not regulated to be in keeping with conditions set by the UN in UNSCR 1452.

Weighting and Conclusion

103. Fiji has not identified a competent authority for purposes of implementing targeted financial sanctions related to terrorism and terrorism financing. There is no clear mechanism, procedure or standards for implementation of requirements of R.6, and freezing of terrorist property cannot be implemented without delay. **Fiji is rated non-compliant for R.6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

104. Recommendation 7 is a new requirement that was added to the FATF recommendations in 2012 and so was not assessed in Fiji's 2006 MER.

105. *Criterion 7.1* - Fiji has not put measures in place to implement targeted financial sanctions without delay to comply with United Nations Security Council Resolutions relating to prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. Fiji's legal framework does not enable implementation of those Resolutions unless the requirements under them are translated into the domestic laws.

106. *Criterion 7.2* - There is no provision that establishes the legal authority and identifies the competent authorities responsible for implementing and enforcing targeted financial sanctions related to proliferation.

107. *7.2(a)* - Fiji has not put in place any measures requiring all natural and legal persons within Fiji to freeze without delay and without prior notice, the funds and other assets of designated persons and entities as per the relevant United Nations Security Council Resolutions.

108. *7.2(b)* - Arising from the absence of provisions requiring freezing of funds and other assets of designated persons and entities, there is no requirement in Fiji that the obligation to freeze the funds or other assets should also extend to the those funds and assets described under c7.2(b).

109. *7.2(c)* - Fiji has not employed any measures to prevent natural persons (nationals and foreigners) and entities (local and foreign entities) in Fiji from making available any funds and other assets to or for the benefit of designated persons and entities unless licensed, authorised or otherwise notified pursuant to the relevant UNSCRs.

110. *7.2(d)* - Since Fiji has not implemented the targeted financial sanctions related to proliferation, there is no mechanism available for communicating designations to financial institutions and DNFBPs immediately after the designation. Thus far, no guidance has been issued to financial institutions and other persons or entities including DNFBPs on their obligations in relation to targeted funds and other assets of designated persons and entities.

111. *7.2(e)* - Given the absence of obligations requiring freezing of funds and other assets of designated persons and entities, financial institutions and DNFBPs in Fiji are not required to submit any reports to the competent authorities on any funds and other assets frozen or action taken in compliance with the relevant UNSCRs including any attempted transactions.

112. *7.2(f)* - Due to non-implementation of the relevant UNSCRs, Fiji has not adopted any measures to protect the rights of bona fide third parties acting in good faith when implementing the obligations stipulated under R.7.

113. *Criterion 7.3* - Fiji has yet to formulate the necessary legislative provision to impose freezing obligations on persons and entities including financial institutions and DNFBPs and to provide for appropriate enforcement actions in the event of non-compliance with the freezing obligations. Since there are no legal obligations imposed to freeze funds and other assets of designated persons and entities in the first place, Fiji has not adopted measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the freezing obligations.

114. *Criterion 7.4* - Fiji has not developed and implemented any publicly known procedures to submit de-listing requests to the United Nations Security Council in the case of designated persons and entities that, in the view of Fiji, do not, or no longer, meet the criteria for designation.

115. *7.4(a)* - Fiji has not developed and implemented any procedures enabling the designated persons and entities to petition a request for de-listing at the Focal Point for de-listing or informing the designated persons and entities to petition the Focal Point directly for de-listing.

116. *7.4(b)* - Since there is no obligation to freeze the funds and other assets of designated persons and entities, Fiji has not drawn up any publicly known procedures to unfreeze the assets of persons and entities with the same or similar name as the designated persons and entities upon adequate verification.

117. *7.4(c)* - There are no procedures authorising access to funds and other assets in circumstances where the conditions for exemptions under the relevant UNSCRs are met, as the funds or other assets of designated persons and entities are not frozen in the first place.

118. *7.5(d)* - There are no mechanisms pertaining to communication of de-listed entities and acts of unfreezing to the financial sector and DNFBPs immediately after such actions. No guidance has been provided to financial institutions and DNFBPs on de-listing and unfreezing actions.

119. *Criterion 7.5* - The funds and other assets of designated persons and entities are not subject to freezing in Fiji. Thus, the question whether any addition to the accounts frozen in the form of interest, other earnings or payments due under contracts, agreements or obligations that arose prior to the designation of the persons and entities could be permitted does not arise. Similarly, the question whether a designated person or entity could make any payment in respect of contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions does not arise since the funds or other assets are not required to be frozen.

Weighting and Conclusion

120. Fiji has yet to put in place any specific measures for purposes of implementing targeted financial sanctions related to proliferation in order to comply with UNSCRs. **Fiji is rated non-compliant for R.7.**

Recommendation 8 - Non-profit organisations

121. In the 2006 MER Fiji was rated partially compliant with former SR.VIII. The primary deficiencies included: (1) Fiji had not conducted a formal review of the adequacy of laws and regulations governing the NPO sector; (2) Fiji had not taken any specific measures to prevent the abuse of the NPO sector by terrorist organisations posing as legitimate NPOs; (3) there were no measures in Fiji to monitor the collection and disposition of funds by NPOs; (4) the legal framework governing the NPOs did not guarantee the transparency of the sector or any monitoring of the collection and disposition of funds for charitable and other non-profitable purposes; and (5) the Registrar could not provide information on the size, composition and sources of funding of the NPO sector. The MER also highlighted implementation issues such as the capacity of relevant registrars, limited staffing and paper-based manual recordkeeping that would now fall within the scope of effectiveness. There have been no significant developments in the laws applicable to NPOs in Fiji, and the deficiencies relating to technical compliance set out in the 2006 MER remain unaddressed.

122. *Criterion 8.1:*

123. *8.1(a)* - Fiji conducted a preliminary review of its NPO sector through the National NPO Sector Working Group in 2008. The scope of the review included the assessment of laws and regulations applicable to the NPOs. The review found that the Charitable Trust Act (CTA) needed to be revised and amended to eliminate risks relating to ML. The review does not cover adequacy of the relevant laws from the perspective of TF risks. Consequently, amendments were made through Charitable Trusts (Amendment) Decree 2013. The documentation on the review merely sets out obligations of all persons in Fiji to report possession or control of terrorist property including by NPOs, the FIU's ability to disseminate information to law enforcement agencies on suspected offences involving NPOs and forfeiture of terrorist property. The review did not consider the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism including NPOs. The recent NRA noted that there are at least 10 laws relating to NPOs and charities and recognised that the adequacy of the relevant laws has not been tested.

124. *8.1(b)* - As indicated above, Fiji undertook a review of the NPO sector in 2008. The NRA exercise in 2014 to 2015 also took into consideration the NPO sector. The authorities were able to identify the number of NPOs in the Report on the Review of the NPO Sector. However, not much detail is available on the activities, size and other relevant features of the NPOs in Fiji. The authorities do not have the capacity to obtain information on the activities, size and other relevant features of NPOs registered under the respective laws. NPOs, whether registered or not under any particular law, would have to register with Fiji Revenue & Customs Authority (FRCA) for tax purposes in order to have access to financial services or to acquire property. The authorities may rely on information from financial institutions where regulation 12 of the FTR Act requires financial institutions to satisfy themselves as to legitimate purpose of the NPO by reviewing the charter, constitution or trust instrument of the NPO. However, the FTR regulations are not legally enforceable as they lack enforceable sanctions.

125. *8.1(c)* - As is evident from the Action Plan for Fiji's NRA, the risk assessment exercise conducted over 2014-15 also reviewed the NPO sector's potential vulnerabilities to terrorist activities. The NRA sets out Fiji's concerns regarding the NPO sector. The NRA contains Fiji's commitment to monitor, assess and review potential ML/TF risks that include periodical assessment of the NPO sector.

126. *Criterion 8.2* - Fiji has not conducted any outreach programmes for its NPO sector.

127. *Criterion 8.3* - Integrity is promoted through the legal framework to a certain extent, although it is limited and differs from one law to another. NPOs registered under the Co-Operatives Act, Friendly Societies Act (FSA) and Companies Act are required to keep proper accounts and records of revenue received and expenditure incurred. However, the NPOs are not required to publish their financial statements or annual reports. On the other hand, the Religious Bodies Registration Act (RBRA) does not impose any specific obligation on the religious bodies to keep proper account of funds received and expenses occurred. Pursuant to s.29 of the CTA the public may inspect the records held by the Registrar including the names and addresses of trustees, the address of the registered office, the audited annual accounts of the trust submitted pursuant to s. 3 of the CTA subject to the conditions imposed by the Registrar and payment of the prescribed fee. Section 29A of the Charitable Trusts (Amendment) Decree 2013 requires charitable trusts to submit returns containing the names and addresses of all the trustees, board members, office bearers of the charitable trust and copy of the audited annual accounts of the charitable trust. A scheme for disposition of property by a charitable trust for some other charitable purposes needs to be presented to the court and registered with the Registrar and can be inspected by the public.

128. *Criterion 8.4* - NPOs that are charitable trusts under the CTA and religious bodies under the RBRA account for a significant portion of the financial resources in the NPO sector or a substantial share of the NPO sector's international activities.

129. *8.4(a)* - The laws governing the relevant NPOs (the CTA and RBRA) do not impose any specific obligations requiring NPOs to maintain information on the purpose and objectives of their stated activities. Details of trustees, board members and officer bearers of charitable trusts under the CTA and details of trustees of religious bodies under the RBRA are lodged with the Registrar. The public may inspect the records held by Registrar CTA for the purpose of ascertaining whether the trustees have been registered, the names of trustees and the address of registered office subject to payment of fee. It is doubtful whether information described in c8.4 relating to religious bodies is publicly available in view of lack of provisions to such effect in the RBRA.

130. *8.4(b)* - The NPOs under the CTA are required under s. 3 of the CTA and s. 29A of the Charitable Trusts (Amendments) Decree 2013 to file a copy of the audited annual accounts of the trust with the Registrar. The religious bodies under the RBRA are not required to issue financial statements detailing breakdowns of income and expenditure. *8.4(c)* - While the CTA does not contain any specific obligations requiring NPOs to have controls in place to ensure that all funds are fully accounted for and spent in a manner consistent with the purpose and objectives of the stated activities, the obligation to submit the audited financial statement to the Registrar would indirectly contribute towards ensuring the intended outcome. The RBRA does not impose any requirement on the religious bodies registered under these laws to keep accounts of moneys received and expenditure incurred.

131. *8.4(d)* - It appears that charitable trusts can also be operated without being licensed or registered. NPOs are required to be registered with the FRCA prior to opening bank accounts, acquiring any assets or conducting financial transactions of FJD5 000 (~USD2 400) and above.

132. *8.4(e)* - The NPOs are not required to follow 'know your beneficiaries and associated NPOs' rule.

133. *8.4(f)* - The applicable laws do not impose any obligations requiring the NPOs to retain records of domestic and international transactions and information described in criterion 8.4(a) and (b).

134. *Criterion 8.5* - Non-compliance such as failure to maintain a register of members, failure to keep books, accounts and records, as well as failure to submit to the Registrar an annual report, audited financial statement and auditor's report does not trigger any sanctions except under the Charitable Trusts (Amendment) Decree 2013 where the Registrar may cancel the incorporation of a charitable trust which failed to submit annual returns. The CTA and RBRA do not provide for any inspection powers to monitor compliance with the provisions of these laws and no offence is legislated in relation to the requirements set out in criterion 8.4. However, s. 13B of the CTA empowers the Minister to dissolve the board of trustees, board members or other office bearers of a charitable trust established or provided with government funding and assistance, among others, if the charitable trust is failing to achieve its objects or is acting contrary to its objects.

135. *Criterion 8.6:*

136. *8.6(a)* - With the exception of the Companies Act, the other applicable laws under which NPOs can be registered are silent on the powers of the authorities to investigate and gather information on NPOs. FRCA in its capacity as the tax authority has powers to gather information on

tax offences committed by NPOs. The books or records of NPOs under the Companies Act that could provide evidence of an offence may be examined by any person through a court order made on the application by the DPP or the Registrar. Even though the law enforcement agencies, e.g., FPF in exercising its powers under the Criminal Procedure Decree, may obtain information on NPOs from the Registrar or the relevant NPOs, the information available from the NPOs and the Registrar may be limited in view of the lack of provisions obliging the NPOs to retain adequate information and requiring NPOs to submit information to the Registrar.

137. *8.6(b)* - Any information lodged with the Registrar of Titles and Registrar of Companies by NPOs can be inspected by any person for a fee. Further, law enforcement agencies such as FPF and FICAC may also invoke their investigation powers under their respective laws to have access to information on the administration and management of particular NPOs. However, authorities will not have full access to information on administration and management of NPOs due to the deficiencies in the applicable laws, among others: (i) no obligation on NPOs under the FSA to maintain updated information on the members and officers; (ii) no express obligation on NPOs under the Co-Operatives Act to maintain information on the identity of senior officers and directors; (iii) religious bodies under the RBRA are not required to keep detailed breakdowns of income and expenditure.

138. *8.6(c)* - The Registrar has established procedures for prompt sharing of information with the law enforcement agencies to take preventive or investigative action when there is a suspicion or reasonable grounds that a NPO is involved in TF activities. The FIU has entered into MOUs with the Registrar of Titles and Registrar of Titles to facilitate information sharing between authorities for similar purposes.

139. *Criterion 8.7* - The AG is the designated point of contact for all international requests seeking information regarding any particular NPOs suspected of being involved in terrorism financing or provision of other forms of supports to terrorists.

Weighting and Conclusion

140. While some measures are in place, Fiji has not reviewed the adequacy of laws relevant to NPOs, nor has it conducted any outreach to the NPO sector on TF risk notwithstanding that Fiji acknowledges the high TF risk of NPO sectors globally. Given the lack of policies and monitoring of NPOs for TF risk issues, there are a number of important shortcomings in relation to this recommendation. **Fiji is rated partially compliant for R.8.**

Recommendation 9 – Financial institution secrecy laws

141. In the 2006 MER, Fiji was rated compliant with the former FATF recommendation 4.

142. *Criterion 9.1* - The FTR Act came into effect in January 2006. Section 37 of the FTR Act requires financial institutions to comply with the FTR Act notwithstanding any other secrecy or other restriction on information disclosure set out in any other laws in Fiji.

Weighting and Conclusion

143. **Fiji is rated compliant for R.9.**

Recommendation 10 – Customer due diligence

144. In the 2006 MER, Fiji was rated partially compliant with the former R.5. The factors underlying the rating included: the FTR Act had not yet been implemented; the specific AML/CFT CDD requirements were only partially in line with international standards; the CDD requirements were only implemented by banks, not all the non-bank financial institutions; there were no specific CDD measures for trusts; and financial institutions were not required under the FTR Act to conduct enhanced due diligence in relation to higher risk customers.

Detailed CDD requirements

145. The FTR Act and FTR Regulations contain measures in relation to CDD applicable to financial institutions and DNFBPs in Fiji. The FTR Regulations are made under s.42 of the FTR Act by Fiji's Minister of Justice to give effect to the provisions of the FTR Act. The FTR Regulations have requirements in relation to CDD; however, the FTR Regulations have no penalty provisions for a breach of their terms and therefore the requirements in them are not enforceable.

146. Consequently, the only obligations that are enforceable (via sanctions) in relation to CDD for financial institutions are contained in the FTR Act, of which not all are enforceable.

147. Section 29(2) of the FTR Act provides the FIU with the power to enforce compliance, including issuance of an action plan and directions to comply, with Part 2 of that Act (obligation to keep records and verify identity) and Part 3 of the Act (obligations to report). Under ss.29(3) & (4), a financial institution may be taken to court if it fails to comply with the FIU's directive, but none of s.29 extends to enforcing any other parts of the FTR Act or FTR Regulations.

148. *Criterion 10.1* - Subsection 9(1) of the FTR Act requires a financial institution to maintain accounts in the true name of the account holder. Subsection 9(2) prohibits financial institutions from opening, operating or maintaining anonymous accounts or accounts in fictitious, false or incorrect name. In addition, ss. 38(1) also has sanction provisions for a person who opens, operates or authorised the opening or the operation of an account with a financial institution in an anonymous or fictitious name.

149. *Criterion 10.2* - Subsection 4(1)(a) of the FTR Act requires financial institutions to identify and verify a customer from reliable and independent source if a financial institution enters into a continuing business relationship. The due diligence of a customer also applies even in the absence of a continuous business relationship where the financial institution conducts any transaction.

150. Subsection 4(1)(b) of the FTR Act also requires customer due diligence to be conducted where a financial institution carries out an electronic funds in circumstances covered by recommendation 16.

151. Subsections 4(1)(c) and (d) of the FTR Act transfer requires customer due diligence to be conducted if there is a suspicion of ML offence or terrorism and if there is doubt about the veracity or adequacy of the customer identification it had previously obtained.

152. *Criterion 10.3* - Subsections 4(1) and (2) of the FTR Act require financial institutions to identify and verify its customers based on reliable and independent source documents, data or information. This CDD requirement applies to permanent and occasional customers.

153. *Criterion 10.4* - Subsection 4(2)(d) requires financial institutions to verify that any person purporting to act on behalf of a customer that is a legal person, is authorised to do so and should identify this person.

154. *Criterion 10.5* - Subsection 4(2)(b) requires the identification and the adequate verification of the existence of principal owners, directors and beneficiaries but does not have identification requirements in relation to 'beneficial owner' as defined under the FATF standards.

155. *Criterion 10.6* - Subsection 4(6) of the FTR Act requires a financial institution to take reasonable measures to ascertain the purpose of any transactions and the origin and ultimate destination of the funds involved in the transactions. By obtaining information in relation to the transactions, financial institutions gain understanding of the purpose and intended nature of the business relationship. Interpretation of the Act is that 'transaction' includes opening of an account.

156. *Criterion 10.7* - (a) Subsections 4(6), 4(7) and 10(1) of the FTR Act relate to requirements for monitoring transactions and for financial institutions to take measures to monitor transactions, with sanctions for non-compliance applicable. (b) There is no provision in the Act requiring that documents, data or information collected under the customer due diligence process be kept up to date and relevant.

157. Furthermore, although s.11 of the FTR Act requires financial institutions to conduct due diligence on the customer and its business relationship with the customer and to monitor customer's transactions to ensure they are consistent with customer's business and source of funds, there is no penalty for the breach of the requirements in s.11, therefore, neither can it be enforced under the provisions of s.29.

158. *Criterion 10.8* - For customers that are legal persons or legal arrangements ss.4(2) of the FTR Act requires the financial institution to verify the customer's ownership and control structure but there is no provision in the FTR Act that requires the financial institution to understand the nature of the customer's business.

159. *Criterion 10.9* - Section 4(2) of the FTR Act requires that for a customer that is a legal entity, a financial institution must adequately verify its legal existence and the structure of the legal entity, including information relating to the, name, address, legal form, its control structure, principal owners, directors, beneficiaries and the provisions regulating the power to bind the entity. In addition, the person that acts on behalf of the entity must also be identified. The Act, however, does not require the identification by financial institutions of the names of relevant persons having a senior management position in the legal person.

160. *Criterion 10.10* - Subsection 4(2)(b) requires financial institutions to verify the principal owners, directors and beneficiaries of a customer that is a legal entity. However, Fiji does not have legislative provision requiring financial institutions to identify the natural person(s) who ultimately has/have controlling ownership interest in a legal person.

161. *Criterion 10.11* - Although subsection 4(2)(b) requires that for a legal entity, financial institutions must verify the beneficiaries of the legal entity, it does not go further and set legislative provisions in relations to trusts. There is no legislation requiring the identity of the settlor, the trustee(s), the protector(if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and for other types of legal arrangements, the identity of persons in equivalent or similar position.

162. *Criterion 10.12* - The FTR Act does not have provisions requiring financial institutions to conduct customer due diligence measures on the beneficiary of life insurance and other investment related insurance policies.

163. *Criterion 10.13* - The FTR Act does not have provisions requiring financial institutions to determine whether enhanced customer due diligence should apply to beneficiary of a life insurance policy as required in this criterion. The FTR Regulations, s.13, 'Identification of insurance beneficiaries', requires financial institutions to identify each beneficiary under the insurance policy and states that a financial institution 'may', not 'should', undertake the identification and verification of a beneficiary before the time of pay-out. This section of the FTR Regulations does not have penalties for non-compliance and therefore the requirements are not enforceable.

164. *Criterion 10.14* - Subsections 4(1) and (2) of the FTR Act requires a financial institution to verify the identity of the customer and any beneficiaries when it enters into a business relationship or, in the absence of such a relationship, conducts a transaction. However as identified in Criterion 10.5, the FTR Act has no provision in relation to requirements for beneficial owners as defined by the FATF standards. Furthermore, the FTR Act does not have any provision in relation to timing of verification of customers and beneficial owners.

165. *Criterion 10.15* - The FTR Act has no provision requiring financial institutions to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

166. *Criterion 10.16* - The FTR Act does not have provision requiring financial institutions to apply customer due diligence on existing customers. The FTR Regulations have a provision requiring due diligence on existing customers, however, as stated earlier, these are not enforceable.

167. *Criterion 10.17* - There are no legal requirements for financial institutions to perform enhanced due diligence where the ML/TF risks are higher. *Criterion 10.18* is not met. There are no legal provisions for conducting simplified CDD where ML/TF risks are lower.

168. *Criterion 10.19* - Section 7 of the FTR Act provides that the financial institution must not proceed with the transaction where the identity of the customer is not satisfactorily obtained and for it to report the attempted transaction to the FIU. This provision, however, has no penalty for non-compliance and is not enforceable, therefore, neither can it be enforced under the provisions of s.29. Fiji does not have enforceable means to meet this criterion.

169. *Criterion 10.20* - There is no provision in the FTR Act for exemption of the CDD process in circumstances where conducting the CDD process would tip-off the customer. Moreover, there is no requirement in those circumstances that requires the financial institution to report a STR.

Weighting and Conclusion

170. Fiji has shortcomings in meeting recommendation 10 in areas where the CDD requirements in the FTR Act and FTR Regulations are not enforceable with sanctions. There are also areas where Fiji has no or inadequate legislative requirements to meet the FATF standards. These are in the areas of trusts, identifying the person who has the ultimate controlling ownership interests, carrying out due diligence on beneficial owners of life insurance and insurance investment products, and the requirement to conduct enhanced due diligence when ML/TF risk are higher. **Fiji is rated partially compliant for R.10.**

Recommendation 11 – Record-keeping

171. In the 2006 MER, Fiji was rated partially compliant and found that although the FTR Act imposes requirements in relation to keeping records and methods of retention, not all institutions have implemented the requirements.

172. *Criterion 11.1* - Subsection 8(1) of the FTR Act requires financial institutions to establish and maintain records of all transactions conducted, including any correspondences relating to these transactions, which is a FATF requirement. However, it is also a FATF requirement that the records are maintained for at least five years following completion of the transaction. Although s.8(3) of the FTR Act specifies these records must be kept for a minimum period of seven years from the date of any transaction or correspondence, ss.8(3) has no penalty attached for non-compliance and therefore cannot be enforced.

173. *Criterion 11.2* - Subsections 8(1)(b) and (c) of the FTR Act requires financial institutions to establish and maintain records of a person's identity obtained under the s.4 ("Verifying customer's identity") and s.5, ('Correspondent banking relationship'). This criterion however requires the financial institutions to keep all these records obtained for at least five years following the termination of the business relationship or after the date of the occasional transaction and as stated in criterion 11.1, the FTR Act has no penalty attached requiring the records to be maintained for at least five years..

174. *Criterion 11.3* - Subsection 8(2) of the FTR Act sets out the records that financial institutions must maintain as reasonably necessary to enable transactions to be readily reconstructed at any time by the FIU or a law enforcement agency. The penalty under s.8(5) of the FTR Act applies for the contravention of this requirement. However, there is no set timeframe for these records to be maintained as required by c11.1. Therefore, they may not be available for reconstruction.

175. *Criterion 11.4* - Although under ss.8(4) of the FTR Act financial institutions are required to maintain customer identification information and transaction records in a manner and form that enables it to comply as soon as practicable with requests for information from the FIU or a law enforcement agency, this requirement has no penalty attached for non-compliance and is therefore not enforceable.

Weighting and Conclusion

176. The FTR Act provides for recordkeeping requirements but those requirements lack enforceable means (no sanctions) to address non-compliance related to record retention periods and to require that the records be available swiftly to domestic competent authorities. **Fiji is rated partially-compliant for R.11.**

Recommendation 12 – Politically exposed persons

177. In the 2006 MER, Fiji was rated partially compliant with the former R.6. The factors underpinning the rating included: the provisions in the FTR Act on PEPs did not extend to beneficial owners and existing customers and the relevant provisions had not been implemented; and banks were not required to conduct enhanced due diligence in relation to PEPs.

178. *Criterion 12.1:*

179. *Criterion 12.1(a)* - Section 4(3) of the FTR Act requires that the financial institution must have risk management systems capable of determining whether a customer is a foreign PEP. Regulation 20(7) of the FTR Regulations (which are not enforceable) requires financial institution to put in place appropriate risk management systems to determine whether the beneficial owner is a foreign PEP.

180. *12.1 (b) and (c)* - Section 4(3) of the FTR Act requires the identification of PEPs and where the customer is such a person, the financial institution must obtain the approval of senior management before establishing business relationship, take steps to establish source of wealth and funds and conduct regular and enhanced monitoring of the business relationship. Such measures are also set out in ss. 20(6) and 20(7) of the FTR Regulations (although these Regulations have no sanctions attached and therefore not enforceable).

181. *12.1 (d)* - Requirements for enhanced monitoring of relationship with foreign PEPs is provided in s.4(3) FTR Act.

182. *Criterion 12.2* - Domestic PEPs and persons entrusted with a prominent function by an international organisation are not included in the PEPs requirements under the FTR Act. The definition of PEPs in the FTR Act only relates to foreign PEPs.

183. *Criterion 12.3* - The definition of PEPs (s.2 of the FTR Act) covers family members and close associates of foreign PEPs, but does not include persons entrusted with a prominent function by an international organisation or domestic PEPs. Thus, the measures for dealing with PEPs in s.4(3) of the FTR Act in relation to family members and close associates of PEPs are only in relation to foreign PEPs.

184. *Criterion 12.4* - The FTR Act does not have provisions requiring a financial institution to take reasonable measures to determine whether the beneficiary of a life insurance policy is a PEP.

Weighting and Conclusion

185. Fiji's legislation in relation to PEPs only relates to foreign PEPs and does not extend to domestic PEPs or international organisations. In addition, for life insurance policies, Fiji's legislation does not require financial institutions to take reasonable measures to determine whether beneficiaries of the policy are PEPs. **Fiji is rated partially compliant for R.12.**

Recommendation 13 – Correspondent banking

186. In the 2006 MER, Fiji was rated partially compliant with the former R.7. The factors underlying the rating included that: banks did not offer correspondent banking services to foreign intermediaries; the due diligence obligations that may apply to correspondent banking under Policy 6 were ambiguous and did not meet the international standards.

187. *Criterion 13.1* - Section 5 of the FTR Act is headed 'Financial institution in cross-border correspondent banking relationship'. It states the requirements for 'cross-border correspondent banking relationship and other similar relationship', and sets out due diligence requirements for 'the person' with whom the financial institution conducts business. The requirements are enforceable under Banking Supervision Policy No. 6 with penalties prescribed in Section 15 of the Banking Act. The Act empowers the Reserve Bank of Fiji as the supervisor to impose financial sanctions or to direct the licenced institution to take any action as specified by the Reserve Bank. Sanctions can also be enforced through the conditions of licence including revocation of licence.

188. *Criterion 13.2* - Subsection 4(5) of the FTR Act sets out the requirements with respect to payable-through accounts in accordance to the standards for this criterion. The requirements are enforceable through banking licensing conditions under the above-noted Banking Supervision Policy Statement 6.

189. *Criterion 13.3* - While there are no provisions in the FTR Act prohibiting entering into or continuing correspondent banking relationship with shell banks, the FTR Regulations have a provision requiring financial institutions to have measures in place to guard and prohibit financial institutions against establishing relationship with a shell banks. This requirement is enforceable pursuant to the Banking Supervisions Policy No. 6 and has applicable sanctions for its breach.

Weighting and Conclusion

190. **Fiji is rated compliant for R.13.**

Recommendation 14 – Money or value transfer services

191. In the 2006 MER, Fiji was rated partially compliant with the former SR.VI. Factors underlying the rating included that: AML/CFT requirements had not been implemented in the MVTS sector; and on-going supervision of compliance had not yet commenced.

192. *Criterion 14.1* - MVTS are required to be licenced under the Exchange Control Act and are regulated by the RBF. Providing MVTS without proper RBF approval is an offence.

193. *Criterion 14.2* - The RBF has issued public statements to raise awareness in relation to the requirements for persons to be licensed in order to provide MVTS, and provided to the public the list of licensed MVTS. The MVTS advise that the RBF also holds regular meetings with them, which provides an opportunity for licensed operators to advise of any unlicensed operators. However, the RBF has not received any such reports. The RBF has had other occasion to revoke three restricted foreign exchange dealers' (RFEDs) licences: two on request and another after issuing a notice. The RBF, however, has not evidenced that it has taken active outreach or investigation to proactively identify unlicensed MVTS and/or work with investigative authorities to identify unlicensed operators.

194. *Criterion 14.3* - Under schedule 2 of the FTR Regulations, the RBF is the supervisory authority for MVTS providers' compliance with AML/CFT obligations. MVTS providers are assessed for compliance with the FTR Act annually by the RBF prior to licence renewal. The assessments include review of compliance with customer identification and recordkeeping requirements. The RBF works with the FIU in matters relating to compliance with the MVTS reporting obligations.

195. *Criterion 14.4* - MVTS providers are the banks and the RFEDs and are licensed by the RBF under the Banking Act and Exchange Controls Act which also requires agent of MVTS to be licensed.

196. *Criterion 14.5* - MVTS providers that have agents are required as part of their license requirements to take ultimate responsibility for ensuring their agents comply with all relevant laws and supervisory requirements in Fiji relating to the agency business.

Weighting and Conclusion

197. **Fiji is rated compliant for R.14.**

Recommendation 15 – New technologies

198. In the 2006 MER Fiji was rated non-compliant with R.15. The main factor underlying the rating was there was no requirement on financial institutions to establish policies and procedures to manage the ML/TF risks of misuse of technological developments for ML/TF and of non-face to face transactions at that time.

199. *Criterion 15.1* - The NRA action plan covers the identification and assessment of the ML/TF risks related to new technologies, however as the NRA was only adopted in June 2015, the follow-up of the assessment is not clear, including how the results have been communicated to all financial institutions. Not all financial institutions are required to assess the risks of new products, business practices and delivery mechanisms before their introduction in the market. Only banks and credit institutions are required under the Banking Supervision Policy Statement No. 6 (enforceable instrument) to carry out ML/TF risk assessment prior to the launch of new products, services and delivery channels. Section 3 (2) and 29 (2) of the FTR Regulations only require other financial institutions to apply a risk-based approach with risk mitigation measures in relation to customer, transaction and products as well as services offered. There are no requirements on carrying out risk assessments, including the use of new or developing technologies for both new and pre-existing products. There are requirements on risk management under the Insurance Supervision Policy Statement on Minimum Risk Management and the Restricted Foreign Exchange Dealers/Moneychanger Supervision Policy No. 1, but the risk assessment does not cover ML/TF areas.

200. *Criterion 15.2* - Similar to the above, only banks and credit institutions are required to identify and assess ML/TF risks prior to the launch of new products, business practices and delivery mechanisms and introduce risk mitigation measures accordingly.

Weighting and Conclusion

201. The requirement to identify and assess ML/TF risks related to new technologies only applies to banks and credit institutions but not to other non-bank financial institutions. The NRA assessment in 2015 did cover assessment on new technologies but it is not clear whether financial institutions have identified and assessed their ML/TF risks related to new technologies. **Fiji is rated partially compliant for R.15.**

Recommendation 16 – Wire transfers

202. Fiji was rated partially compliant with former SR.VII. The factors underlying the rating included: (1) the legal requirements under the Act were largely consistent with the elements of SR.VII, however the CDD rules on wire transfers below FJD1 000 (~USD500) were unclear; (2) the practice of financial institutions was not fully consistent with the FTR Act; and (3) there were weaknesses identified with regard to the sanctioning and supervision system under the FTR Act that undermined the framework of rules relating to wire transfers to the same extent.

203. *Criterion 16.1* - Section 12 of the FTR Act requires financial institutions to include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers. Although it does not specifically state that it must include beneficiary information as required by this criterion, the requirement for reporting cross border electronic funds transfer under s.13 (2)(a) and (b) of the FTR Act requires the report to be in the prescribed form. The prescribed form under the regulations requires both the relevant originator information and the relevant beneficiary information to be included.

204. Section 13(2) of the FTR Act requires that any electronic transfer exceeding \$10,000 (USD \$5,000) or any other prescribed amount must be reported. The prescribed form to report electronic transfer does not specify the threshold amount to report. However, s.26 of the FTR Regulations states that any electronic funds transfer carried out by the financial institution must be reported. Therefore, all electronic funds transfers are required to be reported.

205. *Criterion 16.2* - The FTR Act does not provide any special CDD requirements for cross-border transfers contained within a batch transfer. Fijian authorities indicated that batch transfers do not exist in Fiji. However, there are no provisions under the law that prohibit batch transfers. There are CDD requirements for batch transfers under the FTR Regulations though they are non-enforceable.

206. *Criterion 16.3* - According to s.4 (9)(d) of the FTR Act, occasional cross-border electronic transfers of less than FJD 1000 (~USD500) are exempted from the CDD requirements (in s.4) to identify originator information. However, the reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers.

207. *Criterion 16.4* - The reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers. In addition, identification and verification of identification still apply when the financial institution has reason to suspect that the transaction is suspicious or unusual.

208. *Criterion 16.5* - Section 12(1) of the FTR Act requires financial institutions to include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and such information must remain with the transfer. In addition, the reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations covers the CDD information of all electronic funds transfers.

209. *Criterion 16.6* - Section 12 of the FTR Act provides originator information requirements for domestic wire transfers while the reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers. However, the requirement for ordering financial institutions to make information available to the beneficiary institution within three working days in s.23 (4) of the FTR Regulation is not enforceable.

210. *Criterion 16.7* - Section 8 of the FTR Act requires financial institutions to maintain records of all transactions including wire transfer transactions.

211. *Criterion 16.8* - Under s.7 of the FTR Act, if the ordering financial institution is unable to complete the CDD process on the originator, the financial institution is prohibited from proceeding with the transfer.

212. *Criterion 16.9* - There are no provisions under the FTR Act that require intermediary financial institutions to maintain the required originator information with all wire transfers including cross-border wire transfers.

213. *Criterion 16.10* - There is no requirement under the FTR Act that intermediary financial institutions must maintain the required originator information with all wire transfers regardless of the intermediary financial institution's technical capacity.

214. *Criterion 16.11* - Section 10(1)(d) of the FTR Act requires all financial institutions to monitor for electronic fund transfers that do not contain complete originator information but there are no

specific requirements to apply measures consistent with straight-through processing to identify cross-border wire transfers that lack originator information or required beneficiary information.

215. *Criterion 16.12* - There is no requirement for intermediary financial institutions to set up risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or required beneficiary information and take appropriate follow-up actions.

216. *Criterion 16.13* - Section 10(1)(d) of the FTR Act requires all financial institutions (including beneficiary financial institutions) to monitor for electronic fund transfers that do not contain complete originator information but there are no specific requirements for post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

217. *Criterion 16.14* - The FTR Act does not provide any requirements for measures to address this criterion.

218. *Criterion 16.15* - There is no requirement for beneficiary financial institutions to set up risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and take appropriate follow-up action.

219. *Criterion 16.16* - All MVTs providers and their agents operating in Fiji are covered under the FTR Act and are required to comply with the requirements on wire transfers but not all required measures under R.16 are addressed by the Act.

220. *Criterion 16.17* - Section 14 of the FTR Act requires financial institutions to report suspicious transactions when there are reasonable grounds for suspicion but there is no specific requirement for taking into account all the information from both the ordering and beneficiary sides in a wire transfer. The reporting form on wire transfers covers both the ordering and beneficiary parties. However there is no requirement for taking both into account in the decision of whether to report STR or not.

221. *Criterion 16.18* - There is no requirement under the FTR Act for taking freezing action and comply with prohibition from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs.

Weighting and Conclusion

222. Fiji has not fully addressed the deficiencies identified in the 2006 MER with deficiencies in the enforceability of the FTR Regulations that require the identification of the originator information and attachment of the necessary identification information in all domestic and cross-border transfers and cover all financial institutions that are acting as remitting, beneficiary or intermediary financial institutions. There is also no requirement to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and take appropriate follow up action. No requirement to take freezing action in relation to relevant UNSCR designated persons and entities. **Fiji is rated partially compliant for R.16.**

Recommendation 17 – Reliance on third parties

223. In the 2006 MER Fiji was rated compliant with former R.9. The FTR Act imposed adequate obligations that comply with the international standard. At that time, financial institutions did not rely on third parties for CDD.

224. *Criterion 17.1* - Section 6 of the FTR Act sets out the actions financial institutions, including DNFBPs, must take when they rely on third parties to undertake its CDD obligations in accordance with the FATF standards. There are, however, no penalties for non-compliance with these requirements in relation to DNFBPs and other financial institutions not regulated by the RBF and hence are not enforceable in those sectors. The requirements however are enforceable for institutions regulated by the RBF under RBF Banking Policy Statement No.6. The FTR Regulations also attempt to apply additional requirements in relation to reliance on third parties for CDD obligations. However, there are no sanctions for non-compliance applicable and therefore the requirements are not enforceable in the same circumstances noted.

225. *Criterion 17.2* - The FTR Act does not provide any provision to meet this requirement. Any relevant requirements in the FTR Regulations that addresses this criterion are not enforceable except for institutions regulated by the RBF as there are no sanctions for non-compliance with the Regulations.

226. *Criterion 17.3* - Section 6 of the FTR Act and section 16 of the FTR Regulations sets out the requirements for reliance on 3rd party to perform CDD measures. These requirements do not have enforceable means except for financial institutions regulated by the RBF where the requirements are enforceable under the Banking Policy Statement No. 6.

Weighting and Conclusion

227. Fiji has legislation regarding third parties reliance but, except for financial institutions regulated by RBF where the requirements are enforceable under the Banking Policy Statement No.6, there are no sanctions for non-compliance and therefore the requirements are, except in the case noted, not enforceable **Fiji is rated partially-compliant for R.17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

228. In the 2006, MER Fiji was rated partially compliant with former R.15 and compliant with former R.22. Factors underlying the rating included the following: limited internal control requirements were only implemented by banks in accordance with a Policy 6 at the time; not all non-bank financial institutions had implemented AML/CFT internal controls; and none of the financial institutions established in Fiji at that time operated foreign branches.

229. *Criterion 18.1* - The RBF Banking Supervision Policy Statement No. 6 (Revised 2014) sets the minimum requirements for a ML/TF risk management framework. The requirements include setting out roles and responsibilities of the board, senior management and the appointed AML compliance officer, to have ongoing employee training programmes and the establishment of an independent audit function to test procedures and systems. These requirements meet the standards of criteria 18.1(a), (c) and (d). The requirement for financial institutions to have screening procedures to ensure high standards when hiring employees is set out in a separate policy statement for the different industries i.e. the Fit and Proper Policies. The Reserve Bank of Fiji's Banking Supervision Policy No. 10, for example, states that: "1.7 Whilst the requirements of this Policy focus on responsible persons, each LFI must ensure that all their current and prospective employees are

assessed against the requirements of this Policy.” Section 21(1)(a)(vii) of the FTR Act attempts to address the requirement for employee screening, however, except in the case of institutions regulated by the RBF, it lacks sanctions and is not enforceable.

230. *Criterion 18.2* - There are no specific requirements in the FTR Act relating to financial groups. Fiji does not have any requirements to implement group-wide programmes against ML/TF.

231. *Criterion 18.3* - Section 21(5) of the FTR Act has requirements in relations to foreign branches and majority-owned subsidiaries that relates to this criterion. However, the requirement in ss.21(5) has no sanctions for non-compliance nor is it enforceable.

Weighting and Conclusion

232. The requirements under c.18.1 are met through the RBF Banking Supervision Policy Statement No. 6 only in relation to financial institutions licenced by the RBF. While c.18.2 and c.18.3 are not met, reduced weight is given to these deficiencies given the low number of financial groups and foreign branches/subsidiaries respectively. **Fiji is rated partially compliant for R.18.**

Recommendation 19 – Higher-risk countries

233. In the 2006 MER Fiji was rated partially compliant with former R.21. Factors underlying the rating included that financial institutions were not advised of the weaknesses in the AML/CFT systems of other countries; and there was no implementation of the required measures beyond the banking sector.

234. *Criterion 19.1* - Section 10(1)(c) of the FTR Act requires financial institutions to pay special attention to business relationship and transactions with persons in a country that does not have adequate systems in place to prevent or deter ML/TF. This is in relation to its transaction monitoring obligations but does not impose the requirement for financial institutions to apply enhanced due diligence (EDD). There is also no provision requiring financial institutions to apply EDD, proportionate to the risks, to business relationships and transactions from countries for which is called for by FATF. The FIU has issued notices on DPRK and Iran to commercial banks and money remittance service providers in August 2014 and advised those entities to apply EDD. However, this direction is not enforceable.

235. *Criterion 19.2* - The FTR Act has no provisions requiring financial institutions to apply countermeasures against high-risk countries.

236. *Criterion 19.3* - Section 25(1)(h) of the FTR Act provides the FIU with powers to instruct financial institutions to take steps as may be appropriate in relation to any information or report received by the FIU. The FIU uses this power to issue notices to financial institutions to apply enhanced due diligence to business relationships and transactions with persons and legal entities in Iran and Democratic People’s Republic of Korea. However, the FIU has not advised financial institutions of concerns and weaknesses in the AML/CFT systems of other countries through the use of information from FATF and mutual evaluation results.

Weighting and Conclusion

237. The FTR Act does not specifically require financial institutions to apply EDD to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF. The Act only requires financial institutions to ‘pay

special attention' but not apply additional measures to those transaction. There is no legislation requiring financial institutions to have countermeasures in place for high-risk countries and there are deficiencies in advising FIs about the weaknesses in the AML/CFT regimes of other countries. **Fiji is rated non-compliant for R.19.**

Recommendation 20 – Reporting of suspicious transactions

238. Fiji was rated partially compliant with former R.13 on suspicious transaction reporting on ML and former SR.IV on suspicious transaction reporting on TF in the 2006 MER. The factors underlying the rating included: (1) the STR requirements were only effectively implemented by banks; (2) the STR requirements had only recently been imposed upon the non-bank financial institutions by the FTR Act and were not yet implemented; (3) a deficiency remained in the requirement in ss.14(1)(b) of the FTR Act to report information relevant to an investigation and information preparatory to the offence of the financing of terrorism, among others, which was viewed as undermining other important STR issues; (4) STR requirements applied in the same manner to suspicion of financing of terrorism; and (5) TF-related STR requirements had only just been introduced by the FTR Act, therefore, evidence of the effectiveness of these provisions was still limited.

239. Fiji addressed the deficiencies concerning the introduction of awareness raising, outreach and training programs during 2007 to 2010, which led to a significant increase in the number of STRs received from the non-bank financial sector. Fiji also issued the FTR Regulation that clarifies the criteria for reporting suspicious transactions and the FIU produces annual reports that contain detailed statistics of STRs. However, nothing has yet been done for the implementation of the reporting requirements on dealers of precious metal and stone.

240. *Criterion 20.1* - Section 14 of the FTR Act requires a financial institution to report to the FIU any transaction or attempted transaction that it suspects or has reasonable ground to suspect may be linked to a serious offence, a ML offence or a TF offence though not all predicate offences as specified by FATF are covered. The suspicious transaction must be reported within two working days from when the suspicion was formed. Section 24 of the FTR Regulations provides the form to be used by a financial institution to report a suspicious transaction. The RBF Policy Statement No. 6 has a similar requirement.

241. *Criterion 20.2* - Section 14 of the FTR Act requires a financial institution to report all suspicious transactions regardless of the amount of transaction, including attempted transactions.

Weighting and Conclusion

242. Not all predicate offences are included in the ML offence and there are deficiencies in the TF offence both areas of which adversely affect the full reporting of suspicious transactions. **Fiji is rated largely compliant for R.20.**

Recommendation 21 – Tipping-off and confidentiality

243. In the 2006 MER Fiji was rated compliant with former R.14

244. *Criterion 21.1* - Section 20 of the FTR Act protects a financial institution, an auditor and supervisory authority and an officer, employee and an agent of the financial institution from civil and criminal liability for reporting a suspicious transaction in good faith or in compliance with a directive from the FIU. Directors are not covered as required for this criterion.

245. *Criterion 21.2* - Section 18 of the FTR Act prohibits a financial institution, its officers, employees or agents from disclosing information that a suspicious transaction has been filed with the FIU. While directors are not specifically mentioned, they are covered by the phrase, "...or any other person..." in s.18 of the FTR Act.

Weighting and Conclusion

246. A minor deficiency in s.20 of the FTR Act means that directors are not covered by the 'tipping off' provisions. **Fiji is rated largely compliant for R.21.**

Recommendation 22 – DNFBPs: Customer due diligence

Preamble: Scope of DNFBPs

247. The DNFBP sector consists of accountants, lawyers, real estate agents, casinos and dealers of precious metals and stones.

248. As at December 2013, there were 787 members/accountants registered with the Fiji Institute of Accountants; there are 38 registered chartered accountants in public practice and operating 20 accounting firms. As at 10 April 2015, there were 563 licenced lawyers. As at January 2015, there were 133 registered real estate agents. There are only small size dealers of precious metals and precious stones which engage in retail business of homemade jewels with value below the FATF threshold of USD/EUR 15,000.

249. Casinos operating in Fiji have to obtain a licence from the OAG according to the Gaming Decree 2009 and are subject to supervision for compliance with AML/CFT requirements by the FIU. Fiji's first casino license was granted in 2011, but the licence was revoked in early 2015. According to the June 2015 NRA report, interactive gaming also exists in Fiji and is regulated under the Gaming Decree 2009 but not covered under the AML/CFT regime. Casino operations aboard cruise ships are required to discontinue operating while in Fiji.

250. All the DNFBPs are covered under the AML/CFT framework, but due to the small size and family nature of jewellers in Fiji, the legal requirements are not yet implemented for dealers of precious metal and dealers of precious stone.

251. There are other business sectors not designated under the FATF recommendations but covered under the AML/CFT framework that are not yet subject to the requirements of the FTR Act. These include pawnbrokers, bookmakers, dealers in art/antiques/precious metals/precious stones or jewels, travel agencies and dealers in motor vehicles/aircrafts/other vessels.

252. Fiji was rated partially compliant with former R.12 in the 2006 MER. The factors underlying that rating included: (1) the obligations on dealers in precious metal and stones were not in force, contingent on prescribing a minimum threshold for transactions to be covered; (2) the FTR Act obligations had only recently been imposed upon DNFBPs and had not been implemented; and (3) the sanctions prescribed under the FTR Act for breaches of obligations under the Act were equally applicable to DNFBPs.

253. *Criterion 22.1* - The FTR Act applies all AML/CFT requirements to a 'financial institution'. The schedule to the FTR Act defines 'financial institutions' – the definition captures all DNFBPs as required under R.22. However, the Act does not address all CDD requirements under R.10. The main element of CDD of beneficial owner has to be covered in law but not in 'other enforceable means'

under the FATF requirement while the requirement of ongoing due diligence can only be enforced indirectly through the implementation of action plan to ensure compliance under S.29 of the FTR Act.

254. *Criterion 22.2* - The obligation to report under Part 3 of the FTR Act does not cover all the necessary records on CDD under the recordkeeping requirements of R.11.

255. *Criterion 22.3* - DNFBPs are only required to comply with foreign PEP requirements. They are not required to comply with domestic PEP requirements.

256. *Criterion 22.4* - The FTR Act does not require financial institutions including DNFBPs to mitigate ML/TF risks, having regard to the types of products and services they offer but there are no explicit requirements for new technologies. Section 3 of the FTR Regulations requires the application of RBA in financial institutions but new technologies are also not covered. Besides, the requirements can only be enforced through the implementation of action plan under S.29 of the FTR Act.

257. *Criterion 22.5* - Article 6 of the FTR Act set up the requirements for c11.1 but there are no provisions for c11.2 and c11.3. The requirements must be enforced in the courts under s.29 of the FTR Act.

Weighting and Conclusion

258. The FTR Act does not cover all the material elements of the CDD requirements under R.10 nor other requirements under R.11, R.12, R.15 and R.17. The domestic PEP deficiency is a major shortcoming. The major deficiencies in the enforceability of the FTR Act and Regulations adversely and seriously affect Fiji's ability to meet the CDD requirements of this recommendation. **Fiji is rated non-compliant for R.22.**

Recommendation 23 – DNFBPs: Other measures

259. Fiji was rated as partially compliant with former R.16 in the 2006 MER. The factors underlying that rating included that the STR obligations of dealers in precious metal and stones were not yet in force, contingent on prescribing a minimum threshold for transactions to be covered. STR requirements have only been recently imposed upon DNFBPs by the FTR Act and were not yet implemented.

260. *Criterion 23.1* - DNFBPs are required to comply with all the requirements of the FTR Act, including requirements on reporting suspicious transaction. As mentioned above, the STR requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented but the vulnerabilities of the sector are considered low.

261. *Criterion 23.2* - DNFBPs are required to comply with the requirements of the FTR Act and FTR regulations to set up internal controls on AML/CFT purposes but the requirements have to be enforced indirectly through the implementation of action plan under s.29 of the FTR Act. Besides, the requirements for dealers of precious metal and stones have not yet been implemented.

262. *Criterion 23.3* - The FTR Act only requires financial institutions to pay special attention to business relations and transactions with persons in a country that does not have adequate systems in place to prevent or deter ML or the financing of terrorism. There are no specific measures in place in relation to countries called into special attention by FATF or requirements to apply counter measures proportionate to the risks.

263. *Criterion 23.4* - DNFBPs are required to comply with all the requirements of the FTR Act including requirements on tipping-off and confidentiality.

Weighting and Conclusion

264. The FTR Act does not cover all the material elements of the requirements for other measures under R.18 and R.19 and the requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented. **Fiji is rated partially compliant for R.23.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

265. In the 2006 MER Fiji was rated partially compliant with former R 33. The 2006 report noted that the Companies Act 1985 created a registration system and a set of record keeping obligations and gave the registrar useful powers to ensure the transparency of legal persons operating in Fiji. However, access to information on beneficial ownership and control was limited.

266. *Criterion 24.1* - Section 4 of the Companies Act 1985 provides the legal framework for the establishment of three basic forms of company as follows: (a) company limited by shares; (b) company limited by guarantee; and (c) unlimited company. Of these, the main types of companies in Fiji are:

- private companies (Part II - Division 8)
- public company (a private company listed on the stock exchange)
- foreign companies (Part X - Division 1)

267. While limited partnerships cannot be formed in Fiji, foreign limited partnerships may register under the Companies Act 1985 to undertake business in Fiji.

268. As at 23 March 2015, the total number of companies registered in Fiji was 135 446. However, there are no statistics available on the numbers of each type of registered company in Fiji, including foreign companies and foreign limited partnerships.

269. Section 3 of the Companies Act establishes the Registrar of Companies as a central registry containing the following information:

- Memorandum of association
- Articles of association
- Name, occupation, address and number of shares of each subscriber of a limited company with share capital
- Number of members of unlimited companies and limited companies not having shares, the number of members (no requirement to register the members' information). The name, occupation and postal address are available for each subscriber as part of the memorandum of association. Companies are also required to keep an up-to-date register of members including the same set of information
- Registered office and postal address
- Information on company secretaries

270. In addition, directors are required to disclose information including their address, nationality, business occupation and other directorships. Section 203 of the Act deems to be director any person in accordance with whose directions or instructions the directors of a company are accustomed to act. Foreign companies must also submit directors' information similar to Fiji companies, as well as the address of the registered office of the company.

271. There is no mechanism in the Companies Act 1985 requiring the identification and disclosure of beneficial ownership information beyond the direct legal owner of shares.

272. Information held by the Registrar of Companies is publicly available for inspection and copying. In addition, companies must make their own registers of members and directors open to any person for inspection (s 117) subject to court order on refusal (s 117(4)).

273. *Criterion 24.2* - The ML/TF risks associated with all forms of legal persons was not assessed in the National Risk Assessment (NRA) of 2015. Given that Fiji does not keep information on the number of various forms of legal persons operating in the country this explains the lack of assessment of risk associated with the varying forms of legal persons. The NRA (p 34) only assesses generally the risk associated with companies but does not breakdown the analysis into assessment of all forms of legal persons as required by this criterion. Neither does there appear to be any evidence of other assessments outside the NRA of 2015 on the risks posed by all types of legal persons for ML and TF.

274. *Criterion 24.3* - Companies are required to be registered with the Registrar of Companies. On registration of the required documents the Registrar issues a certificate of incorporation (s 19). The company is also required to provide the Registrar details on the address of registered office (s.110) and details on directors and the secretary of the company (s. 202). The Registrar of Companies will record the company name, legal form, address of the registered office, particulars of directors and secretary of the company. The public may access information held by the registrar of companies on request.

275. *Criterion 24.4* - Under the Companies Act 1985 at s 114 companies are required to maintain a register of its members (s.114) which includes:

- Names and postal addresses of members
- In the case of a company with share capital, a statement of the shares held by each member and amount paid or agreed to be considered as paid on the shares of each member
- Date at which each person was entered in the register as a member
- Date at which any person ceased to be a member
- Where the company has converted any of its shares into stock, the register must show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified

276. The register should be maintained at the company's registered office or at the office of a third person under the company's responsibility. The register is to be maintained within Fiji. (s.114(2)). The company shall notify the registrar of the place where its register of members is kept and of any change in that place (s 114(3)). Members of the public may access the register for inspection (s.117).

277. As noted above, under Part X of the Act, a foreign company must register under the Act to undertake business in Fiji. In doing so, it must provide the registrar with a copy of its charter, statutes or memorandum/articles; a list of its directors; names and postal addresses of a local agent; address of its registered office or principal place of business and other such information. However, no shareholder information is required to be disclosed nor is the foreign company's register of members or a copy thereof required to be held in Fiji.

278. *Criterion 24.5* - The Companies Act requires companies (not including foreign companies) to provide notification to the registrar of any change to directors and secretaries under s.202(4); change of registered office under s.110(1); change to location of its register of members under s.85(2). The register of members must be updated within 14 days of any changes.

279. Separately for foreign companies, the Companies Act (Part X) requires that changes to a foreign company's charter (memorandum or articles), directors, address of its agents or changes to its register office must be notified to the registrar within 60 days (s. 369). Notification of changes to shareholders and shareholdings are not required.

280. *Criterion 24.6*. Each of the three sub-criteria is individually discussed, bearing in mind that they are alternatives:

281. *24.6 (a)* - The Companies Act does not require the collection and recording of information on the company's beneficial ownership beyond the direct owner of shares by either the company itself or the company registry.

282. *24.6 (b)* - The Companies Act does not require companies to take reasonable measures to obtain and hold up-to-date information on its beneficial owners beyond the direct owners of shares.

283. *24.6 (c)* - Pursuant to FTR Regulations 2007, financial institutions are required to take reasonable measures to understand and document the ownership and control structure of legal persons including the name and permanent residential address of the natural person(s) who ultimately own or control the legal person (see recommendation 10). Lawyers, accountants and real estate agents (as well as other DNFBPs) are defined as 'financial institutions' under the FTR Act Schedule (see recommendation 22). The CDD requirements for lawyers, accountants and real estate agents in relation to beneficial owners of legal persons are the same as for other financial institutions under the FTR Regulations 2007. However, none of the CDD obligations under the FTR Regulations are enforceable for the reasons stated in the analysis of recommendation 10. There do not appear to be any provisions in relation to companies listed on the stock exchange as required by sub-criterion (iv) of this criterion.

284. *Criterion 24.7* - There is no requirement that beneficial ownership information is accurate and as up to-date as possible.

285. *Criterion 24.8* - There is no requirement in the Companies Act or elsewhere to ensure that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner, by:

- Requiring that one or more natural persons resident in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities, and/or

- Requiring that a DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities, and/or
- Taking other comparable measures, specifically identified by the country

286. *Criterion 24.9* - There is no requirement in the Companies Act for records to be maintained for a period of five years following winding up, dissolution or otherwise ceasing to exist, of a company, including a foreign company. The FTR Act, however, provides for financial institutions and DNFBPs (including lawyers and accountants) to keep records of legal persons for a minimum period of seven years from the date the account is closed or business relationship ceases (FTR Act s. 8(3)(c)).

287. *Criterion 24.10* - Law enforcement authorities have adequate powers to access ownership information on companies held either with companies themselves or with the Registrar of Companies. But the range of information collected is limited to direct ownership information. Wider beneficial ownership information (as defined by the FATF) is not required to be collected or maintained. FPF and FICAC can access information from individual companies through search warrants. Similarly, FRCA issues administrative summons (s. 36 of the Tax Administration Decree (TAD)) to obtain company information or documents required for investigations. The FIU has powers to access company information from the Registrar under s.25(b) and (d) of the FTR Act. The FIU can also access company information held by financial institutions and DNFBPs. These powers do not extend to information other than what is held (i.e., do not extend to comprehensive beneficial ownership information beyond the immediate shareholder).

288. *Criterion 24.11* - The Companies Act by s. 87 allows the issue of a share warrant to bearer, which entitles the bearer thereof to the shares specified therein. Companies are required, once a share warrant has been issued, to remove the name of the holder of the shares from the register of members as if he has ceased to be a member. The company must then enter into the register: the fact that a warrant has been issued, a statement of the shares included in the warrant, and the date of the issue of the warrant. Nothing in the Act restricts the rights or powers of the bearer of a share warrant. Subject to the company's articles of association, the bearer of these instruments can exercise full membership rights. Apart from ensuring the disclosure of the fact that bearer shares do form part of the ownership structure of the company and the size of this type of ownership, the transparency obligations imposed by the Act do not guarantee the transparency of beneficial ownership for bearer shares.

289. In addition to the warrants described, the Companies Act does not prohibit the issuance of bearer shares including the issuance of bearer shares by foreign registered companies in Fiji. Consequently, unless a company's articles of incorporation restrict the issuance of bearer shares those companies in Fiji may issue them. Likewise, for companies registered in Fiji but established in a foreign jurisdiction under whose laws bearer shares are permitted to be issued, those companies are not directly restricted from issuing those bearer shares in Fiji. For bearer share warrants and bearer shares there are no measures in the Companies Act 1985 to mitigate the ML and TF risk posed by these instruments.

290. *Criterion 24.12* - The Companies Act permits nominee directors and nominee shareholders. The deeming provision of s. 203 of the Act provides that a director may be any person "in accordance with whose directions or instructions the directors of a company are accustomed to act." There are no provisions in the Act requiring disclosure to the company or to the Registrar of the identity of the nominator of shares or directors.

291. *Criterion 24.13* - The Companies Act contains some sanctions in the form of fines for failure to meet provisions in the Act such as:

- Failure to notify the Registrar of the location of the registered office or any change therein (s.110(3), s 395)
- Failure to maintain a register of members or for failing to notify the Registrar of companies on location of the register of members (s. 114(4))
- Refusal to provide register of members for inspection (s.117(3) and (4))
- Failure to maintain register of directors; failure to notify the registrar of companies of change to directors or secretary; refusal for provide register of director for public inspection (s.202(7); s.395)

292. However, the penalty is a default fine for these breaches (s.395) not greater than FJD20 (~USD9) per day as long as the breach continues. In these circumstances, it cannot be said that the penalties are proportionate and dissuasive.

293. *Criterion 24.14* - Fiji can provide international cooperation in relation to basic ownership information but not beneficial ownership information as defined by the FATF methodology (see c24.10). Under MOUs signed with foreign FIUs, and under the Egmont Group sharing arrangements, the Fiji FIU is able to facilitate and respond to requests from foreign FIUs for basic beneficial ownership information held with the company Registrar.

294. Fiji Police Force can access basic company information (without a warrant) held at the registrar of companies and provide this to foreign counterparts. The Police are also able to use their investigative powers to obtain beneficial ownership information from companies on behalf of foreign law enforcement authorities using formal mutual legal assistance channels.

295. *Criterion 24.15* - There is no evidence that Fiji monitors the quality of assistance it receives from other countries in relation to requests.

Weighting and Conclusion

296. The lack of ML and TF risk mitigating measures for bearer share instruments and for nominee shareholders and directors, together with the absence of requirements for the Registrar and companies themselves to hold beneficial ownership information are major shortcomings¹⁶. Given the vulnerability rating of companies in the NRA (high) these are major shortcomings. Fiji does, however, have measures in place to meet or partly meet a number of the criteria **Fiji is rated partially compliant for R.24.**

Recommendation 25 – Transparency & beneficial ownership of legal arrangements

297. Fiji was rated partially compliant with former R 34. The 2006 MER found that apart from the recordkeeping requirements and CDD obligations on TCSPs in the FTR Act, there were no mechanisms to ensure the transparency of trusts and similar arrangements. Further, at the time of the 2006 MER the FTR Act provisions in relation to TCSPs had not been implemented or enforced. FATF's revised methodology and recommendations (R 25) contain new requirements that were not assessed under the 2004 methodology.

¹⁶ A new Companies Act 2015 became law in Fiji after the on-site visit and in doing so repealed the Companies Act 1985.

298. Express trusts in Fiji are formed under common law and subject to limited statutory measures in the Trustee Act.

299. *Criterion 25.1* - There is no requirement in Fiji law (common law or statute law) for trustees of express trusts to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust. Trustees are also not required to hold information on other regulated agents as provided in this criterion.

300. Professional trustees including lawyers, accountants and trust companies are defined as “financial institutions” in the FTR Act under which they must hold information in relation to their business dealings (s.8). Further, under the FTR Regulations 2007 at s.10, these financial institutions must take reasonable measures to understand the ownership and control structure of “legal arrangements” (defined as an express trust or other similar arrangement”) including the ultimate beneficial owner of trusts. This extends under s.10(6) as meaning, identifying the settlor and trustee, and any beneficiary whose interest is “30 per cent or more of the value of the trust or arrangement.” This definition does not comply with the definition of “beneficiary” in the FATF methodology (where it is not restricted to a value threshold). Information maintained by these professions must be held for a period of seven years after the business relationship ceases (FTR Act s. 8(3)(c)).

301. *Criterion 25.2* - There is no requirement that any information held by express trustees, trustees of other forms of trust, and professional trustees is kept as accurate and up-to-date as possible, or is updated on a timely basis.

302. *Criterion 25.3* - There is no obligation on trustees to disclose their status when entering into a business relationship or conducting an occasional transaction with a financial institution entity or DNFBP.

303. *Criterion 25.4* - There is no prohibition in law on trustees providing trust-related information to competent authorities.

304. *Criterion 25.5* - Competent authorities, e.g., FICAC, police, have the adequate legal powers to access information on trusts held with trustees or financial institutions and DNFBPs. The FIU has powers to access information on trusts held by financial institutions and DNFBPs (FTR Act) Law enforcement agencies can rely on the FIU to provide information. Tax authorities have adequate powers of search under s.35 of the Tax Administration Decree 2009.

305. *Criterion 25.6* - Fiji does not require all trustees to hold basic information for exchange with competent authorities including law enforcement. There is no specific framework governing the exchange of information in relation to trusts. However, Fiji FIU has powers under the FTR Act to collect and disseminate information to foreign FIUs. The Mutual Assistance in Criminal Matters Act allows a foreign country to request Fiji to issue an order requiring relevant documents to be produced or made available for inspection.

306. *Criterion 25.7* - There are no laws, including under the Trustee Act, providing for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees. Accordingly, Fiji lacks proportionate and dissuasive sanctions for of trustees to comply with their trust obligations.

307. *Criterion 25.8* - There are no proportionate and dissuasive sanctions available (criminal, civil or administrative) to enforce the requirement to grant competent authorities access in a timely

manner to information where held regarding trusts. The Trustee Act does not provide for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees.

Weighting and Conclusion

308. Information available on trusts is limited. Beneficial ownership information is not available. Fiji did not assess the vulnerabilities of trusts for ML and TF. Based on the vulnerability rating of companies in the NRA (high), the deficiencies in this recommendation are also considered significant. Fiji does however have measures in place to meet or partly meet a number of the criteria. **Fiji is rated partially compliant for R.25.**

Recommendation 26 – Regulation and supervision of financial institutions

309. In the 2006 MER, Fiji was rated partially compliant with former R.23. Factors underlying the rating included the FTR Act did not give the existing supervisory authorities a definite role in implementing and enforcing AML/CFT requirements; and the framework defined in the Act created opportunity for conflict of jurisdiction and overlapping responsibilities.

310. *Criterion 26.1* - The RBF is the supervisory authority that regulates and supervises the banks, insurance industry, capital markets and securities industry for compliance with AML/CFT obligations. (s.36 of the FTR Act sets out the obligations of the supervisory authority.). The FIU also monitors the transactions reports submitted by these sectors off-site.

311. Two statutory lenders (the Housing Authority of Fiji and Fiji Development Bank), cooperatives and credit unions are specifically exempted from supervision and oversight by the RBF under s.70(1) of the Banking Act 1995, even though they fall within the definition of “financial institution” under the Act. The statutory lenders are not supervised for compliance with AML/CFT requirements.

312. Oversight and licencing of cooperatives and credit unions is entrusted to the Department of Cooperatives and the Registrar of Credit Unions respectively. These authorities do not regulate and supervise their respective entities for compliance with the AML/CFT requirements. For context, these entities form less than 1% of the total financial sector in Fiji.

313. *Criterion 26.2* - Persons or entities who wish to conduct banking, insurance, securities and restricted foreign exchange business are required to first be licensed by the RBF as stipulated in the legislation:

- Banking Business – s.8(1) of the Banking Act 1995
- Insurance Business as an Insurance Company – s.13 of the Insurance Act 1998
- Licencing of Insurance Intermediaries – s.42 of the Insurance Act 1998
- Restricted foreign exchange business - s.3 of the Exchange Control Act and Legal Notice 88 (delegating powers of the Minister of Finance under the Exchange Control Act to the Governor RBF), and
- Capital Markets (securities advisors, dealers, brokers, unit trusts or managed funds) – s.14 of the Capital Markets Decree 2009

314. Credit unions are licensed by the Registrar of Credit Unions and co-operatives are licenced by Department of Cooperatives. Hence, all financial institutions in Fiji are licensed by competent authorities.

315. *Criterion 26.3* - The RBF is responsible for licencing and supervising financial institutions. A condition for issuance of a licence to a financial institution is that the key responsible persons must meet certain criteria such as technical knowledge and must be 'fit-and-proper persons'.

316. The fit-and-proper requirements are provided in relevant laws (Banking Act; Insurance Act; Capital Markets Decree; and the Exchange Control Act). The specific supervision policies for the fit and proper requirements are as follows:

- Banks/credit institutions – Banking Supervision Policy Statement No. 10
- Insurance Companies and Insurance Brokers – Insurance Supervision Policy Statement No. 7
- Capital markets intermediaries – Capital Markets Supervision Policy Statement No. 6
- Restricted Foreign Exchange Dealers (RFEDs) and moneychangers - Banking Supervision Policy Statement No. 2.

317. The types of business permitted for restricted foreign exchange dealers licences are set out in Banking Supervision Policy Statement No. 1. RBF conducts fit-and-proper assessments, background and credibility checks and obtains written confirmation from home supervisors of all key responsible persons within a financial institution during the licensing stage. Under ss.19(7) of the Banking Act, the RBF also has powers to debar unfit persons from management of banks, credit institution. This includes any person who has been sentenced by a court in any country to an imprisonment term for an offence involving dishonesty. Under s.23 of the Insurance Act, a disqualified person cannot be a principal officer or director of an insurance company.

318. Subsection 36(a) of the FTR Act provides that the relevant AML/CFT supervisory authority of financial institutions can take necessary measures to prevent unsuitable persons from controlling, or participating in the management or operation of, a financial institution.

319. *Criterion 26.4:*

320. *26.4(a)* - In line with Core Principle 29 of the Basel Committee's Core Principles for Effective Banking Supervision (abuse of the financial system and supervision of the bank's AML/CFT controls) under the Banking Act 1995 the RBF has issued the Banking Supervision Policy Statement No. 6 which sets out the minimum requirements for the management of ML/TF risk. That instrument requires all RBF licensed institutions to implement a comprehensive ML/TF risk management framework in line with the requirements of the FTR Act. Sanctions can be imposed for failure to comply under s.15(1)(d) of the Banking Act 1995. The RBF applies a risk-based approach to supervising compliance with these requirements.

321. *26.4(b)* - Under the FTR Act, the RBF is also the supervisory authority for other financial institutions, namely: restricted foreign exchange dealers (RFEDs), moneychangers, insurance companies, security exchange, securities intermediaries and unit trusts. Section 36 of the FTR Act sets out the obligations of supervisory authorities, which includes conducting examinations and issuing guidelines. The RFEDs and moneychangers are licensed under the Exchange Control Act. The RBF supervises these sectors through an annual review of their obligations of the requirements

under the FTR Act and the RBF's Supervision Policy Statement No. 2, which relates the ML/TF requirements. Those assessments include information sourced from the FIU's off-site assessments of the sector.

322. *Criterion 26.5* - The RBF has taken into account the ML risk posed by the banking, capital markets and insurance sectors, the information it has gathered from previous assessments and the reporting information from the FIU to create its annual supervision activity plan. This methodology is not applied to the moneychangers and RFED as the RBA assessed entities in these sectors annually before renewing the licences. It is however not evident that the RBA assess the ML/TF risk of each entity to apply the necessary level or scope of assessment for the entities with different characteristics and profile.

323. *Criterion 26.6* - The RBF reviews the ML/TF risk profile of financial institutions when it conducts on-site assessments, but not in response to major events or developments in their management and operation.

Weighting and Conclusion

324. Fiji has designated supervisors for regulating and supervising compliance with the AML/CFT requirements through the FTR Act and the Banking Act. There is a licensing regime and 'fit-and-proper' tests are applied. The financial institutions are supervised by the RBF and the FIU monitors the financial institutions reporting requirements. Although there is no AML/CFT-related supervision of credit unions or cooperatives in Fiji, given the relatively small size of these institutions within the overall financial sector of Fiji (combined they amount to 0.08% of the financial sector) the non-supervision of these entities has little impact on the risks of ML and TF in Fiji. **Fiji is rated largely compliant for R.26.**

Recommendation 27 – Powers of supervisors

325. In the 2006, MER Fiji was rated partially compliant with former R.29. Factors underlying the rating included that the FTR Act "seemed" to vest all AML/CFT supervisory functions with the FIU, which did not have adequate resources to carry out these supervisory obligations; and the RBF supervision over the insurance sector was not definitely vested under the FTR Act with the powers for enforcing AML/CFT requirements.

326. *Criterion 27.1.* Subsection 36(b) of the FTR Act provides for the relevant supervisory authority to examine and supervise financial institutions, for compliance with AML/CFT requirements. The FTR Act defines financial institutions to mean 'any person carrying on a business or activity set out in the Schedule for or on behalf of a customer.' The power under the FTR Act includes powers to regulate and verify, through regular examinations, to ensure that licenced financial institutions comply with the requirements of the Act. There is also provision in the FTR Act for supervisors to issue guidelines to assist financial institutions to comply with the requirements of the Act.

327. *Criterion 27.2* - Section 28 of the FTR Act provides the FIU the power to examine the records and inquire into the business and affairs of any financial and non- financial institutions regulated under the FTR Act. for the purpose of ensuring compliance with Part 2 - Obligations to Keep Records and Verify Identity, and Part 3 - Obligations to Report of the FTR Act.

328. The FIU also has powers to enter any premises to examine records relevant to ensuring compliance with customer identification and reporting obligations. Section 36 of the FTR Act also

provides for the supervisory authorities, to ‘examine and supervise’ financial institutions. The FTR Act defines “supervisory authority” to mean ‘any body or agency having regulatory, supervisory or licensing authority over a financial institution.’ The RBF also has powers under the Banking Act, Insurance Act, Exchange Control Act and Capital Markets Decree to supervise and conduct inspections of all entities that it licenses.

329. *Criterion 27.3* - Section 28 of the FTR Act provides the FIU power to obtain any information that it may reasonably require in order to monitor institutions that are regulated under the FTR Act for compliance with its obligations to keep records, verify, identify and report transactions, including STRs. The RBF has additional powers under the Banking Act to compel financial institutions that it licences to provide information relevant to monitoring compliance with AML/CFT requirements.

330. *Criterion 27.4* - The RBF has powers to impose sanctions for regulatory breaches under the following legislation:

- Banking Act 1995 – Issue directives, impose financial penalties; revoke or suspend a financial institution’s licence under s.15, s.30 (2)(a) and s.30(2)(e).
- Insurance Act – Issue directives to licensed insurer/agent (s.80); impose a financial penalty on an insurance company/agent (s.168); and revoke insurers licence (s.3).
- Exchange Control Act Legal Notice 88 for RFEDs and moneychangers – for any contravention to requirements of licence.
- Capital Markets Decree – RBF has powers to issue directives; and revoke or suspend licence of securities intermediaries/unit trust or mutual fund upon failure to meet regulatory requirements s.5(h), s.17.

331. Under s.29 of the FTR Act, the FIU has powers to issue individual directives to financial and non-financial institutions, regulated under the FTR Act, including DNFBPs as described in the schedule of financial institutions within the Act and discussed further in R.28, to establish action plans to address AML/CFT deficiencies after specific examinations of each to enforce compliance with AML/CFT requirements. Those directives are enforceable through court orders with fines set by the court.

332. The FTR Act has fines available to sanction individuals and bodies corporate for non-compliance, including terms of imprisonment for contravention of certain areas of the FTR Act. There are however, requirements in the FTR Act that do not have penalties for non-compliance.

Weighting and Conclusion

333. The FTR Act, the Banking Act, the Insurance Act, the Exchange Control Act and the Capital Markets Decree provides supervisors with powers to examine and supervise financial institution. Supervisors have powers to compel financial institutions to comply with the AML/CFT requirements and production of information relevant to monitoring compliance with the AML/CFT requirements. There are fines and terms of imprisonment that can be imposed for the conviction of the contravention of the FTR Act. However, the FTR Act does not impose sanctions in all areas of the Act. **Fiji is rated largely compliant for R.27.**

Recommendation 28 – Regulation and supervision of DNFBPs

334. In the 2006 MER Fiji was rated partially compliant with former R.24. At that time, the supervisory framework envisioned by the Act was not sufficiently resourced to achieve effectiveness.

Furthermore, the 2006 report, at R.23, advises that in general the supervisory framework created by the FTR Act is unclear and “does not give authorities a definite role in implementing and enforcing AML/CFT requirements” (p.83).

335. *Criterion 28.1:*

336. *28.1(a)* - Casinos are deemed financial institutions under Schedule 2 (u) of the FTR Act. Persons and entities that wish to operate a casino in Fiji must be first licensed by the OAG (refer s.4, s.8, s.9 of the Gaming Decree (2009).

337. *28.1(b)* - The casino laws require fit-and-proper tests for shareholders and management in casinos operating in Fiji.

338. *28.1(c)* - Casinos are/will be (there are no licenced land-based casinos yet in Fiji) supervised for compliance with AML/CFT requirements by the FIU (s.28, s.29 and s.36 of the FTR Act; s.34 and Schedule 2 of the FTR Regulations).

DNFBPs other than casinos

339. *Criterion 28.2* - The second schedule of the FTR Regulations designates the FIU as the supervisor for DNFBPs.

340. *Criterion 28.3* - According to s.28 (1) of the FTR, the FIU is granted with limited power to examine the records and inquire into the business and affairs of any DNFBPs for the purpose of ensuring compliance with only Part 2 and 3 of the Act

341. *Criterion 28.4:*

342. *28.4(a)* - The FTR Act provides FIU with limited power to monitor compliance with Part 2 and 3 of the Act.

343. *28.4(b)* - The Legal Practitioners Decree 2009, the Institute of Accountants Act and Real Estate Agents Act 2006 empower the Legal Practitioners Unit, the Institute of Accountants and Real Estate Agents Licencing Board to carry out licensing and registration of legal professionals, accounting professional and real estate agents with fit-and-proper tests. There are also provisions under ss.44 and 45 of the Legal Practitioners Decree 2009, s.33 of the Institute of Accountants Act and ss.69 and 70 of the Real Estate Agents Act to impose disciplinary actions, including suspension of licences for misconduct.

344. Before approving an application for a licence, or salesperson’s certificate, the Real Estate Agents Licensing Board must consider an applicant’s character, financial position, the interests of the public and whether the applicant is a fit-and-proper person (ss.21 and 43 of the Real Estate Agents Act).

345. A condition for admission to practice as a lawyer is that he/she must be a fit-and-proper person (s.35 of the Legal Practitioners Decree). Furthermore, a person’s annual certificate to practice can be refused or cancelled by the Chief Registrar if he/she has been convicted of an offence involving moral turpitude or fraud (s.44).

346. Persons must be fit-and-proper persons and must be of good character or reputation in order to be registered as members of the Fiji Institute of Accountants (s.20; s.22; s.23A of the FIA Act).

347. Section 36(a) of the FTR Act provides for the FIU to adopt any necessary measures to prevent unsuitable persons from controlling or participating directly or indirectly in the management or operation of a financial institution, including a DNFBP. However, it is not clear how the FIU enforces the measures without supervisory competence given by the Act.

348. *28.4(c)* - Section 28(1) of the FTR Act empowers the FIU to monitor compliance with record-keeping, customer identification (Part 2) and STR reporting (Part 3) requirements but the sanctioning power in Part 2 and 3 of the FTR Act does not include all of the obligations in those parts. There are also no sanctioning powers for breach of FTR regulations.

349. *Criterion 28.5* - Fiji FIU is given some power to monitor the AML/CFT compliance of the DNFBPs as described in c28.3 above; however, supervision is not undertaken on a risk-sensitive basis. The compliance monitoring of the DNFBP sector has been primarily an off-site approach through use of compliance questionnaires (issued 2011, analysed 2011-12) and through off-site monitoring of transaction reports submitted to the FIU to assess their compliance with the AML/CFT requirements. This approach was used in order to assess as many entities as possible.

Weighting and Conclusion

350. There is a designated competent authority for supervision, but there are no sanction measures for some of the preventive measures under the FTR Act. In addition, the frequency and intensity of AML/CFT monitoring of the DNFBP sectors carried out by the FIU is limited to offsite monitoring and issuing questionnaires to the entities, which is not sufficient to ensure compliance of DNFBPs in meeting the requirements with recommendations 18, 19 and 21. The FIU's power to compel compliance with AML/CFT requirements is severely limited. **Fiji is rated partially compliant for R.28.**

Recommendation 29 - Financial intelligence units

351. In the 2006 MER, Fiji was rated partially compliant with former R.26. The factors underlying the rating included: Fiji FIU suffered from resource constraints, which undermined the effectiveness of its functions; no guidelines had been issued to the institutions required to report suspicious transaction; and no strategic analysis was being conducted.

352. Since the 2006 MER, Fiji FIU has issued the FTR Regulations (May 2007), providing further guidance to financial institutions on how to meet their obligations under the FTR Act. In addition, AML guidelines have been issued and made available on the FIU's public website. The FIU has implemented standard operating procedures (SOP) to ensure prioritisation and systematic analysis of suspicious transaction reports (STRs), as well as procedures for conducting preliminary and comprehensive analysis of STRs, supported by statistics demonstrating implementation. By 2009, the FIU had increased staff numbers to eight permanent and three on secondment from partner agencies (one from FPF, a police officer, and two from FRCA, being one tax officer and one customs officer).

353. *Criterion 29.1* - Fiji FIU was established in 2006 under s.22 of the FTR Act 2004. Section 25(1) of that Act provides the FIU's functions, duties and powers, including receipt of STRs and information agencies of another country; by law enforcement agencies; other government institutions; and any other information voluntarily provided to the FIU relevant to serious offences, including ML and TF offences.

354. Sections 7, 13, 14, 15, 16 and 33(2) specify the types of reports to be received by the FIU and s.25(1)(f) provides the legal mandate for the FIU to disseminate the results of the analysis to the appropriate law enforcement and supervisory authority, both domestic and foreign. The FIU *SOP No.1.1 on Receipt, Analysis & Dissemination of STRs* clearly sets down the procedures to be applied in relation to the receipt, analysis and dissemination of STRs.

355. *Criterion 29.2* - Section 14 of the FTR Act mandates that financial institutions report suspicious transactions to the FIU. Section 24 of the FTR Regulations 2007 explains the mode of reporting required under s.14 of the Act. Section 13 of the Act obligates financial institutions to report cash transactions of FJD10 000 (~USD4 700) and above and all international electronic fund transfer transactions (zero threshold amended under s.26.1 FTR Regulations) to the FIU. Sections 25 and 26 of the FTR Regulations provide further guidelines on the reporting of cash transaction reports and electronic fund transfer reports by financial institutions to the FIU. Section 32 of the FTR Act allows the FIU to receive border currency reports. Section 25(1)(a) of the FTR Act also allows the FIU to receive information provided on a voluntary basis including reports from members of the public. Section 16 of the FTR Act imposes requirements on financial institutions and any other person to disclose information relating to terrorist property to the FIU.

356. *Criterion 29.3* - Section 25(1)(b)(c)(d)(q) empowers the FIU to collect, obtain and request the widest possible range of financial, administrative and law enforcement information that it requires to properly undertake its functions including: the receipt of STR, CTR and ETR, direct and indirect access to information from government agencies, requesting additional information from financial institutions and DNFBPs, as well as exchanging of information through MOUs with foreign counterparts.

357. *Criterion 29.4*. The FIU conducts operational analysis pursuant to the legal provisions under the FIU Act. Section 25(1)(e) mandates the FIU to analyse and assess all reports and information received. Section 25(1)(b), (c) and (h) as well as s.14(3) and s.10.4.b allows the FIU to obtain further information relevant to serious offences, ML activities or financing of terrorism to assist in effective tactical analysis. The FIU SOP No.1.1 and No.1.9 also set down the procedures to be followed by FIU staff in relation to the tactical analysis of STRs and strategic analysis on trends and developments in the area of ML/TF. The FIU conducts strategic analysis on regular basis covering the statistics of STR, trends and development of typologies and common ML methods observed and sends out general feedback to reporting entities through the FIU annual reports.”

358. *Criterion 29.5* - The FIU disseminates, spontaneously and upon request, information and the results of its analysis to relevant law enforcement agencies using dedicated, secure and protected channels for the dissemination as set out in the FIU SOP. Section 25(1)(f) and s.27 of the FTR Act provides for the dissemination of any information derived from a report or any other information that the FIU received. The FIU SOP No. 1.1 sets down the procedures to be followed by FIU staff in relation to the dissemination of STRs.

359. *Criterion 29.6* - The FIU SOP No.1.1 on *Receipt, Analysis & Dissemination of STRs* provides the procedures to safeguard confidentiality of suspicious transaction information during receipt, storage and dissemination stages. Access to the FIU’s IT database is restricted to FIU users and authorised users from financial institutions (for uploading transaction reports).

360. Section 30 of the FTR Act creates the offence for the director, staff and/or agents, or former directors, staff and/or agents, of the FIU to disclose information received or obtained during the performance of their duty, subject to a fine or imprisonment. The director of the FIU has issued

internal rules, in accordance with this section, to govern the security and confidentiality of FIU information (SOP 1.6). All FIU staff members, including new staff members and secondees with the FIU, are bound by confidentiality agreements and need to pass a security assessment check. Authorized users from partner agencies under SOP 1.3 that have direct access to the FIU database must also sign a confidentiality agreement with the FIU before access is provided to them. Furthermore, there are provisions in the MOUs with their respective heads of agency that requires them to safeguard the confidentiality of any FIU information that they will access or view.

361. The FIU's IT system incorporates modern security and firewall systems to ensure the safety and security of the FIU database. There are strict protocols in place to safeguard access to the FIU's database. FIU users and users from FIs can only access the FIU database through designated user names and passwords.. Access to the FIU office is restricted only to FIU staff. Non-FIU staff do not have direct access to the FIU office within the RBF building (SOP 3.1)

362. *Criterion 29.7* - Section 22 of the FTR Act establishes the FIU as an independent and administrative statutory agency. The powers, duties and functions of the FIU are clearly defined in the FTR Act. Section 23 of that Act establishes the FIU's independence. The director of the FIU is responsible for exercising the powers, duties and functions of the FIU and can take decisions relating to the delivery of the FIU core outputs as well as core technical and functional matters without prior approval of other persons. The director is responsible to the Minister for Justice who has delegated the power to the governor of the RBF. The director also has authority to appoint staff and make dismissal decisions. The FIU has sufficient operational independence.

363. Section 25(1)(q) of the FTR Act allows the FIU to enter into agreements or arrangements with a government institution or department for the exchange of information. Sections 26 and 27 of that Act also allow the FIU to enter into agreements and MOUs with foreign and international agencies.

364. The FIU is located within the RBF and organised as a separate functional group although fully funded by the RBF. The FIU's annual budget is submitted for the approval by the Board of the RBF each year. The FIU is accountable to the RBF governor and board for the use of funds allocated annually and is subject to administrative protocols, policies and procedures of the RBF. Due to the nature of its establishment as part of the RBF, the FIU does not prepare and publish a separate set of financial statements on its operations. The expenditure of the FIU is included in the financial statements of the RBF and is subject to the RBF's internal and external audit. The FIU also receives indirect financial support from the FPF and the FRCA through staff secondments. The FIU does not currently receive any supplementary funding support from the Fiji government. While administratively dependent, the technical functions of the FIU are independent of the RBF. The director has sole authority in the discharge of the functions and powers of the FIU under the FTR Act.

365. To ensure that the FIU functions are not influenced by others, the FIU director is vested with the powers to discharge his/her statutory and functional responsibilities. The nomination and remuneration package of the director is determined under the FTR Act. The FIU director has authority to obtain and deploy financial and staffing resources as he sees fit subject to the RBF's basic governance protocols and without undue influence from the governor and third parties. The director has autonomy to prepare strategic plans in line with its functions, duties and powers and allocate annual budgets according to its work plans.

366. *Criterion 29.8* - Fiji FIU is a member of the Egmont Group (admitted 2009).

*Weighting and Conclusion***367. Fiji is rated compliant for R.29.*****Recommendation 30 – Responsibilities of law enforcement & investigative authorities***

368. In the 2006 MER, Fiji was rated partially compliant with former R.27. Deficiencies related to a lack of capacity and technical capabilities that undermined effectiveness. The new R.30 contains requirements that are more detailed.

369. *Criterion 30.1* - FPF is the primary law enforcement agency responsible for the investigation of ML/TF and predicate offences. The Criminal Investigation Department (CID) has 479 investigators trained to investigate serious offences and financial crime. In 2000, FPF established a dedicated ML/TF investigations unit responsible for investigation of serious and complex ML. This unit has six investigators, and operates without the support of a forensic accountant or specialist analytical support staff. FICAC is the designated authority to investigate and prosecute all matters associated with corruption and bribery in the public sector. FICAC has 35 investigators who support the Commissioner of FICAC in undertaking his statutory responsibilities to prevent and investigate allegations of corruption. FRCA has responsibility for the investigation of both tax and customs-related predicate offences. In order to manage transnational criminal investigations throughout the Pacific region, the Australian Federal Police together with foreign transnational crime units (TCUs) across the Pacific may cooperate. Fiji's TCU is hosted by FPF and comprises 19 officers from FPF and 6 from FRCA. TCU staff can assist domestic law enforcement with ML investigations.

370. *Criterion 30.2* - FPF is authorised to undertake parallel investigations of both predicate and ML/TF offences. FICAC, FRCA and the Immigration Department do not have a mandate to investigate ML/TF offences; and any offending identified during the course of their respective investigations can be referred to FPF for parallel investigation and prosecution by the DPP as required.

371. *Criterion 30.3* - The identification, restraint, seizure, and confiscation of the proceeds of crime are the responsibility of FPF. FPF units investigating predicate offences can initiate these proceedings independently of the specialist AML Unit in the name and upon the authority of the DPP pursuant to the POCA 1997. In urgent cases, the AG can apply to the High Court for an order to freeze funds held in bank accounts pursuant to s.25 of the FTR Act in support of ML/FT investigations undertaken by the FPF.

372. *Criterion 30.4* - FRCA conducts audits (civil) and limited investigations (criminal) relating to tax compliance, tax fraud and tax evasion. FRCA has the required powers to carry out its functions. Evidence relating to ML/TF can be referred to FPF for independent or parallel investigation.

373. *Criterion 30.5* - FICAC is only designated to investigate and prosecute allegations of corruption and bribery in the public sector. Any ML/TF offences identified during the FICAC's investigations must be referred to the FPF. FICAC has investigation tools to identify and trace property. Section 14C of the Prevention of Bribery Promulgation provides that the Commissioner of FICAC may make applications to the High Court for restraining orders over property suspected to be derived from, or suspected of being involved in, corruption and bribery offending. Forfeiture is advanced by the DPP pursuant to the POCA 1997 and the POC Amendment Act 2005.

*Weighting and Conclusion***374. Fiji is rated compliant for R.30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

375. In the 2006 MER, Fiji was rated partially compliant with former R.28. The new R.31 contains more detailed requirements for investigative powers to enable thorough and comprehensive investigation of suspected ML/FT offending.

376. *Criterion 31.1* - The FPF can apply to a judicial officer for a search and seizure warrant pursuant to s.98 of the Criminal Procedure Decree 2009 (CPD). This authority permits the search of places (including financial institutions, taxation authorities, other institutions, businesses and private places) by a police officer, to recover and seize documents or any evidence as it relates to the investigation of suspected ML/TF or predicate offences. The Illicit Drugs Control Act 2004 and other legislation specific to particular types of predicate offences, such as fisheries crime, also contain specific search and seizure authorities. Section 15 of the CPD provides an authority for a police officer to detain and search persons without warrant who are suspected to possess property or evidence that has been unlawfully obtained. Production Orders, issued by a judge pursuant to s.50 of the POCA compel the production of property tracking documents in possession or control of any person that would assist in a criminal proceeds investigation. In support of the investigations undertaken by the FICAC investigators can seek search warrants to locate and recover evidence pursuant to s.17 of the Prevention of Bribery Promulgation No.12 2007. FICAC also has an authority to search arrested persons, and places from which persons were arrested without warrant pursuant to s.10(1) of the FICAC Promulgation No.11 of 2007. The Commissioner also has wide powers in relation to the entry into any government premises and inspection of documents and records of public service agencies and the documents created by any public service employee in the course of their duties. The *FTR Act* at s.14(3) provides an authority for the FIU or a law enforcement agency to request further information from a reporting entity when conducting an investigation of an STR; and Monitoring Orders can also be sought by the FPF pursuant to s.57.3 of the POCA to monitor bank accounts for up to three months at a time. FICAC, pursuant to s.14 of the Prevention of Bribery Promulgation, can seek orders from the High Court to compel the production of records from any natural or legal person (including taxation authorities) relevant to a corruption related investigation. The FRCA can issue an administrative summons requiring the production of any records or documents required for the purpose of tax audit or tax-related crime.

377. With regard to the taking of witness statements, the FPF and other law enforcement agencies can obtain witness statements in any matter when a witness is prepared to provide a statement. Witnesses cannot be compelled to prove evidence in ML/FT or any predicate offence with the exception of corruption-related offences where upon the authority of the High Court witnesses can be compelled to provide information to FICAC investigators. An additional exception occurs when an application is made by the DPP to the High Court requiring an individual to provide an Unexplained Wealth Declaration pursuant to s.71G of the POCA. Having received such an order a person must provide information as to their income and expenditure for the purpose of determining unexplained wealth.

378. *Criterion 31.2* - The inability to lawfully intercept private communications when investigating ML/TF or any of the predicate offences, with the exception of narcotic offences, is a significant deficiency, particularly so for offences related to corruption and/or fraud. The Illicit Drug Control Act provides legal authority for the deployment of undercover operatives, the interception of private communications, the use of tracking devices, and the controlled delivery of narcotics to investigate drug crime. There is no legal authority to use these special investigation techniques to investigate ML/TF or any other predicate offence, however there appears to be nothing in statute that would prohibit the use of undercover agents or controlled deliveries of funds to advance ML/TF

investigations. FPF and FICAC can use the search warrant authorities (refer c31.1) to access and examine computer systems and any electronic device in which data can be stored.

379. *Criterion 31.3* - The FIU co-ordinates requests for account holder information for the law enforcement agencies. Requests are directed via the FIU to the reporting institutions with responses provided to the relevant agency in a timely manner. Information relating to vehicle and land ownership is available via direct access to the vehicle registry and land title databases. Company ownership and shareholder information is obtained from the Registrar of Companies or via the FIU who have direct access to the Companies database. For evidential purposes the FPF are required to obtain search warrants to obtain account holder and account operating information from financial institutions. Subject to the preparation time, the availability of judicial officers, and the amount of material required from the financial institution, such information is available within acceptable timeframes and in both electronic and hard copy as required. FICAC can use the previously referred production orders and the FRCA can rely upon the administrative summons. No provision exists that prohibits financial institutions from disclosing the receipt of the search warrant to their customer or any third party. There is an absence of a specific authority that prohibits parties who receive search warrants or production orders from advising the subject of the investigation that such information is being actively sought and acquired by competent authorities.

380. *Criterion 31.4* - Competent authorities investigating ML, TF and associated predicate offences are able to ask for and obtain all relevant information collected and held by the FIU.

Weighting and Conclusion

381. Law enforcement and investigative authorities have sufficient powers to investigate ML/TF with the exception of a specific authority to intercept private communications. The absence of an ability to intercept private communications during ML/TF and predicate offences such as bribery and corruption is a significant deficiency. **Fiji is rated largely compliant for R.31.**

Recommendation 32 – Cash Couriers

382. In the 2006 MER, Fiji was rated partially compliant with former SR.IX. The rating reflected that although a legal framework for border reporting of currency and bearer negotiable instruments (BNI) existed, the legislation was not in force at that time. R.32 contains new requirements that were not assessed under the 2004 Methodology, but which are assessed under *criteria 32.2 – 32.10* of the 2013 Methodology.

383. *Criterion 32.1* - Fiji operates a currency declaration system. Section 32(1) of the FTR Act and s.39 of the FTR Regulations, require that every person entering or departing Fiji with FJD10 000 (~USD4 700), or its equivalent in foreign currency, or more, in combined currency and BNI on their person or within their baggage must declare that cross-border movement to the FRCA. A large number of cruise ships visit every year and many thousands of persons disembark (for example in 2015, 36,207 passengers disembarked from cruise ships into Fiji). Disembarking passengers are classified as 'transit tourists' and are not subject to currency declaration requirements; Fiji identifies and acknowledges this deficiency. The declaration system does not extend to the shipment of currency or BNIs through containerised cargo or the mailing of currency or BNI by a natural or legal person.

384. *Criterion 32.2* - All persons arriving or exiting Fiji (except those entering via cruise ships) must make a written declaration on their arrival or departure documents identifying if they are carrying, or are not carrying, combined valued of currency or BNIs over FJD10 000 (~USD4 700).

Travellers who declare they are carrying currency or BNIs of FJD10 000 (~USD4 700) or more, must complete a BCR providing further details of the person submitting the report, the nature of the currency or BNI, the details of or any person on whose behalf the currency or BNI is being transported and to whom it will be delivered. The BCR must then be submitted to the FRCA at the border.

385. *Criterion 32.3* - Fiji operates a declaration system, not a disclosure system.

386. *Criterion 32.4* - Pursuant to s.32(3) of the FTR Act, Customs officials may use their powers under the Customs Act 1986 to question, detain, inspect and search travellers who have or are suspected of having made a false declaration or have failed to make a declaration.

387. *Criterion 32.5* - Any persons that enters or exits Fiji with more than FJD10 000 (~USD4 700), in currency or BNI without having first reported that fact to FRCA commits an offence liable on conviction to a fine not exceeding FJD60 000 (~USD28 500) or imprisonment for a term not exceeding 10 years or both. The offence and sanctions as detailed at s.32(1) of the FTR Act are proportionate and dissuasive.

388. *Criterion 32.6* - The BCR form (form 4) is prescribed within the FTR Regulations 2007. Section 40 of the FTR Regulations requires that having been collected the FRCA must provide all BCRs to the FIU for entry into the FIU database. If suspicious cross-border declarations are made the Director of the FIU is advised per phone or email and a response is co-ordinated involving Police and any other appropriate agency. Routine BCRs are collated by FRCA and delivered to the FIU at the end of each month.

389. *Criterion 32.7* - On implementation of s.32 of the FTR Act, training was provided to Customs, FPF and Immigration officials who operate at the border. Since 2008 there have been regular meetings and between Customs, FPF, the FIU, TCU and Immigration officials to discuss and resolve implementation issues, or to deal with specific cases of travellers making false declarations or failing to make declarations.

390. *Criterion 32.8* - Section 32(4) and s.33 of the FTR Act enable a Customs official to seize and detain *any currency* or BNI located during the course of their duties when the official has reasonable grounds to believe that the currency or BNI may evidence the commission of a serious offence, a ML or TF offence, or an offence associated with the border declaration. If the currency or BNI is detained within a 'Customs Area' (defined as a designated area appointed by the Comptroller of Customs being subject to customs control) the retention and forfeiture of the currency and/or BNI will be subject to provisions contained within s.129 of the Customs Act 1986. If the currency or BNI is located outside a 'Customs Area', it can only be detained for up to 48 hours. Retention after 48 hours requires an order be issued by a judge who must be satisfied that there exist reasonable grounds to suspect that the currency or BNI was derived from a serious offence, a ML or TF offence or was intended to be used in the commission of such an offence. If satisfied, the judge can order retention for a further 3-month period that can be extended to up to a maximum timeframe of two years. Section 34(5) prohibits the return of any currency or BNI that is relevant to an investigation, prosecution or proceeding under POCA or MACMA or any law relating to the financing of terrorism.

391. *Criterion 32.9* - All BCRs are forwarded to the FIU for intelligence purposes. The FIU retains all border currency information received from Customs on its database. The FIU can disseminate reports to appropriate competent domestic authorities for investigation. The FIU can share BCR information with foreign counterparts for intelligence and investigation purposes when appropriate.

When the disclosure system identifies offences that may relate to ML/TF or offences against the declaration system then such information is forwarded to the FPF for investigation.

392. *Criterion 32.10* - Information collected through the declaration process is used solely for the purpose of the FTR Act, to detect transporting of currency or BNI linked to ML/TF offences. To this end the collection process does not impose restrictions on trade payments between countries for goods and services; or on the legitimate movement of capital between Fiji and any foreign jurisdiction.

393. *Criterion 32.11* - Any person that brings into Fiji or possess while in Fiji, currency or BNIs which are evidenced to be related to ML or TF, may be charged with ML pursuant to s.69 POCA that contains penalties of a fine not exceeding FJD120 000 (~USD57 000) or a term of imprisonment of 20 years for natural persons and a fine not exceeding FJD600 000 (~USD285 000) for a body corporate. If the currency or BNI is the proceeds of ML/FT then the funds can be restrained and forfeited pursuant to POCA (refer R.4).

Weighting and Conclusion

394. The declaration system has a substantial deficiency with regards a requirement to declare currency or BNI that is physically removed or imported into Fiji via containerised cargo, via the use of postal services or through the tens of thousands of passengers who arrive and depart Fiji on cruise ships. **Fiji is rated largely compliant for R.32.**

Recommendation 33 - Statistics

395. Fiji was rated partially compliant with former R.32 in the 2006 MER. Deficiencies related to the absence of any statistics relating to the investigations and prosecution of ML; proceeds of crime investigations and recoveries; reports received and disseminated by the FIU and statistics relating to extradition.

396. *Criterion 33.1:*

- STRs: The FIU maintains comprehensive statistics on suspicious transaction reports (STRs) received and disseminated
- Investigations: The FPF and Office of the Director of Public Prosecutions (ODPP) have limited statistics on ML/FT investigations, prosecutions and convictions. Statistics had to be compiled at the request of the assessment team as opposed to being maintained and a number of data fields were incomplete. Fiji Independent Commission against Corruption (FICAC) and Fiji Revenue and Customs Authority (FRCA) had limited statistics on their respective investigations relating to corruption and taxation offences relating to ML
- Confiscations: The FPF, FIU and ODPP have some limited statistics on property restrained, seized and confiscated but statistics to identify what property was confiscated as instruments of crime as opposed to proceeds had to be compiled at the request of the assessment team
- MLA/other international: Statistics as they relate to mutual legal assistance (MLA) and other international requests for cooperation are limited. Other than indicating

that MLA and extradition are provided, information relating to further detailed information on each type of MLA request was not available.

Weighting and Conclusion

397. Although some statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system were available, it was clear that comprehensive statistics are not “maintained” as required by R.33. **Fiji is rated partially compliant for R.33.**

Recommendation 34 – Guidance and feedback

398. Fiji was rated partially compliant with former R.25 in the 2006 MER. The factors underlying that rating included: (1) no guidelines had been provided to financial institutions on their reporting obligations and in respect of identifying suspicious transactions; (2) feedback was only given to reporting institutions on reports disseminated to the law enforcement authorities and only summaries of STRs that are filed away; (3) the FTR Act formally introduced the requirement to provide feedback and statistics, however detailed statistics on the reporting regime were not regularly circulated to financial institutions; and (4) no guidance was issued to DNFBPs to assist them in complying with their obligations.

399. *Criterion 34.1* - The RBF has issued guidelines (Banking Supervision Policy No.6 issued November 2014) to guide licensed financial institutions on the minimum requirements for establishing an AML risk management framework. This policy superseded Banking Supervisory Policy Statement No.6 that was issued in 2001 by RBF.

400. The guidelines issued by the FIU provide guidance on the requirements under the FTR Act relating to suspicious transaction reporting, cash transaction reporting and customer identification and verification. The FIU also provides policy advice on an-ad-hoc basis, as and when requested by financial institutions. In 2014, the FIU issued 32 ad-hoc policy advisories explaining various requirements of the FTR Act and Regulations. The majority (14) of the ad-hoc policy advisories related to customer due diligence requirements.

401. The FIU holds regular forums with the AML compliance officers of financial institutions. There were two such forums held in 2014 for compliance officers of banks, foreign exchange dealers and mobile phone banking companies. These forums are aimed at briefing the AML compliance officers on key policy issues, STR indicators and recent laundering cases. In 2014, the FIU also held a briefing for new AML compliance officers to brief them on their role under the FTR Act. The FIU also provides semi-annual written feedback to FIs on the status of STRs received from them and when needed or requested the FIU will meet with a financial institution to discuss policy matters and provide guidance on implementation of the AML/CFT requirements; however, no guidelines or feedback has been provided to dealers of precious metal and stone. The FIU also provides general feedback to reporting entities through the FIU’s annual reports covering the statistics of STRs, trends and development of typologies and common ML methods observed.

402. The FIU has issued a general guideline for all types of financial institutions, which does not regard the specific risks and context of different business sectors and profession. The SRBs, including the Fiji Institute of Accountants, the Legal Practitioners Unit and Fiji Law Society, and the Real Estate Licencing Board have not issued AML/CFT-related guidance to the members of their professions, notwithstanding that they do not supervise their members for AML/CFT compliance.

Weighting and Conclusion

403. Fiji has not issued guidance specific to the different types of DNFBPs in accordance with this recommendation. **Fiji is rated largely compliant for R.34.**

Recommendation 35 – Sanctions

404. In the 2006 MER Fiji was rated partially compliant with former R.17. The factors underlying the rating included: heavy reliance on the criminal sanctions to enforce compliance with the AML/CFT requirements, non-existence of sanctions for a number of AML/CFT requirements imposed on financial institutions and DNFBPs under the FTR Act and inability of the supervisory authorities to impose any sanctions for non-compliances with the AML/CFT requirements. The other deficiencies concerned effectiveness issues that are not relevant for purposes of assessing technical compliance under the new methodology. Fiji has yet to address the gaps identified in the previous assessment.

405. *Criterion 35.1* - Criminal sanctions provided under the FTR Act for non-compliance with AML/CFT committed by legal persons ranges from a maximum of FJD30 000 (~USD14 000) to FJD300 000 (~USD142 000) per offence. For non-compliance with AML/CFT requirements committed by individuals, the FTR Act provides for sanctions ranging from maximum fine of FJD12 000 (~USD5 600) and/or two years imprisonment to a maximum fine of FJD60 000 (~USD28 500) and/or ten years imprisonment.

406. The FTR Act attaches sanctions for failure to comply with the following AML/CFT requirements:

- Failure to comply with customer due diligence obligations
- Failure to maintain records of transactions, a person's identity or reports made to FIU
- Failure to maintain accounts in the true name of the account holders
- Offence of opening, operating and maintaining any anonymous/numbered only account or account that is fictitious, false or incorrect
- Failure to pay special attention to certain transactions (complex, unusual and large transactions with no apparent economic or lawful purpose; business relations or transactions with persons with inadequate AML/CFT systems; and electronic fund transfers without complete originator information)
- Failure to report cash transactions exceeding stipulated threshold
- Failure to lodge suspicious transactions report
- Failure to provide additional information on suspicious transaction reports when required
- Failure to disclose information relating to the property of terrorist groups
- The offence of tipping off

407. The FTR Act provides for a different scale of sanctions for legal persons and individuals depending on the nature of the relevant offences. Legal persons are subject to higher fines, while natural persons are subject to a lower fine coupled with imprisonment. The sanction provided under

the FTR Act especially in respect of the offences committed by legal persons (a fine in the amount of FJD300 000 (~USD142 000)) is not proportionate and dissuasive.

408. The FIU is empowered under the FTR Act to issue a direction to a financial institution that has failed to comply with any obligation to implement an action plan to ensure compliance pursuant to s.29 of the FTR Act. Failure to comply with the directive may lead to the AG initiating civil actions where the court may impose financial penalties against the financial institution as well as its officers and employees consistent with the penalties provided under the FTR Act.

409. The FTR Act does *not* attach any sanctions for failure to comply with the following fundamental AML/CFT requirements:

- Obligations relating to cross-border correspondent banking relationship
- Offences in relation to reliance on third party or intermediary to perform customer due diligence
- Failure to conduct on-going customer due diligence
- Failure to include originator information
- Failure to establish compliance programmes

410. Even though the Minister when making regulations under the FTR Act may provide that a breach of the regulations may trigger penalty not exceeding FJD400 (~USD190) or imprisonment of six months by virtue of s.25(e) of the Interpretation Act, the FTR Regulations do not in fact provide for any sanctions in the event of breach of such obligations. And the requirements under the FTR Regulations cannot be enforced under the FTR Act due to the following reasons:

- The requirements of the FTR Regulations are more detailed in nature;
- Sanctions under the FTR Act makes reference only to non-compliance with obligations under specific subsections of the FTR Act (not any regulations made thereunder); and
- The FTR Act does not contain a general penalty clause for non-compliances with any provisions in the Regulations.

411. RBF may pursue administrative sanctions, i.e., impose an initial maximum fine of FJD5 000 (~USD2 400) and maximum daily fine of FJD1 000 (~USD470) or issue a direction to comply against banks or credit institutions pursuant to s.15 of the Banking Act for violation of the AML/CFT directions contained in the Banking Supervision Policy Statement No.6 issued pursuant to s.14 of the Banking Act 1995. RBF does not have powers to impose sanctions in respect of other financial institutions under its purview. However, RBF's licensing conditions of banks, credit institutions, restricted foreign exchange dealers and insurance companies (in most circumstances if not all) require the financial institutions' compliance with other laws and regulations relevant to its operations. In certain circumstances requirements to comply with the FTR Act have been specifically imposed as a licensing condition. Any non-compliance with licensing conditions may trigger suspension or revocation of licence under the respective laws such as the Banking Act, Insurance Act, Exchange Control Act. The RBF may suspend or revoke the licence of the banks or credit institutions in the event of non-compliance with the directions or licensing conditions on AML/CFT requirements imposed under the FTR Act.

412. In relation to requirements relating to R.6, the POCA provides for a maximum fine of FJD120 000 (~USD57 000) and/or imprisonment up to 20 years for offences committed by

individuals and fine up to FJD 600 000 (~USD284 000). Contravention of a restraining order made by the court may trigger contempt proceedings in court. The sanctions provided under the POCA, even though the scope of the provisions are limited, are considered proportionate and dissuasive. An individual failing to disclose information relating to terrorist property would be subject to a maximum fine of FJD60 000 (~USD28 400) and/or five years imprisonment and a legal person would be subject to maximum fine of FJD150 000 (~USD71 000).

413. For requirements under R.8, the relevant laws governing the NPOs with the exception of Companies Act do not provide for sanctions for the relevant AML/CFT requirements. The sanctions under the Companies Act for relevant offences range for relevant offences range from a fine of FJD300 (~USD150) up to FJD600 (~USD300) or most of the offences and up to FJD6 000 (~USD3 000) for limited offences. Accordingly, the penalties provided under the Companies Act for non-compliance with AML/CFT requirements by NPOs are not proportionate and dissuasive.

414. The ability of the authorities to pursue sanctions against financial institutions as well as against directors and officers of those financial institutions, together with the maximum term of imprisonment, mitigates the low amount of fine provided under the relevant laws.

415. Criterion 35.2 - Section 40 of the FTR Act establishes liability for directors, controllers and officers of financial institutions and DNFBPs for non-compliance committed by legal persons.

416. With regard to requirements relating to R.6, the POCA contains provisions relating to establishment of the intention to commit an offence through the conduct of directors and officers. In relation to the requirements relating to R.8, sanctions would also apply to directors or senior management where the specific obligations are imposed on them. There is, however, a lack of clarity under the POCA whether sanctions could also be applied against directors and senior management for non-compliance committed by legal persons.

Weighting and Conclusion

417. The sanctions provided under the FTR Act (the primary legislation through which the AML/CFT requirements are imposed) are limited to criminal sanctions. Further, the sanctions applicable against legal persons for non-compliance with AML/CFT obligations under the FTR Act are not proportionate and dissuasive. **Fiji is rated partially compliant for R.35.**

Recommendation 36 - International instruments

418. In the 2006 MER Fiji was rated partially compliant with the former R.35 and non-compliant with the former SR.I. The report found that Fiji had not ratified either the Palermo or the Terrorist Financing (TF) Conventions, and had not yet fully implemented the TF measures required by the UN Security Council Resolutions. Since its last evaluation, Fiji ratified the TF Convention and acceded to the UN Convention against Corruption (Merida Convention).

419. *Criterion 36.1* - Fiji ratified the Vienna Convention in 1993 and the TF Convention in 2008 and acceded to the UN Convention against Corruption (Merida Convention) in 2008. Fiji has not ratified the Palermo Convention.

420. *Criterion 36.2* - Fiji has enacted legislation to implement the Merida Convention requirements, including the Crimes Decree 2009, Prevention of Bribery Promulgation 2007, POCA and the FICAC Promulgation 2007. Fiji has implemented the TF Convention requirements through

the POCA and FTR Act. Fiji has implemented the Vienna Convention through the POCA and Illicit Drugs Control Act, the Extradition Act, the Mutual Legal Assistance in Criminal Matters Amendment Act No. 28 of 1997, as amended by the MLACM (Amendment) Act No.2 of 2005 and the Customs Act. Pursuant to s.115 (7) of the Fiji 2013 Constitution, FICAC, in exercising its powers and performing its functions and duties, shall be guided by the standards established under the United Nations Convention Against Corruption (UNCAC). While Fiji has not yet ratified the Palermo Convention, it has implemented some measures required under the Convention, including the criminalisation of ML under the POCA.

421. Fiji has not yet fully implemented the relevant obligations under all of the Conventions mentioned above.

Weighting and Conclusion

422. Fiji has not ratified all the relevant conventions nor fully implemented their obligations. **Fiji is rated partially compliant for R.36.**

Recommendation 37 - Mutual legal assistance

423. In the 2006 MER Fiji was rated mostly compliant with former R.36 and partially compliant with former SR.V. The report found that Fiji's legal framework permitted a wide range of assistance but data on mutual assistance was lacking. There were also ambiguities on the enforceability of TF offences under POC Act where a citizen of Fiji not extradited may not be prosecuted in Fiji for an act committed abroad.

424. *Criterion 37.1* - The legal framework for MLA in Fiji is governed by the Mutual Assistance in Criminal Matters Act 1997. However, the POCA also provides for the provision of assistance in relation to 'foreign serious offences'. There are no requirements for dual criminality or reciprocity to provide assistance and no limitations in terms of scope of offences. The POCA requirement for a foreign serious offence to have occurred to register foreign orders takes the same as the domestic definition. As Fiji defines a serious offence as being any offence attracting a minimum of six months imprisonment this is not likely to cause an impediment to providing MLA.

425. *Criterion 37.2* - The designated central authority is the Attorney General (AG) who is responsible for receiving MLA requests. The AG then delegates to the relevant authority to take necessary action. Requesting countries can send their requests directly to the DPP. The Office of the DPP (ODPP) provides the details necessary for making an MLA request through its website at www.odpp.com.fj/mutual-assistance. The Fijian authorities utilise a case management system, referred to as "CASES", developed to suit the workflow of state counsel, litigation clerks and other staff members. The system provides for an integrated prioritisation process. Case managers update the system regularly. All users of CASES have unique usernames and passwords. All activity on CASES is able to be audited and changes in the system are detectable. The AG may elevate cases as higher priority as appropriate.

426. *Criterion 37.3* - Section 5 of the MACMA extends the operation of the Act to any foreign country whether or not the foreign country has entered into any agreements or arrangements with Fiji. Section 7 of the MACMA provides that assistance may be provided subject to conditions that the AG determines. Section 6 of the MACMA confirms that a request by a foreign country for assistance may be refused if, in the opinion of the AG the assistance would prejudice the national, essential or public interests of Fiji or result in a manifest unfairness or a denial of human rights. The AG may also

postpone the request if it is likely to prejudice an ongoing investigation or proceeding in Fiji. The requirements are not unreasonable and do not unduly restrict an incoming request for MLA.

427. *Criterion 37.4* - The ability to provide MLA is not unreasonably restricted. The MACMA does not preclude assistance in cases involving fiscal matters and MLA is not refused on the grounds of secrecy or confidentiality of financial institutions or DNFBPs.

428. *Criterion 37.5* - Sections 49 and 50 of the MACMA restrict the use of material obtained from or obtained pursuant to a foreign request, preventing it from being used intentionally for any other purpose without the approval of the AG. Contravention of these provisions attracts significant fines, and/or imprisonment.

429. *Criteria 37.6 and 37.7* - Dual criminality is not a requirement of MLA..

430. *Criterion 37.8* - Under the various acts of FTR Act, MACMA, Banking Act, and Illicit Drugs Control Act, Fiji has a wide range of powers available to the FIU, police, supervisors and the courts to respond to requests for MLA. However, there are some notable deficiencies: a search warrant issued by the court only applies to searches of land or premises, not to search of persons (s.13, MACMA)), and, as discussed under R.31, there is a lack of legislative provisions allowing for interception of private communications beyond that of investigations of narcotics offences.

Weighting and Conclusion

431. Fiji's MLA meets most of the requirements of this recommendation except for the full range of law enforcement investigative powers. **Fiji is rated largely compliant for R.37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

432. In the 2006 MER Fiji was rated largely compliant with former R.38. The report found that Fiji's legal framework permits wide range of assistance concerning confiscation but the overall assessment of the investigative capacity and domestic use of POC Act suggested that capacity to provide MLA in relation to confiscation was restricted by technical constraints.

433. *Criterion 38.1* - Section 31 of the MACMA provides the power to identify, freeze, seize or confiscate the proceeds of crime or an instrument of a foreign serious offence on request by another country. In addition, Fijian authorities can register foreign forfeiture orders, pecuniary penalty orders and restraining orders. To effect registration, a foreign serious offence is required to have occurred, which takes the same definition as a domestic serious offence. By registering the orders, they gain effect and may be enforced as a domestic order (s.31(4, 5 and 6) of the MACMA). Fiji is able to domestically confiscate the range of property required in R.4 and therefore may confiscate these pursuant to an international request. Fijian authorities can apply for a restraining order in respect of a foreign serious offence even where the foreign jurisdiction has not yet obtained a formal restraining order (s.33 of the MACMA). Further, an interim restraining order can be made that has effect for 30 days pending the formal registration of a foreign restraining order (s.45 of the POCA). The provisions of the POCA and MACMA allow MLA with regard to confiscation and provisional measures against the full spectrum of 'property subject to confiscation as defined in R.3 and R.38'.

434. *Criterion 38.2* - The MACMA permits assistance in non-conviction based confiscation proceedings. The POCA does not require a conviction for domestic proceedings and foreign orders take the form of a domestic order once registered in Fiji. Fiji is able to restrain properties and forfeit properties (non-conviction) under the POCA where the defendant is not able to be served personally

by using substituted service to meet the requirements of service. A similar process may be used for requests from foreign countries. Application for restraining orders are made *ex parte*.

435. *Criterion 38.3* - The AG coordinates all incoming and outgoing MLA requests. The FPF has built networks with foreign LEAs to coordinate seizure and confiscation actions. Section 47 of the POCA allows the AG to take custody and control of property subject to a registered foreign restraining order. The AG is required to preserve the property pending confiscation. The registration of a foreign pecuniary penalty order may be enforced (s.26 POCA) and a forfeiture order takes effect so that all property subject to a (foreign) forfeiture order vests with the State (s.12 (2) POCA) and provisions for the transfer of title are provided.

436. *Criterion 38.4* - Fiji has not entered into any formal arrangements with foreign authorities for reciprocal sharing of assets recovered under MLA in Fiji. However, this does not undermine Fiji's authority to receive assets from a foreign country (s.71B (e) of the POCA) and to make payments to a foreign country (s.71D (1) (a) of the POCA). In addition, s.71C of the POCA provides that the AG may enter into arrangements with foreign authorities for the reciprocal sharing with that country of part of any property realised in a foreign country or property recovered in Fiji pursuant to a MLA request. All proceeds recovered in Fiji are paid to the Forfeited Assets Fund. Section 71D provides for the payment out of the Forfeited Assets Fund to make such payments as the Minister considers necessary to satisfy Fiji's obligation in respect of a registered foreign forfeiture order or PPO.

Weighting and Conclusion

437. **Fiji is rated compliant for R.38.**

Recommendation 39 - Extradition

438. Fiji was rated largely compliant with former R.39 and partially compliant with SR.V. The 2006 MER found that Fiji's Extradition Act (2003) creates an adequate legal framework for extradition for the purposes of R.39. However, there were some gaps in information regarding the coverage of ML/TF offences under the former extradition treaties and the rules governing extradition to 'treaty countries' generally.

439. *Criterion 39.1:*

440. *39.1(a)* - Extradition in Fiji is governed by the Extradition Act 2003. Under the Act, a person can be surrendered for an 'extradition offence', which is an offence against the law of the requesting country punishable by at least 12 months imprisonment; each of ML and TF carry a maximum penalty of 20 years. Notwithstanding the deficiencies in the TF offence identified in R.5, the underlying conduct of TF has been criminalised with a broad range of TF offences that are extraditable.

441. The Act applies when a country is designated as an 'extradition country'. This designation automatically includes Commonwealth countries, Pacific Island Forum (PIF) countries and any country with which Fiji has an extradition treaty. The scope of 'extradition country' can include other countries, referred to as "comity" countries, by the discretion of the Minister as contained in s.45 and s.47 of the Extradition Act. It is (i) unclear how Fiji's legal provisions operate in circumstances where a comity country is designated as an extradition country by certification from the Minister for the purposes of a request, and (ii) ministerial decision-making in the designation of comity countries could cause delay in the execution of extradition requests.

442. 39.1(b) - Part 2 of the Extradition Act (General Provisions) establishes a procedure for responding to extradition requests. For requests from countries other than PIF countries, the Minister must consider each request and provide an authority to proceed as criminal proceedings with an opportunity for review in the high court. Requests from PIF countries have an expedited procedure available known as backing of warrants (Part 4 of the act, *Extradition from the Fiji Islands to other Pacific Island Forum countries – Backing of Warrants Procedures*) under which a magistrate simply endorses the original warrant from the PIF country to authorise the arrest as requested. While any decision by a magistrate to surrender a person requested by a PIF country must still be referred to a judge and can still be reviewed by the high court, this expedited procedure removes the requirement to seek Ministerial authority.

443. In either of the above cases there is no timeframe mandated for a Ministerial authority to proceed. The magistrate may roll the person's remand beyond the benchmark of 42 days in custody if it is expected that the Minister's decision is likely in the next 42 days. Alternatively, the magistrate may release the person from custody, or release the bond for the bail. However, the extradition process continues past the release (s.9 of the Extradition Act).

444. The ODPP also uses the CASES system (see R.37) to manage extradition requests received by Fiji. Fiji does not have any system for prioritising, on the basis of ML/TF offences, the small number of extradition requests it receives.

445. 39.1(c) - A judge may refuse an extradition request for several procedural reasons and a few substantive ones, which include: the absence of a provision in the request country's law prohibiting prosecution for an offence other than the one for which the person was surrendered (s.18(2)(a)(ii) of the Extradition Act); the offence in question is punishable by death in the requesting country but not in Fiji; and the person has been subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting country. Section 4 of the Extradition Act also provides for "extradition objections" which relate to offences of a political character, prejudice on account of race, religion etc., offences solely under military law and not the ordinary criminal law, immunity under Fijian law due to lapse of time, amnesty etc., and cases of double jeopardy. These do not appear to be unreasonable or unduly restrictive conditions and would be justifiable as consistent with other international practice.

446. Broadly, however, it is unclear what processes apply to requests from treaty countries or comity countries because in these circumstances the Act applies subject to limitations, conditions, exceptions or qualifications contained in the particular extradition treaty or in the Minister's certification regarding a comity country.

447. *Criterion 39.2* - Under section 18(2)(b) of the Act, the judge that makes the ultimate decision to surrender a person may refuse an extradition request for the reason that the person is a citizen of Fiji. While this basis for refusal is not mandatory for the judge, it is available at the judge's discretion. Therefore, while there is no bar to the extradition of nationals in Fiji it is possible that an extradition request is refused for this reason. This ground for refusal is not accompanied by any requirement that the relevant authorities submit the case for prosecution in Fiji without undue delay.

448. *Criterion 39.3* - Section 3(1)(b) of the Extradition Act, which deals with the 'dual criminality' aspect of the definition of 'extraditable offences', uses 'conduct' as a reference point, i.e., 'the conduct that constitutes the offence', rather than the any formal characterisation or denomination of the offence. Section 3(2) further clarifies that in determining whether conduct constitutes an offence, regard may be had only to some of the acts or omissions that make up the conduct. Therefore, Fiji

does not therefore assess the dual criminality requirement based on the categorisation or the terminology used to describe the relevant offences.

449. *Criterion 39.4* - Fiji provides three simplified extradition mechanisms. One general mechanism is through Article 12 of the Act that allows for the person whose extradition is being requested to expedite the process by providing consent to be surrendered to the requesting jurisdiction.

450. The second, narrower, mechanism is for requests from PIF countries (Part 4 of the Extradition Act). Under this procedure, the original warrant to authorise the arrest may be endorsed by a magistrate, removing the requirement to seek Ministerial authority. Any decision by a magistrate to surrender a person, as requested by a PIF country, must still be referred to a judge and can be reviewed by the high court. Authorities advised that there are some restrictions on the use of this expedited procedure.

451. A third mechanism is for expedited measures in relation to Commonwealth countries under Part IV of the Extradition Act. Authorities advised during the on-site visit that this mechanism is suspended.

Weighting and Conclusion

452. Fiji's Extradition Act establishes a legal framework for extradition. The requirement for Ministerial authority to proceed may lead to delays in the progress of a request. The layers of decision-making (magistrate, Minister and judge), with an opportunity for review, that applies to most requests from other countries, leads to a protracted process for extradition. Lastly, Fiji is able to refuse extradition of a national without being compelled to prosecute domestically at the request of the requesting country. **Fiji is rated partially compliant for R.39.**

Recommendation 40 – Other forms of international cooperation

453. In the 2006 MER Fiji was rated partially compliant with former R.40. The factors underlying the rating included: non-existence of a clear privacy framework to govern the handling of information received from foreign counterparts by Fiji; the requirement for an investigation or prosecution in the foreign jurisdiction, which was a statutory pre-requisite for an exchange of information by the FIU, was considered too restrictive; and the condition under the FTR Act that information obtained from the FIU could only be used for purposes of investigation or prosecution of a serious offence, ML offence or TF offence was considered too restrictive. The requirements of the new recommendation 40 are more detailed.

General principles

454. *Criterion 40.1* - Generally, competent authorities such as FPF, FIU, TCU, RBF and FRCA are able to cooperate with foreign counterparts in relation to ML, TF and associated predicate offences. The exchange of information can be made both spontaneously and upon request.

455. *Criterion 40.2:*

456. *40.2(a)* – Sections 25, 26 and 27 of the FTR Act empower the FIU to share information with a wide range of foreign authorities and international organisations, including foreign law enforcement agencies and foreign supervisory authorities, subject to certain pre-requisites – e.g., the Minister, or

the FIU with the approval of the Minister, has entered into an agreement/arrangement with the foreign state/foreign authority.

457. RBF is empowered under s.27 (1)(f) of the Banking Act and s.159(1)(f) of the Insurance Act to disclose information, returns or data relating to the relevant financial institutions to foreign supervisors. The Capital Markets Decree does not contain specific provisions pertaining to cooperation with foreign securities market regulators. However, the RBF may rely on s.46 of the Capital Markets Decree that enables disclosure of information that has been obtained in the performance of functions by RBF provided RBF authorises such disclosure. The FRCA may render assistance to foreign tax authorities and foreign customs authority pursuant to any legal agreement or arrangement entered by Fiji pursuant to s. 106 of the Income Tax Act and s.52(4)(e) of the Fiji Islands Revenue and Customs Authority Act 1998 respectively. Law enforcement agencies such as FPF, FICAC and other authorities such as the Registrar of Titles and Registrar of Companies do not have a clear legal basis for providing cooperation to foreign authorities (information maintained by the Registrar of Titles and Registrar of Companies could be obtained by any person for a payment of fee). Nevertheless, the authorities may cooperate with their foreign counterparts through the FIU as the FIU is legally empowered to disclose information to foreign authorities.

458. *40.2(b)* - Competent authorities are able to use the most efficient means to cooperate.

459. *40.2(c)* - The arrangement or agreement entered into with the foreign counterparts would *specifically* state the channels for facilitating the transmission of requests made by the foreign authorities. Fiji FIU exchanges information with foreign FIUs that are Egmont Group members through Egmont Secure Website and non-Egmont Group members via secure email channel. FRCA exchanges information with its foreign counterparts (tax and customs authorities) through secure emails to designated officers of both parties. However, no further details were provided on the gateways, mechanisms or channels used to facilitate and allow for the transmission and execution of requests between FPF, RBF and their foreign counterparts.

460. *40.2(d)* - FPF gives high priority to requests relating to fugitives and drug, organized crimes and terrorism related offences. Fiji FIU treats all requests from foreign authorities as high priority. No details were provided on whether other relevant authorities have put clear processes in place for prioritisation and timely execution of requests by their counterparts.

461. *40.2(e)* - Respective agencies have their own internal processes and procedures for safeguarding the information exchanged. However, no further details were provided on what those processes and procedures involve. The FIU observes strict protocols to protect the confidentiality of information (paragraph 3.1 and 4.1 of FIU's Standard Operating Procedures). FRCA has put in place security of information and IT controls to safeguard any information received from foreign counterparts. For example, only designated officers dealing with double taxation agreements is given access to information received from foreign authorities. No information was provided on the processes put in place by the other authorities to safeguard information received from foreign counterparts.

462. *Criterion 40.3* - The two authorities that need bilateral agreements or arrangements in order to cooperate, namely the FIU and FRCA, have negotiated and signed the relevant agreements. The time taken by FIU to sign MOUs with foreign FIUs varies depending on jurisdiction. In many cases, FIU has completed the negotiation and signed the MOU within two to three months. Time taken to conclude bilateral agreements enabling cooperation between FRCA and foreign tax authorities

depends on the negotiation process between the parties ranging from one week (in the case of review of double taxation agreement) to two years. .

463. *Criterion 40.4* - Feedback is provided on a case-by-case basis when requested by the foreign authorities who have assisted authorities in Fiji. However, no information was provided on the number of occasions the authorities have given feedback to their counterparts.

464. *Criterion 40.5* - A review of the relevant legislation demonstrates that the exchange of information with foreign authorities is not prohibited by unreasonable or restrictive conditions. Fiscal matters are not used as grounds for refusal for assistance. The secrecy provisions are not a hindrance to exchange of information with foreign authorities as the relevant legislation contains sufficient exceptions to enable the cooperation between the relevant authorities and their foreign counterparts.

465. *Criterion 40.6* - The arrangements or agreements entered into between the Fijian authorities and foreign counterparts include specific provisions on the usage and dissemination of information exchanged. The relevant arrangements or agreements include clauses on the purposes for which information received could be used and the requirement to obtain prior authorisation from the party that provided the information before disclosure. Agencies such as the FPF and the FIU have their own internal processes and controls to safeguard any information exchanged or received from third parties including foreign authorities. The RBF is empowered under the Banking Act and Insurance Act to impose specific conditions with regard to further disclosure of information provided by RBF (s.27 (2)(a) of the Banking Act and s.159 (2)(a) of the Insurance Act). Under the agreement or arrangement entered pursuant to the FTR Act, the use of information obtained is restricted to purposes relevant to investigating or prosecuting a serious offence, including ML and TF offences or a substantially offence (s.26(2)(b) of the FTR Act). Information provided or obtained by FRCA can only be used for purposes of enforcing tax laws or customs laws, as the case may be, by FRCA and its foreign counterparts in accordance with the agreements with the foreign counterparts. No further details are available on the safeguards put in place by other authorities to ensure information exchanged is only used for the authorised purpose.

466. *Criterion 40.7* - In relation to the agreement or arrangement that could be entered into with foreign authorities by the Minister or the FIU, with the approval of the Minister, the FTR Act states that the agreement or arrangement must stipulate that the information be treated in a confidential manner and must not be further disclosed without the express consent of the FIU (s.26 (2)(c) and s.27 (3) of the FTR Act).

467. *Criterion 40.8* - Pursuant to s.25 (1)(m) of the FTR Act, the FIU may undertake due diligence checks and other inquiries requested in writing by a government department or authority. The FIU may disclose information obtained from the enquiries conducted with the foreign authorities, provided that the information would be relevant to investigation or prosecution of a serious offence, a ML offence, a TF offence, or substantially similar offences. For other authorities, since there are no express powers to conduct enquiries on behalf of foreign authorities, domestic authorities need to use investigation powers subject to requirements set out in the respective laws.

Exchange of Information between FIUs

468. *Criterion 40.9* - Section 25 (1)(p) of the FTR Act allows the Fiji FIU to exchange information with foreign agencies, including foreign FIUs, any information suspected to be relevant to the investigation of a ML/TF or other serious offences.

469. Sections 26(1) and (2) of the FTR Act allow the FIU to enter into agreements or arrangements with the foreign governments, an institution or agency of a foreign government, or an international organization established by those governments, that have powers and duties similar to those of Fiji's FIU. The FIU may exchange information suspected to be relevant to the investigation and prosecution of ML offence, TF offence or other serious offence. Section 27 of the FTR Act also provides the legal mandate for exchange of information between international counterparts.

470. Fiji's FIU is a member of the Egmont Group of FIUs and is committed to sharing information with other Egmont Group members whenever there is a need. The FIU provides assistance and information to other Egmont Group members upon request via the Egmont Secure website.

471. *Criterion 40.10* - The FIU provides feedback to foreign counterparts on the use of information provided and the outcome of the analysis on the information when requested to do so by the foreign agency that provide information.

472. *Criterion 40.11* - The FIU may exchange a wide range of information. This includes information that it receives from financial institutions (reports of suspicious transactions, cash transactions and electronic fund transfer transactions) and information that the FIU may obtain directly or indirectly from other sources (such as, information on currency declarations; transfer information etc.).

Exchange of Information between Financial Supervisors

473. *Criterion 40.12* - Section 27(f) of the Banking Act and s.159 (1)(f) of the Insurance Act allow the RBF to share information in confidence with the other supervisory authorities. The RBF has established MOUs with foreign supervisors of licenced financial institutions providing a basis for information exchange.

474. *Criterion 40.13* - Under s.27(f) of the Banking Act and s.159(1)(f) of the Insurance Act the RBF is able to exchange information with foreign counterparts available to the RBF and other information held by financial institutions.

475. *Criterion 40.14* - The legal provision allowing the RBF to share information with foreign supervisors is general and includes the sharing of regulatory, prudential and AML/CFT information for FIs operating in the same group.

476. *Criterion 40.15* - The RBF is able to conduct inquiries on behalf of foreign counterparts under the Association of the Financial Supervisors of Pacific Countries MOU. The MOU provides for cooperation for the purpose of financial group supervision.

477. *Criterion 40.16* - The terms and conditions on how shared information is to be used and relating to dissemination to third parties is stated in MOUs between supervisors. Information provided may be used only for supervisory purposes as agreed to in the MOU.

Exchange of Information between Law Enforcement Authorities

478. *Criterion 40.17* - The FPF is a member of INTERPOL and is able to provide domestically obtained information to foreign counterparts for intelligence or to support the investigation of foreign-suspected serious offences, including ML and TF. Informal police-to-police relationships enable the exchange of information and intelligence associated with the tracing of criminal proceeds and the identification of tainted property. FRCA has double tax agreements with a number of

jurisdictions in the Pacific (including Australia and New Zealand) and is obliged to provide information to foreign tax authorities pursuant to those agreements. This information exchange relates only to tax related matters and does not permit the exchange of domestic-related tax information with foreign LEAs to support foreign ML/FT investigations. FRCA is also a member of the Oceania Customs Organisation, connecting Fiji Customs to 23 customs administrations throughout the Pacific region.

479. *Criterion 40.18* - The FPF and other competent authorities can conduct enquiries for foreign counterparts, however the limitations of investigative powers (as detailed under R.31 above) restricts the ability of Fiji to fully support foreign jurisdictions in their ML/TF investigations. Fiji competent authorities are not permitted to use investigative techniques or investigation powers in the absence of an authority pursuant to MACMA, unless it is suspected that offences have, in part, occurred domestically within Fiji.

480. *Criterion 40.19* - Competent authorities are able to form joint investigation teams and establish bilateral and multilateral agreements with foreign jurisdictions for the purpose of investigating ML/TF and predicate offending. The FPF have been part of foreign investigation task forces with foreign police agencies to investigate drug and other transnational crimes.

Exchange of Information between Non-counterparts

481. *Criterion 40.20* - The FIU can share information with non-counterparts pursuant to s.16(3) of the FTR Act, which provides that the FIU may disclose information to a foreign FIU or other appropriate foreign authority. Taken contextually, this means whichever authority operates as an FIU. It does not mean “any authority” of a foreign state. Section 26(1)(b) also provides the authority to exchange information with a foreign counterpart pursuant to an MOU. However, the MOU must have the approval of the Minister; and s.27, while wide, does cover the requirements of the criterion.

482. No other agencies have processes or procedures for information sharing with non-counterpart foreign agencies.

Weighting and Conclusion

483. Fiji has some deficiencies in its cooperation framework including lack of information on feedback between foreign counterparts and the length of time needed to negotiate arrangements with FRCA. Also there are no details on the gateways, mechanisms or channels used to facilitate and allow for the transmission and execution of requests between FPF, RBF and their foreign counterparts. FPF, FRCA in its capacity as the customs authority, FICAC, Registrar of Titles and Registrar of Companies do not have clear legal basis to cooperate with foreign authorities even though they may cooperate with their foreign counterparts through FIU channels. Beyond the FIU there are no processes articulated for information sharing with non-counterpart foreign agencies.
Fiji is rated largely compliant for R.40.

Summary of Technical Compliance – Key Deficiencies

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 NRA does not identify any specific high-risk countries either as origins of proceeds of crime and TF with Fiji as a destination, or as destination countries for proceeds and TF from Fiji. Authorities have not yet implemented a strategically-focused approach to allocating resources across all government sectors to address the identified risks in NRA. Fiji purports to require financial institutions and DNFBPs to take enhanced measures when dealing with higher-risk customers and transactions, however, these requirements are unenforceable. The FTR Act also does not require that financial institutions and DNFBPs ensure that high-risk information is incorporated into their individual risk assessments. Financial institutions are required to undertake RBA when managing ML/TF risks; however, this is not enforceable by supervisors. Supervisors are not ensuring that their sectors are implementing their obligations in accordance with the sectoral risks identified in the NRA. Section 29(2) of the FTR Regulations requires financial institutions and DNFBPs to have effective AML/CFT programmes in place that have regard to ML/TF risks, the size and nature of the business, and the types of products and services offered by the financial institution. This requirement is undermined by lack of enforceability. Due to the deficiencies in the coverage of financial institutions and DNFBPs under the FTR Act, not all financial institutions and DNFBPs are required to take appropriate steps to identify, assess and understand their ML/TF risks. Under paragraph 4(ii) and (iii) of the FIU PA/5/2007 financial institutions and DNFBPs must undertake enhanced measures to manage and mitigate the risks where higher risks are identified, however, these regulations are not enforceable. Credit unions, jewellers and dealers in precious metals and stones are not required to measures stipulated in c1.11, as they are not subject to the FTR Act. The NRA has not yet been fully communicated across all sectors.
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> Fiji lacks a national AML/CFT strategy and policies informed by the risks identified in NRA. Fiji has not implemented a coordination mechanism for proliferation financing.
3. Money laundering offence	LC	<ul style="list-style-type: none"> Not all predicate crimes are criminalised. Some required predicate offences fail to meet the 'serious offence' threshold.
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> Fiji has not criminalised certain conduct referred to in the annex

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>of UN TF Convention, e.g., offences relating to taking of hostages and physical protection of nuclear material.</p> <ul style="list-style-type: none"> TF offence does not expressly criminalize the act of collecting or providing property to terrorist groups and individual terrorists when there is no connection to a terrorist act.
<p>6. Targeted financial sanctions related to terrorism & TF</p>	<p>NC</p>	<ul style="list-style-type: none"> Fiji has yet to identify a competent authority and put in place a mechanism for proposing the designation of persons and entities under UNSCRs 1267, 1988 and 1373. No legal authority and procedures are in place to collect and solicit information of persons and entities suspected to meet the criteria for designation. Targeted financial sanctions cannot be implemented without delay due to the requirements to obtain restraining orders from court and identification of each property specifically in the application to court. No guidance has been issued to FIs and DNFBPs on their obligations. No measures to protect bona fide third parties implementing TFS.
<p>7. Targeted financial sanctions related to proliferation</p>	<p>NC</p>	<ul style="list-style-type: none"> There is no legal framework for implementation of targeted financial sanctions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.
<p>8. Non-profit organisations</p>	<p>PC</p>	<ul style="list-style-type: none"> No review of adequacy of NPO laws from the perspective of TF risks. Lack of outreach to NPO sector concerning TF issues. Lack of clarity whether authorities have capacity to obtain timely information on activities, size and other relevant features of NPOs. Limited policies in place to promote transparency, integrity and public confidence in the administration and management of NPOs. No requirements for NPOs to maintain information on the purpose and objectives of their activities, to be registered or to follow a “know your beneficiaries and associated NPOs rule”. The applicable laws do not impose any obligations requiring the NPOs to retain records of domestic and international transactions and information described in criterion 8.4(a) and (b). The RBRA does not impose any requirement on the religious bodies registered under the CTA laws to keep accounts of moneys received and expenditure incurred. No monitoring of NPOs with the relevant requirements and no sanctions are provided for under the applicable laws except power to cancel the incorporation in respect of certain NPOs. Lack of investigation and information gathering powers under the laws governing NPOs.

Technical compliance

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
9. Financial institution secrecy laws	C	
10. Customer due diligence	PC	<ul style="list-style-type: none"> Fiji's FTR Act provides for fundamental measures for customer due diligence, but fails to meet several of the standards of customer due diligence requirements. Not all the CDD measures and other requirements in the FTR Act are enforceable. None of the CDD measures contained in the FTR Regulations are enforceable except with respect to financial institutions regulated by the RBF. Fiji has no or inadequate legislative requirements to meet the FATF standards in the areas of trusts, identifying the person who has the ultimate controlling ownership interests, carrying out due diligence on beneficial owners of life insurance and insurance investment products, and the requirement to conduct enhanced due diligence when ML/TF risk are higher.
11. Record keeping	PC	<ul style="list-style-type: none"> The FTR Act provides for recordkeeping requirements (minimum 7 years) Those requirements lack enforceable means (no sanctions) except with respect to financial institutions regulated by the RBF to address non-compliance related to record retention periods and availability for domestic competent authorities.
12. Politically exposed persons	PC	<ul style="list-style-type: none"> Fiji's legislation in relation to PEPs only relates to foreign PEPs and does not extend to domestic PEPs or international organisations. Life insurance policies are not required to identify whether the beneficiary is a PEP.
13. Correspondent banking	C	
14. Money or value transfer services	C	
15. New technologies	PC	<ul style="list-style-type: none"> The requirement to identify and assess ML/TF risks related to new technologies only applies to banks and credit institutions but not to other non-bank financial institutions or DNFBPs. The NRA assessment in 2014 did cover assessment on new technologies but it is not clear whether financial institutions have identified and assess their ML/TF risks related to new technologies.
16. Wire transfers	PC	<ul style="list-style-type: none"> No requirement to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking the required originator or beneficiary information and take appropriate follow up action. No requirement for beneficiary financial institutions to set up risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and take appropriate follow-up

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		action. <ul style="list-style-type: none"> • No requirement under the FTR Act that intermediary financial institutions must maintain the required originator information with all wire transfers regardless of the intermediary financial institution's technical capacity. • No specific requirements to apply measures consistent with straight-through processing to identify cross-border wire transfers that lack originator information or required beneficiary information. • No requirement for intermediary financial institutions to set up risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or required beneficiary information and take appropriate follow-up actions. • No provisions under the FTR Act that require intermediary financial institutions to maintain the required originator information with all wire transfers including cross-border wire transfers. • No requirement to take freezing action in relation to relevant UNSCR designated persons and entities.
17. Reliance on third parties	PC	<ul style="list-style-type: none"> • The requirements on reliance on third party CDD set out in s.6 of the FTR Act and s.16 of the Regulations are not enforceable except with respect to financial institutions regulated by the RBF. • No enforceable sanctions for non-compliance with country risk requirements. • No provision requiring appropriate CDD to be undertaken when relying on a third party that is part of the same financial group.
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • There is no requirement for financial institutions to implement group-wide programmes against ML/TF. • No enforceable means requiring foreign branches and majority-owned subsidiaries of financial institutions to apply AML/CFT measures consistent with the home country.
19. Higher-risk countries	NC	<ul style="list-style-type: none"> • There is no requirement for financial institutions to apply EDD proportionate to the risks, to business relationships and transactions from countries for which this is called for by the FATF. • No requirement to apply countermeasures proportionate to the risks when called upon to do so by the FATF. • There are deficiencies in advising FIs about the weaknesses in the AML/CFT regimes of other countries.
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> • No implementation of the reporting requirements on dealers of precious metals and stones. • Section 14 of the FTR Act does not cover all predicate offences as specified by FATF.
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> • Directors of financial institutions are not protected from civil and criminal liability for reporting a compliant STR.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
22. DNFBPs: Customer due diligence	NC	<ul style="list-style-type: none"> The FTR Act does not cover all the material elements of the CDD requirements under R.10 nor other requirements under R.11, R.12, R.15 and R.17. The lack of requirement for DNFBPs to comply to CDD obligations for domestic PEPs is a major shortcoming.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> The FTR Act does not cover all the material elements of the requirements for other measures under R.18 and R.19. There are no specific measures in place in relation to countries called into special attention by FATF or requirements to apply counter measures proportionate to the risks. The requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> There is no mechanism in the Companies Act 1985 requiring the identification and disclosure of beneficial ownership information beyond the direct legal owner of shares. There has been no assessment, including in that of the NRA, of risks posed by all types of legal persons for ML and TF. No shareholder information is required to be disclosed nor is the foreign company's register of members or a copy thereof required to be held in Fiji. Changes to shareholders and shareholdings of foreign companies are not required to be notified to the registrar. Companies Act does not require the collection and recording of information on the company's beneficial ownership beyond the direct owner of shares by either the company itself or the company registry. Companies Act does not require companies to take reasonable measures to obtain and hold up-to-date information on its beneficial owners beyond the direct owners of shares. None of the CDD obligations under the FTR Regulations are enforceable. There do not appear to be any provisions in relation to companies listed on the stock exchange as required by sub-criterion (iv) of this criterion. There is no requirement that beneficial ownership information is accurate and as up to-date as possible. There is no requirement in the Companies Act or elsewhere to ensure that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. There is no requirement in the Companies Act for records to be maintained for a period of five years following winding up, dissolution or otherwise ceasing to exist, of a company, including a foreign company. Law enforcement authorities do not have adequate powers

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>beyond access to basic information, missing out on beneficial ownership, information on companies held either with companies or with the Registrar of Companies.</p> <ul style="list-style-type: none"> • Transparency obligations imposed by the Act do not guarantee the transparency of beneficial ownership for bearer shares. • For bearer share warrants and bearer shares there are no measures in the Companies Act 1985 to mitigate the ML and TF risk posed by these instruments. • There are no provisions in the Act requiring disclosure to the company or the Registrar of the identity of the nominator of shares of directors. • Sanctions contained in the Companies Act are neither proportionate nor dissuasive. • Fiji cannot provide international cooperation in relation to beneficial ownership information as defined by the FATF methodology (see c. 24.10). • There is no evidence that Fiji monitors the quality of assistance it receives from other countries in relation to requests.
<p>25. Transparency and beneficial ownership of legal arrangements</p>	<p>PC</p>	<ul style="list-style-type: none"> • There is no requirement for trustees of express trusts to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust. • Trustees are not required to hold information on other regulated agents as provided in c25.1. • There is no requirement that any information held by express trustees, trustees of other forms of trust, and professional trustees is kept as accurate and up-to-date as possible, or is updated on a timely basis. • There is no obligation on trustees to disclose their status when entering into a business relationship or conducting an occasional transaction with a financial institution entity or DNFBP. • Fiji does not require all trustees to hold basic information for exchange with competent authorities including law enforcement. • There is no specific framework governing the exchange of information in relation to trusts. • There are no laws, including under the Trustee Act, providing for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees: <ul style="list-style-type: none"> ○ There are no proportionate and dissuasive sanctions for trustees to comply with their trust obligations. ○ There are no proportionate and dissuasive sanctions available (criminal, civil or administrative) to enforce the requirement to grant competent authorities access in a timely manner to information where held regarding trusts.

Technical compliance

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> No supervision of cooperatives and credit unions but little impact on ML and TF risks. No review of ML/TF risk profile of financial institutions and DNFBPs or groups when there are major events or developments in the management and operations.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> The FTR Act does not provide the FIU with powers to impose a range of disciplinary and financial sanctions.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> The FIU, the designated supervisory authority for DNFBPs, does not have powers to enforce compliance with the FTR Regulations. The FIU has limited power to enforce compliance with only some of requirements of the FTR Act. The FTR Act does not designate an authority to carry out compliance monitoring. The sanctioning power in the FTR Act for recordkeeping and CDD (Part 2), and STR reporting (Part 3) does not include all of the obligations. There are no sanctioning powers for breach of FTR regulations. Supervision of DNFBPs is not undertaken on a risk based basis.
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> The authority to intercept private communication only extends to serious drug crime. There is no authority to intercept private communications associated with ML/TF, bribery, corruption or other serious crime.
32. Cash couriers	LC	<ul style="list-style-type: none"> A large number of cruise ships and many thousands of passengers that enter Fiji are exempted from the currency declaration system on the basis that they are 'transit tourists' despite many undertaking economic activities in Fiji. The declaration system does not extend to the shipment of currency or BNIs through containerised cargo or the mailing of currency or BNI by a natural or legal person.
33. Statistics	PC	<ul style="list-style-type: none"> Comprehensive statistics across the government are not maintained.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> Neither the FIU nor the SROs have issued any specific guidance for different sectors of DNFBPs.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> No specific feedback was provided in accordance with this recommendation.
35. Sanctions	PC	<ul style="list-style-type: none"> The FTR Act does not provide for sanctions in respect of several fundamental AML/CFT requirements. No sanctions are provided in the FTR Regulations for non-compliance with the detailed AML/CFT obligations. Penalties provided under the Companies Act for non-compliance with AML/CFT requirements by NPOs are not proportionate and dissuasive. There is a reliance on criminal sanctions to enforce compliance with the AML/CFT requirements although sanctions are available for certain instances of non-compliance. There is a lack of clarity under the POCA whether sanctions could also be applied against directors and senior management for non-compliance committed by legal persons.
36. International instruments	PC	<ul style="list-style-type: none"> Fiji has not ratified the Palermo Convention. Fiji has not fully implemented the obligations under the Palermo, Vienna, TF and Merida Conventions.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> Court-issued search warrants are limited to searches of land or premises, not persons. Fiji lacks legislative provisions allowing for interception of private communications beyond that of investigations involving narcotics offences.
38. Mutual legal assistance: freezing and confiscation	C	
39. Extradition	PC	<ul style="list-style-type: none"> Ministerial decision making processes may cause delay in relation to whether comity countries are designated as extradition countries in the execution of requests. Fiji does not have any system for prioritising requests on the basis of ML/TF offences. Fiji is able to refuse extradition of a national without being compelled to prosecute domestically at the request of the requesting country.
40. Other forms of international cooperation	LC	<p><i>General Principles</i></p> <ul style="list-style-type: none"> Authorities such as FPF, FRCA in its capacity as the customs authority, FICAC, Registrar of Titles and Registrar of Companies do not have clear legal basis to cooperate with foreign authorities even though they may cooperate with their foreign counterparts through FIU channels. Information on prioritisation and timely execution of requests by authorities other than FIU and FPF is not available. Information on processes put in place by authorities other than FIU and FRCA to safeguard information and use of information for authorised purpose only is not available.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p><i>Exchange of Information between Law Enforcement Authorities</i></p> <ul style="list-style-type: none"> Competent authorities are not permitted to use investigative techniques or investigation powers in the absence of an authority pursuant to MACMA, unless it is suspected that offences have in part occurred domestically within Fiji. <p><i>Exchange of Information between Non-counterparts</i></p> <ul style="list-style-type: none"> Beyond the FIU there are no processes articulated for information sharing with non-counterpart foreign agencies.

LIST OF ABBREVIATIONS

- AML** – Anti-Money Laundering
- AG** – Attorney General
- APG** – Asia/Pacific Group on Money Laundering
- APIFIUs** - Association of Pacific Island FIUs
- BCR** – Border Currency Report
- BNI** – Bearer Negotiable Instrument
- CDD** – Customer Due Diligence
- CDR** – Case Dissemination Report
- CFT** – Combating the Financing of Terrorism
- CMS** – Case Management System
- CTR** – Cash Transaction Report
- CTU** – Counter Terrorism Unit
- CTOG** - Counter Terrorism Officials Group
- DNFBP** – Designated Non-financial Business and Profession
- DTA** – Double Tax Agreement
- EDD** – Enhanced Due Diligence
- EFTR** – Electronic Funds Transaction Report
- FATF** – Financial Action Task Force
- FI** – Financial Institution
- FICAC** – Fiji Independent Commission Against Corruption
- FIA** – Fiji Institute of Accountants
- FFIMSO** - Fiji FIU Information Management System Online
- FFIU** – Fiji Financial Intelligence Unit
- FNPF** – Fiji National Provident Fund
- FPF** – Fiji Police Force
- FRCA** – Fiji Revenue and Customs Authority
- FT** – Financing of Terrorism
- FTR Act** – Financial Transactions Reporting Act
- FTR Regulations** – Financial Transactions Reporting Regulations
- GDP** – Gross Domestic Product
- IDR** – Information Dissemination Report
- KYC** – Know Your Customer
- LEAs** – Law Enforcement Agencies
- LPU** – Legal Practitioners Unit
- MACMA** – Mutual Assistance in Criminal Matters Act

ANNEX - List Of Abbreviations

- ML** – Money Laundering
- MLA** – Mutual Legal Assistance
- MOU** – Memorandum of Understanding
- NAMLC** – National Anti-Money Laundering Council
- NPO** – Non-Profit Organisation
- NRA** – National Risk Assessment
- ODPP** – Office of the Director of Public Prosecutions
- PEP** – Politically Exposed Person
- PF** – Proliferation Financing
- POCA** – Proceeds of Crime Act
- RBF** – Reserve Bank of Fiji
- REALB** – Real Estate Agents Licencing Board
- RFED** – Restricted Foreign Exchange Dealer
- RO** – Restraining Order
- STR** – Suspicious Transaction Report
- TCU** – Transnational Crime Unit
- TF** – Terrorist Financing
- TFS** – Targeted Financial Sanctions
- UN** – United Nations
- UNSCR** – United Nations Security Council Resolution



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Anti-money laundering and counter-terrorist financing measures – Fiji

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/counter the financing of terrorism (CFT) measures in place in Fiji as at October 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Fiji's AML/CFT system, and provides recommendations on how the system could be strengthened.