



Anti-money laundering and counter-terrorist financing measures

Tonga

Mutual Evaluation Report

September 2021





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EXECUTIVE SUMMARY

1. This report summarises the AML/CFT measures in place in Tonga as at the date of the on-site visit (22 October to 1 November 2019). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Tonga's AML/CFT system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- 1) Tonga completed its first ML/TF national risk assessment in 2019. Tonga has very limited statistical information to inform its NRA and relies heavily on the views and experience of public and private sector representatives, and information from public sources. As some of the information for the NRA was collected in 2015, there may be evolving risks which have not yet been addressed in the NRA. Tonga has gaps in understanding its ML risks and a low level of TF risk understanding. Tonga's NRA is focused predominantly on predicate offences and only consequentially on ML, with little-to-no analysis of TF risks.
- 2) Tonga makes limited use of financial intelligence for ML and predicate crime investigations. Although the Transaction Reporting Agency has wide information gathering powers, tax information is unable to be shared by the Inland Revenue Department. This leaves the Transaction Reporting Agency unable to access tax information to provide a detailed analysis of STRs and information it receives. In addition, the Transaction Reporting Agency's ability to undertake its financial intelligence and supervisory function is undermined by lack of staff and IT resources.
- 3) Although there is no high level policy to prioritise ML (including ML related to tax evasion), Tonga has investigated six ML cases, with four cases proceeding to prosecution and one conviction. Limited capability to investigate financial crime and a lack of policy and guidance are obstacles to the identification and investigation of ML. ML cases identified are largely in line with Tonga's threats and risk profile. ML cases pursued in Tonga are all for self-laundering relating to domestic predicate offences.
- 4) Although there is no policy focus on confiscation, Tonga has demonstrated an increasing focus on confiscating cash both as a penalty and a dissuasive measure. There is a focus on confiscating cash due to issues with managing and maintaining seized and restrained assets and the lack of a formal asset management system.
- 5) Tonga's exposure to TF is low, yet there are significant deficiencies in Tonga's TF legislation, including the need for a link to a terrorist act for an individual undesignated terrorist; no

definition of 'funds'; and no provision covering the financing of travel. There have been no investigations, prosecutions or convictions for TF in Tonga. Tonga has limited ability to investigate TF, and would likely seek assistance from LEA counterparts in New Zealand and Australia if a case was identified.

- 6) Tonga has a legal framework to implement TFS relating to terrorism and TF, however the framework has moderate shortcomings, including deficiencies in relation to the type of property that can be frozen. The authorities do not have a strong understanding of TFS and TF risks to the NPO sector. The lack of implementation of TFS is not consistent with the requirements of the FATF Standards or Tonga's UN obligations.
- 7) No funds or other assets have been frozen in regards to TFS. Tonga is not applying focussed and proportionate measures to protect NPOs from TF abuse.
- 8) Tonga's exposure to WMD-related sanctions evasion is relatively low. Tonga has no links or trade with Iran or DPRK in the last 5 years. No designated entities have been identified operating in Tonga, or moving funds/assets in or through Tonga. Tonga's shipping registry is not considered a PF risk. Tonga's shipping registry is open to Tongan citizens only. Foreign owned vessels may be registered, but the vessels must only operate within Tongan waters.
- 9) Tonga has not implemented any measures against PF and does not have an enforceable legal framework or process in place to implement TFS relating to PF.
- 10) Tonga's financial sector is small including regionally and includes four commercial banks, two of which are branches of international banks. DNFBPs consist of 31 private sector resident lawyers, 11 accountants, one real estate agent and two dealers of precious metals and stones (DPMS). The Transaction Reporting Agency (TRA) is not adequately resourced to undertake comprehensive AML/CFT supervision in Tonga. The application of sanctions for non-compliance is limited. No DNFBPs have been the subject of any type of supervisory activity and supervisors' understanding of the risks in the DNFBP sector appears to be limited. Market entry controls in the FI and DNFBP sectors are quite strong, with the exception of some industries with a small number of participants.
- 11) FIs and DNFBPs are not required to undertake ML/TF risk assessments, which contributes to a generally low understanding of risks. There has been no outreach to DNFBPs about their AML/CFT obligations. There are technical deficiencies in risk mitigating measures required by Tonga, which most banks and larger MVTS have largely overcome by implementing the requirements of their head office. There is no evidence of DNFBPs applying any risk mitigating or CDD measures. Banks and one MVTS provider submit approximately 30 STRs per year. No DNFBPs have submitted STRs. This appears to be due to a lack of understanding of this and other requirements.
- 12) Tonga has not identified and assessed ML/TF risks associated with all types of legal persons and legal arrangements including domestic and foreign trusts. There is no information on how many and what types of trusts operate in Tonga. There are very limited measures in place to prevent the misuse of legal persons and arrangements for ML. The company registry collects basic information, but lacks the resources to verify information and take enforcement actions.
- 13) Tonga has a reasonable legal framework for international co-operation in MLA and extradition and processing of MLA and extradition requests is given high priority. Tonga provides constructive and timely assistance when requested. From 2015 to 2019 Tonga has not made any MLA requests and has made only one extradition request in a murder case. Due to the lack of requests made, Tonga was not able to demonstrate that its MLA and extradition were in line with

its risk profile. Tonga prefers to use informal channels for international co-operation and competent authorities have good working relationships with their counterparts. The Transaction Reporting Agency, Tonga Police, Customs and Immigration are involved in international and regional co-operation organisations and have signed MoUs with regional counterparts. They were able to seek or provide assistance through established virtual private networks, emails or phone.

B. Risks and General Situation

2. The Kingdom of Tonga ('Tonga') is an archipelago in the South Pacific Ocean spread over 940km with a population of 103,000. Approximately 100,000 other Tongans reside overseas, primarily in Australia, New Zealand and the United States. Tonga has been a hereditary monarchy for over 1,000 years. However, recent changes include a new Constitution in 2016 which modernised the structures of government by establishing more transparent and accountable institutions and enshrined basic human rights. Tonga is a member of the British Commonwealth.

3. Tonga's GDP in 2018 was US \$488 million and GDP per capita was US \$4 868. The economy of Tonga is highly dependent on subsistence agriculture and heavily reliant on donor aid and remittances from Tongans residing overseas.

4. Tonga faces a range of ML/TF threats and risks. The NRA adopted in 2019 identifies the following risks:

- six high risk predicate crimes: (i) bribery and corruption; (ii) drugs – transnational; (iii) drugs - domestic; (iv) tax evasion; (v) trade-based crime; and (vi) immigration crimes (passport fraud); and
- six high risk sectors: (i) MVTs; (ii) banks (domestic and foreign); (iii) lawyers; (iv) accountants; and (v) real estate agents; (vi) the sixth is life insurance¹, while rated 'medium-high' is considered 'high' given a lack of licencing and supervisory oversight.

5. As some of the information for the NRA was collected in 2015, there is some concern about evolving risks both in Tonga and within the Pacific region which have not yet been addressed in the NRA.

6. Transnational drug trafficking is an increasing concern based on Tonga's geographical location making it a natural transit point for illicit drugs from South and Central America to primarily Australia and New Zealand. There are also growing risks from cross-border cash smuggling - of particular concern given the significant cash economy in Tonga.

C. Overall Level of Effectiveness and Technical Compliance

7. Tonga has enacted and/or issued a number of legislative and administrative measures since its 2010 mutual evaluation. In 2013, Tonga established the Cabinet Committee on Serious Financial Crimes (CCSFC), supported by a Working Group as the co-ordinating body for AML/CFT measures and PF policy. Tonga enacted the Counter Terrorism and Transnational Organised Crime Act (CTTOCA) in 2013; the revised Mutual Assistance in Criminal Matters Act (MACMA); the amended Money Laundering

¹ Although not included in the NRA, Tonga assessed the ML/TF risk associated with life insurance as 'medium-high' in a 'Sectoral Risk Assessment Tool'.

and Proceeds of Crime Act (MLPCA); and issued revised MLPC Regulations in 2016. In addition, a National Risk Assessment was issued and a National AML/CFT Policy 2018-2022 was endorsed by Cabinet during the on-site visit.

8. However, many of the deficiencies identified in the 2010 MER remain. Compliance remains at the NC or PC level across the majority of the FATF 40 Recommendations, with deficiencies remaining in a significant number of TF/PF Recommendations, preventive measures, transparency and beneficial ownership of legal persons and arrangements requirements, powers and responsibilities of competent authorities and other institutional measures including international co-operation Recommendations.

9. An issue that affects many of the TC ratings relates to the enforceability of the MLPC Regulations issued in 2018. The Regulations, issued under section 80 of the MLPC Act contain what are intended to be enforceable obligations in relation to risk-based CDD, PEPs, reliance on third parties, wire transfers, record keeping, cross border correspondent banking, STR reporting, and internal procedures/controls. However, the MLPC Regulations are unenforceable as they lack sanctions and penalties for non-compliance. The enabling provisions of the MLPC Act are high level, lacking detailed obligations. The MLPC Act also does not contain any provisions that provide penalties or sanctions for non-compliance with regulations issued under the Act. In addition, the Regulations apply only to financial institutions as defined in the MLPCA – namely banks, MVTS, money lenders, life insurers and investment related insurers² and not to other reporting entities including insurance companies and DNFBPs. Consequently, many of the technical requirements outlined in the Regulations cannot be enforced.

10. In terms of effectiveness, although some measures are in place, overall Tonga has low levels of effectiveness across all except one (IO.2) of the Immediate Outcomes. In many areas, a significant factor affecting effectiveness is the absence of policy and operational priorities and inadequate training, expertise and resources allocated to AML/CFT issues.

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

11. Tonga has minor shortcomings with the Recommendations on AML/CFT policies and co-ordination. There are moderate shortcoming on assessing risk and applying a risk-based approach but fundamental improvements are needed in the understanding of ML/TF risks, policy and co-ordination.

12. As noted above, Tonga adopted its first ML/TF NRA in October 2019 (see IO.1 for Tonga's assessment rating). Much of the information collected for the NRA (back to 2015) was out-of-date by 2019 when the document was endorsed. The environment both within Tonga and within the Asia-Pacific region could have (and likely did) change in the intervening four years from 2015 to 2019. In addition, there were very limited statistics available on which to base the risk assessment, and very limited consultation with the private sector in preparing the NRA. There has been no consultation across agencies and the private sector since the NRA was adopted in 2019 during the on-site visit.

13. Tongan authorities did not consult systematically and regularly with regional stakeholder and partner organisations (e.g., PIFS, APIFIU, OCO, PICP) and regional allies, including New Zealand, Australia, Fiji, Samoa, etc., in the preparation of the NRA despite the international dimension of many of the identified high risk predicate crimes. Those crimes include transnational drug trafficking,

² The definition of a 'cash dealer' includes insurers, however the definition of 'financial institution' includes a business that accepts a 'deposit for life insurance and investment related insurance'.

trade-based crime, cross-border movement of illicit funds and TF. This lack of critical information affects the reasonableness of Tonga's risk understanding.

14. While the NRA assesses the risk of TF as 'low' within a combined category of 'terrorism/TF' in the NRA there appears to be some confusion in relation to this rating, as the National AML/CFT Policy 2018-2022 (adopted subsequent to the NRA in 2019) repeats the ML risk categories but does not indicate the risk of TF. It does however state that 'terrorism' is a high risk (in contradiction to the assessment in the NRA that it is 'low' risk).

15. Tonga's competent government authorities including LEAs have a mixed understanding of ML risks, with a focus primarily on predicate crimes. Within the private sector, all DNFBPs displayed a lack of understanding of risks across predicate crimes and within their own sectors. Other private sector reporting entities, with the exception of banks, displayed little understanding of the nature of ML within their own sectors.

16. Competent authorities, LEAs and private sector entities including banks and DNFBPs displayed a lack of understanding and appreciation of TF risks, both within their own sectors and more widely.

17. The National AML/CFT Policy 2018-2022 was endorsed by Cabinet during the on-site visit. Authorities had already taken measures prior to the on-site visit to implement some of the strategies in the policy. While generally in line with identified ML/TF risks in the NRA, some priority areas were not included, such as increasing the allocation of resources to the TRA (the AML/CFT supervisor) to enable comprehensive risk-based supervision.

18. Tonga has increased its efforts to improve AML/CFT/CPF national co-ordination by establishing the Cabinet Committee on Serious Financial Crimes (CCSFC) which focuses on policy matters relating to AML/CFT/CPF in Tonga. Co-ordination and co-operation at the technical level are supported by the Working Group on Serious Financial Crimes (WGSFC), which exchanges information on operational matters across agencies and provides a forum for inter-agency co-operation. The Tonga Law Enforcement Agencies Committee (TLEAC) also operates as a forum to share input on operational matters.

19. There is some co-operation and co-ordination at the operational level, particularly between the AGO and police, and evidence of information sharing and implementation of policies to combat predicate offences and, to some extent, ML. A 2014 MOU between Tongan LEAs is designed to facilitate co-operation and information sharing. Ad-hoc co-operation regularly takes place. However, tax authorities are unable to share tax information due to strict tax secrecy provisions. While overall there is evidence of domestic co-operation, there is no evidence that co-operation is focused on mitigating high risk areas for ML and no evidence that any co-operation occurs in relation to TF-related risk.

20. Regarding statistics, Tonga does maintain statistics in relation to the effectiveness and efficiency of their AML/CFT systems, however the statistics are not comprehensive across the range of information required in R.33 and in relation to AML/CFT supervision.

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

21. Tonga has minor/moderate shortcomings with the Recommendations relating to the ML offence and confiscation measures, with moderate shortcomings in relation to the powers and responsibilities of competent authorities and other institutional measures (operational and law enforcement). Fundamental improvements are needed in the effective use of financial intelligence for

ML/TF investigations, ML investigation, prosecution and sanctions and the confiscation of proceeds and instrumentalities of crime.

22. TRA has a range of powers to access financial and other information from domestic authorities. However, due to TRA capacity constraints, TP usually produces its own financial intelligence, relying on TRA source documents, although TP's experience in undertaking its own financial analysis is limited. Tonga Revenue and Customs, MTED and Immigration can all access financial intelligence, but not all these agencies proactively use that intelligence and other relevant information in their operations, due in part to a failure to understand the benefits of that information. There is minimal evidence that Tongan authorities effectively use financial products from TRA to support investigations.

23. TRA has good working relationships with domestic LEAs and access to a wide variety of financial intelligence and other relevant information. Tax evasion is considered by Tonga to be a high risk predicate offence, however, IRD is unable to share information in relation to income tax, consumption tax and excise tax with agencies including TRA due to strict tax secrecy laws. The lack of tax information for TRA, AGO and TP impedes effective financial investigations. Financial intelligence is used to support investigations into associated predicate offences, although it is infrequently used in ML investigations. TRA has not identified intelligence that relates to TF, which is in line with Tonga's risk. Competent authorities failed to demonstrate that they have the resources and skills to fully utilise financial intelligence to conduct their analysis and financial investigations to identify and trace assets, and to develop operational analysis. Due to a lack of resources, TRA has undertaken limited strategic analysis.

24. Tonga has investigated six ML cases, with three cases proceeding to prosecution and one conviction. Tonga is not targeting its efforts to mitigate high risk predicate and ML cases due to a lack of institutional capacity. The authorities are aware of the occurrence of ML offences related to high risk crimes (drugs in particular) but lack the resources and expertise to effectively respond; and when they do, it is for simple self-laundering cases. In the context of other serious offences in Tonga, sanctions for ML are proportionate to the risk profile of Tonga however, they may not be adequately dissuasive in the event of serious transnational ML.

25. Tonga does not have a policy or strategy to pursue the proceeds of crime and confiscate criminal proceeds or property. However, actions taken by authorities, in particular the AG's office, demonstrate an increasing focus on cash seizures and forfeiture. Tonga has a reasonable legal framework, enabling conviction-based confiscation of proceeds of crime, instruments and benefits of proceeds. Conviction is not required in the case of forfeiture linked to TF. All of the matters involving confiscated cash thus far relate to the issue of drug dealing/use and trafficking which is reflected in the statistics. Authorities have not yet restrained or confiscated assets pertaining to other high risk predicate crimes due primarily to challenges in conducting financial investigations and managing the assets.

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

26. Tonga has moderate shortcomings with the Recommendations on the TF offence, TFS relating to terrorism and TF; and major shortcomings in relation to targeted financial sanctions of proliferation financing. Fundamental improvements are needed in effective investigation and prosecution of TF, the prevention of TF and abuse of the NPO sector, and combatting PF.

27. Tonga's NRA rates its TF risk as 'low,' although it notes that limited information was available to assess the TF risk. There are significant deficiencies in Tonga's TF legislation, including the need for a link to a terrorist act for an individual undesignated terrorist; no definition of 'funds;' and no provision covering the financing of travel. There have been no investigations, prosecutions or convictions for TF in Tonga, consistent with Tonga's risk profile. Tonga has limited ability to investigate TF, and would likely seek assistance from LEA counterparts in New Zealand and Australia if a case was identified.

28. Tonga has a legal framework to implement TFS relating to terrorism and TF, however, the framework has some deficiencies, including gaps in relation to the type of property that can be frozen under Section 13 of the CTTOCA. The Tongan authorities do not have a strong understanding of TFS. The lack of implementation of TFS by the private sector is not consistent with the requirements of the FATF Standards or Tonga's UN obligations. There is a need to conduct more outreach on TFS to competent authorities, the private sector and to the public. TRA issues email notifications to FIs on a monthly basis, focusing on OFAC lists but has not conducted outreach to reporting entities on their obligations to implement TFS for terrorism. The majority of the banks and the major remittance company have commercial screening systems in place to identify designated individuals and entities and indicated a clear understanding of the need to screen transactions and client bases against the UN lists. Smaller FIs and all DNFBPs did not demonstrate screening procedures and showed little understanding of their TFS obligations.

29. No funds or other assets have been frozen in regards to TFS.

30. The NRA considers the risk of TF abuse to the NPO sector to be low risk, however there is minimal oversight of the sector which is not supervised or monitored for AML/CFT. Tonga has not yet implemented an effective system for promoting accountability, integrity and public confidence in the administration and management of NPOs. TRA is currently conducting awareness raising with NPOs, but it is not clear whether this contains any AML/CFT component. Tonga has no targeted measures to prevent TF abuse of NPOs.

31. Tonga's exposure to WMD-related sanction evasion is relatively low. Tonga has had no links or trade with Iran or DPRK in the last five years. No designated entities have been identified operating in Tonga, or moving funds/assets in or through Tonga. Tonga's shipping registry is open to Tongan citizens only. Tonga has not implemented any measures against PF and does not have a legal framework or process in place to implement UNSCRs 1718, 1737 and 2231. There has been no outreach or guidance to REs on the issue of TFS relating to PF. In the event of funds coming into Tonga that were owned or controlled by a designated entity, authorities would not have a legal framework to apply. The Cabinet Committee on Serious Financial Crime is mandated to co-ordinate matters with respect to PF in Tonga but has not yet taken any steps to actively co-ordinate or consider issues relating to PF.

32. The two foreign bank branches and larger money remitters have adopted their parent organisation's PF guidance and their staff have an awareness of PF-related sanctions and designations. Among other FIs and DNFBPs, there was no general understanding of and compliance with PF-related sanctions and designation mechanisms. Tonga does not have a legal system in place to require financial institutions and DNFBPs to implement PF-related sanctions. Consequently, supervisors are not monitoring those reporting entities for sanctions screening.

Preventive Measures (Chapter 5 - IO4; R.9-23)

33. Overall Tonga has major shortcomings with the Recommendations on preventive measures, however, there were no shortcomings found in relation to Tonga's financial secrecy measures and

minor shortcomings in relation to MVTs. Fundamental improvements are needed in effective application of AML/CFT preventive measures by FIs and DNFBPs commensurate with their risks and in the reporting of suspicious transactions.

34. Tonga's financial sector is regionally small, lacks diversity and is relatively underdeveloped. Tonga's financial sector consists of four commercial banks (two international and two locally incorporated), six credit unions, 12 MVTs, five insurance companies, including at least two which offer life insurance products. In addition, there are approximately 280 non-bank, non-deposit taking lenders (family- or community-based entities lending small amounts). The DNFBP sector consists of 31 private sector resident lawyers, 11 accountants, one active real estate agent and two DPMS. Casinos are prohibited in Tonga.

35. The banking sector demonstrated some awareness of their risks and the AML/CFT requirements imposed on them as well as the purpose of preventive measures. But meetings with entities across the private sector revealed serious concerns about the levels of understanding of risks and the implementation of preventive measures. Tongan authorities have undertaken no effective outreach to DNFBPs regarding their AML/CFT obligations. There is no requirement for FIs and DNFBPs to undertake ML/TF risk assessments, which contributes to a generally low understanding of risks.

36. A significant deficiency is that the MLPC Regulations are not enforceable due to the fact that they contain no sanctions or penalties for non-compliance. The Regulations contain fundamental measures in relation to risk-based CDD, record keeping, STR reporting, and internal procedures, policies and controls. In addition, the measures outlined in the Regulations apply only to financial institutions (including life insurers) and do not apply to DNFBPs. This has a significant impact on the effective application of risk mitigation measures in both financial institutions and DNFBPs. Most banks and larger MVTs have overcome this by implementing the requirements of their foreign head office, which largely involves meeting the standard of the fundamental measures outlined above. There is no evidence of DNFBPs applying any risk mitigating or CDD measures.

37. The number of STRs submitted is considered low, and STR reporting is only undertaken by a small number of financial institutions. The banks and one MVTs provider submit approximately 30 STRs per year, with one bank responsible for the majority of these. No DNFBPs have submitted STRs. This appears to be due to a lack of understanding of this requirement. No outreach had been conducted on AML/CFT reporting obligations by relevant authorities.

Supervision (Chapter 6 - IO3; R.26-28, R.34-35)

38. Overall Tonga has moderate shortcomings with the Recommendations on regulation and supervision of FIs and DNFBPs. Fundamental improvements are needed in effective AML/CFT supervision of FIs and DNFBPs commensurate with their risks.

39. Tonga recently developed an AML/CFT supervision manual which employs a risk-based approach to supervision of relevant financial institutions and DNFBPs. However, TRA is responsible for the AML/CFT supervision of all FIs and DNFBPs and currently dedicates the equivalent of less than one full time equivalent staff member to undertaking this function. The lack of TRA resources has meant that comprehensive and targeted on-site and offsite assessments and outreach activity for FIs has reduced. The most recent comprehensive AML/CFT on-site inspection occurred on a large FI in 2013, the last targeted on-site was undertaken in 2019 and the last sanction imposed by the TRA was a warning letter issued to a bank in 2017. Since then, supervisory activity has been limited to quarterly spot checks on MVTs in regards to CDD and reporting requirements.

40. Notwithstanding the responsibility for AML/CFT supervision of DNFBPs, no such supervisory activity has been undertaken for any of these entities. Nor has any AML/CFT supervision of life insurance companies been undertaken. In addition, life insurance companies in Tonga are not required to be licenced.

41. Tonga has not issued effective, proportionate or dissuasive sanctions, which is likely due to the lack of AML/CFT supervision conducted. In addition, sanctions do not extend to breaches of the MLPC Regulations, which impacts Tonga's ability to apply sanctions. No sanctions have ever been applied to DNFBPs for non-compliance.

42. The TRA has some understanding of the ML/TF risks in the financial sector as a result of the NRA and the sectoral risk assessment undertaken in April 2019. The TRA's understanding of ML/TF risks in DNFBP sectors and in the life insurance sector appears to be limited, a function of the low level of engagement with those sectors. While a risk-based framework has been established that focusses resources on higher risk businesses, current AML/CFT supervisory resourcing is not sufficient to implement it. Prior to the development of this framework, supervisory activity while minimal, focussed on banks and MVTs.

43. Market entry controls in the FI and DNFBP sectors are good, with the exception of some industries (including life insurance companies) with a small number of participants. These strengths are confirmed in examples provided whereby authorities have refused and revoked licenses for FIs.

Transparency of Legal Persons and Arrangements (Chapter 7 - I05; R.24-25)

44. Tonga has moderate shortcomings with R.24 and major shortcomings in relation to R.25. Fundamental improvements are needed for an effective system to prevent the misuse of legal persons and arrangements for ML or TF, and in the availability of beneficial ownership information to competent authorities.

45. Tonga has not identified and assessed the ML/TF risks associated with all forms of legal persons. There has been little analysis of data to enable a comprehensive understanding of the potential risks associated with misuse of legal persons. The private sector showed little understanding in relation to ML and TF risks relating to different types of legal persons. Banks indicated that they were vigilant towards the risks associated with shell companies, but banks were not familiar with the risks posed more generally by the four main types of legal persons in Tonga. Other types of financial institutions and DNFBPs (including lawyers) displayed virtually no understanding of ML and TF risks relating to legal persons in Tonga.

46. Nor has Tonga assessed the ML and TF risk associated with legal arrangements including trusts. There is no information on the number of domestic or foreign trusts established or operating in Tonga. There is a low level of understanding relating to the risks relating to trusts, including foreign trusts, in Tonga. There are no enforceable obligations on trustees, FIs and DNFBPs to collect beneficial ownership information relating to legal persons and trusts. There is also no enforcement for non-compliance. Lawyers and accountants have taken part in managing a small number of companies or trusts ancillary to their primary professional services. However, any risk mitigated by the use of professionals is diminished by their lack of AML/CFT regulation.

47. There is a system of recording basic information of legal persons and capturing beneficial ownership information in the financial system. There are, however, no enforceable obligations on FIs to collect that information (the MLPC Regulations are not enforceable) and the reliability and currency of the information collected is uneven and less robust for access by competent authorities. There is no

enforcement for failure to capture information regarding beneficial ownership. The Companies Registrar managed by MTED does not have sufficient resources for verifying the information and implementation of the requirements. No enforcement actions have been taken in certain non-compliance cases by legal persons and legal arrangements. The information in the company register is not necessarily current and there is no information about the beneficial ownership and control of legal persons. There are no enforceable obligations on trustees, FIs and DNFBPs to collect beneficial ownership information relating to legal persons and trusts.

48. Beneficial ownership information may be obtained by the TRA or the LEAs from the FIs, but the accuracy and currency of the information on beneficial ownership is dependent on how the information is collected, updated and adequately verified by the FIs. Not all FIs conduct ongoing reviews of their client base to maintain the currency of beneficial ownership information. In addition there is no obligation on trustees in Tonga to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold in the Recommendations.

International Co-operation (Chapter 8 - IO2; R.36-40)

49. Overall Tonga has moderate shortcomings with FATF Recommendations relating to international co-operation and major improvements are needed in Tonga's international co-operation actions against criminals and their assets.

50. Tonga has a reasonable legal framework for MLA and extradition and provides constructive and timely assistance when requested. From 2012 to 2019, the AGO received two MLA requests and three extradition requests. The requests were completed in a timely manner, with the 2019 extradition request still being processed at the time of the on-site. From 2015 to 2019, Tonga has not made any MLA requests and has made one extradition request in a murder case. Tonga's MLA and extradition is not consistent with its ML risk profile, but is consistent with its TF risks. There are no simplified extradition procedures in Tonga, including for persons who are prepared to waive formal extradition proceedings and consent to return to the jurisdiction from which they are a fugitive.

51. Tonga actively provides and seeks international co-operation with other jurisdictions via informal channels, including through the signing of MOUs and maintaining a presence in regional organisations, and has good co-operative relationships with regional counterparts. While Tonga has pursued co-operation actively through informal channels, the level of formal international co-operation sought by Tonga does not appear to be consistent with its risk profile. There is limited evidence of Tonga receiving and making requests for beneficial information for legal persons and legal arrangements.

D. Priority Actions

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| <p>a) Tonga should disseminate the newly-endorsed NRA to all domestic authorities and the private sector and continue to provide the private sector/authorities with updated risk findings through enhanced outreach. There should be on-going liaison between all domestic authorities and the private sector on evolving risks. This will be greatly assisted if reporting entities are required to undertake risk assessments at the institutional level in order to facilitate a two-way exchange of risk information.</p> <p>b) LEAs should more proactively use financial intelligence for predicate and ML investigations, which will require increased awareness of its benefits, and training. The TRA requires greater staffing and IT resources in order to undertake its core work as an FIU, and to make the best use</p> |
|--|

of its wide information gathering powers. Secondments from other key AML/CFT agencies to the FIU could be undertaken.

- c) To enhance the financial intelligence provided by the TRA, Tonga should make amendments to the Revenue Services Administration Act to allow access to tax records by TRA. TRA should conduct greater outreach to reporting entities on the quality and quantity of STRs filed in order to increase its intelligence base.
- d) The Cabinet Committee on Serious Crime should set a priority for LEAs to identify and investigate ML, and LEAs should confirm a commitment to focus on identifying ML conduct where appropriate. TP should pursue ML cases in parallel with their investigations of predicate offences and serious offences where they occur, and make increased use of financial intelligence and the current legal framework.
- e) Tonga should implement a high level policy prioritising the restraint and confiscation of proceeds of crime, including of assets other than cash and should develop a confiscation policy or manual to guide procedures in relation to the restraint, seizure, asset management and dealing with seized and confiscated properties.
- f) Deficiencies in the TF offence (as outlined in Recommendation 5) need to be addressed. Tongan authorities should continue to monitor the threats of TF (both domestically and globally) and vulnerabilities within Tonga to TF.
- g) Authorities should pursue legislative amendments to ensure DNFBPs are captured by the MLPC Regulations and to ensure the Regulations are enforceable. Tonga should also pursue amendments to the full range of deficient preventive measures, prioritising R.10 (CDD), R.12 (PEPs) and R.16 (wire transfers).
- h) More resources should be applied to the supervisory function of the TRA to undertake outreach, enhancing FIs and DNFBP's understanding of AML/CFT obligations. ML/TF typologies and risk indicators should be provided to these sectors. NRBT resources currently dedicated to prudential supervision could be utilised.
- i) Tonga should introduce comprehensive licencing and AML/CFT supervision programmes for life insurance companies, credit unions and other deposit-taking institutions.
- j) Tonga should undertake a comprehensive assessment of the risks posed by all types of legal persons and legal arrangements, including foreign trusts, and conduct outreach to the private sector to assist their understanding of the operation of, and risk associated with, legal persons and arrangements. Tonga should ensure that the Companies Registrar is adequately resourced to verify information provided and take enforcement action when necessary.
- k) Tonga should pursue more MLA requests and extradition requests relating to ML and associated predicate offences where necessary. Training and resources should be deployed to the Central Authority in handling extradition matters and to the LEAs on the use of MLA and extradition.

E. Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and co-ordination	IO.2 - International co-operation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Low	Moderate	Low	Low	Low	Low
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	
Low	Low	Low	Low	Low	

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

R.1 - Assessing risk & applying risk-based approach	R.2 - National co-operation and co-ordination	R.3 - Money laundering offence	R.4 - Confiscation & provisional measures	R.5 - Terrorist financing offence	R.6 - Targeted financial sanctions – terrorism & terrorist financing
PC	LC	PC	LC	PC	PC
R.7 - Targeted financial sanctions – proliferation	R.8 - Non-profit organisations	R.9 - Financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
NC	PC	C	NC	PC	NC
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
NC	LC	NC	NC	NC	NC
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
NC	NC	LC	NC	NC	PC
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
NC	PC	PC	PC	PC	LC
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
PC	PC	LC	PC	PC	PC
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international co-operation		
PC	PC	LC	PC		

MUTUAL EVALUATION REPORT OF TONGA

Preface

This report summarises the AML/CFT measures in place in Tonga as at the date of the on-site visit, 22 October to 1 November 2019. 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 could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the FATF's 2013 Assessment Methodology. The evaluation was based on information provided by Tonga, and information obtained by the assessment team during its on-site visit and through independent research.

The evaluation was conducted by an assessment team consisting of:

- Ms Connie CHU, Financial Intelligence Unit, Macao, China (FIU and law enforcement expert)
- Ms Lillian IPU, Department of Justice and AG, Papua New Guinea (legal expert)
- Mr Binod LAMICHHANE, Department of Money Laundering Investigation, Nepal (FIU and law enforcement expert)
- Mr Richard LEE, Australian Transaction Reports and Analysis Centre, Australia (financial expert)
- Mr Floyd Ray MERA, Financial Intelligence Unit, Vanuatu (FIU and law enforcement expert)
- Ms Sandy SHUM, Department of Justice, Hong Kong, China (legal expert)
- Mr Jimmy VAJAH, Financial Intelligence Unit, Solomon Islands (financial expert)

The assessment process was supported by Mr Gordon Hook, Ms Michelle Harwood and Ms Marnie Campbell of the APG secretariat. This report was reviewed by Mr Syed Kamrul Islam, of the Bangladesh Financial Intelligence Unit, Ms Dawne Spicer of CFATF Secretariat and by the FATF secretariat.

Tonga underwent a second round APG mutual evaluation in 2010 under the 2004 FATF methodology. The report of that evaluation is available at www.apgml.org.

Recommendation 15 - VASPs

The assessment criteria in R.15 relating to VASPs were not assessed in this report as the amendments were published by the FATF immediately subsequent to the on-site visit.

Exchange rate in this report

Throughout this report Tonga's currency, the Tongan Pa'anga (TOP), is adjusted at a US conversion rate in effect at the time of the on-site visit, namely: US \$1.00 = TOP 2.23.

Statistical Tables

Information shown in tables throughout this report has been sourced directly from government authorities unless otherwise stated.

Background

1. The Kingdom of Tonga (“Tonga”) is an archipelago in the South Pacific Ocean comprising 299 islands with a total land surface area of approximately 750 km² of which 45 km² are inhabited. The islands of Tonga are spread over 940 km in a south to north-east axis. Fiji lies to the northwest, the Cook Islands to the east, Vanuatu to the west, and New Zealand to the southwest. The population of Tonga is 103,000. Seventy per cent of resident Tongans live on the main island of Tongatapu, the location of the capital, Nuku’alofa. Approximately 100,000 Tongans reside outside Tonga primarily in Australia, New Zealand and the United States.

2. Tonga is a constitutional monarchy pursuant to Part II, section 30, of the Constitution 2016. It has been a hereditary monarchy for over 1000 years but has seen many changes including the new Constitution of 2016 which enshrines many human rights and establishes the structures of government. Tonga is a member of the British Commonwealth.

3. Tonga’s GDP in 2018 was US \$488 million and GDP per capita was US \$4 868. The economy of Tonga is highly dependent on subsistence agriculture (vulnerable to natural hazards³), and heavily reliant on donor aid and remittances from Tongans residing overseas. Its medium-term development depends on the continued implementation of structural reforms to improve productivity, remove bottlenecks to growth, and strengthen macroeconomic resilience.⁴

System of Government

4. Under section 31 of the Constitution 2016, the government of Tonga consists of:

- Cabinet;
- Legislative Assembly; and
- Judiciary.

5. The executive authority of the Kingdom vests in the Cabinet which is collectively responsible to the Legislative Assembly for the executive functions of the government. Cabinet consists of the prime minister and other ministers nominated by the prime minister and appointed by the King. The prime minister may nominate cabinet ministers subject to some conditions outlined in the Constitution. The prime minister and cabinet shall be fewer in number than half of the number of elected members of the Legislative Assembly, excluding the speaker.

6. In addition, there is a Privy Council which consists of members appointed by the King. The council has three types of regular members; members who hold their position by virtue of an office they occupy; and Law Lords. The Lord Chancellor, Lord President of the Supreme Court and AG are automatically members of the Privy Council. The constitution does not set a limit on the number of members who can sit on the council.

7. Tonga has a unicameral Legislative Assembly (Fale Alea) with up to 30 seats: 17 are directly elected people’s representatives in single-seat constituencies; nine representatives (called ‘nobles’) are indirectly elected by the country’s 33 hereditary nobles (traditional estate

³ In 2018 Cyclone Gita caused approximately US \$164 million (equivalent to 38 per cent of GDP) in damage. Reconstruction in 2019 continued in Tonga with estimated recovery and reconstruction of approximately US \$149 million.

⁴ Source: Asian Development Bank, <https://www.adb.org/countries/tonga/main>.

holders although eight new noble titles have no hereditary lands); and up to four additional members are appointed by the King on the advice of the Prime Minister. The King is the chief of state and has the right to veto legislation.

Legal and Court System

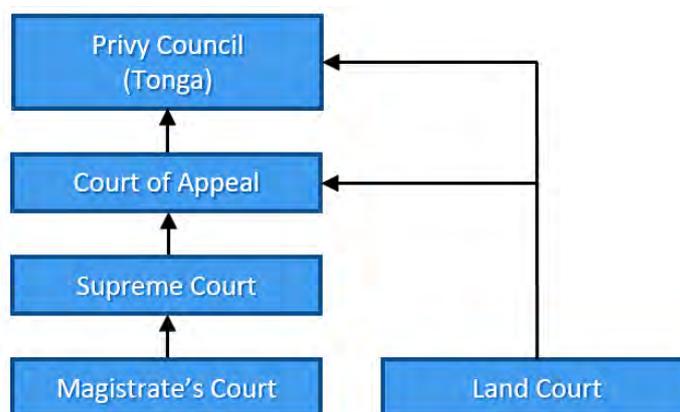
8. The legal system of Tonga is based on English common law. Tonga's hierarchy of laws consists of the following, in order of priority:

- a) Constitution;
- b) Statutes;
- c) Regulations;
- d) Orders-in-Council/ Ordinances (issued by the Privy Council);
- e) Administrative instruments (including guidelines and policy statements).

9. The Constitution is the supreme law of Tonga and if any other law is inconsistent with it, that law is deemed void by section 82 of the Constitution and by section 34 of the Interpretation Act 1988. In addition to the laws noted above, judicial precedent (case law) is a source of law.

10. The Tongan court system consists of a number of courts and tribunals including the Privy Council, courts of superior/inherent jurisdiction, and statutory courts. The Privy Council, consists of the King and Cabinet members and has limited jurisdiction to hear appeals from the court of appeal on matters appealed from the Land Court in relation to hereditary estates and titles of nobility. It does not exercise criminal jurisdiction or civil jurisdiction outside this limited appellate function. The following chart outlines the name and structure of Tonga's courts:

Figure 1.1: Hierarchy of Tonga's Courts



Source: Pacific Islands Legal Information Institute: <http://www.paclii.org/to/courts.html>

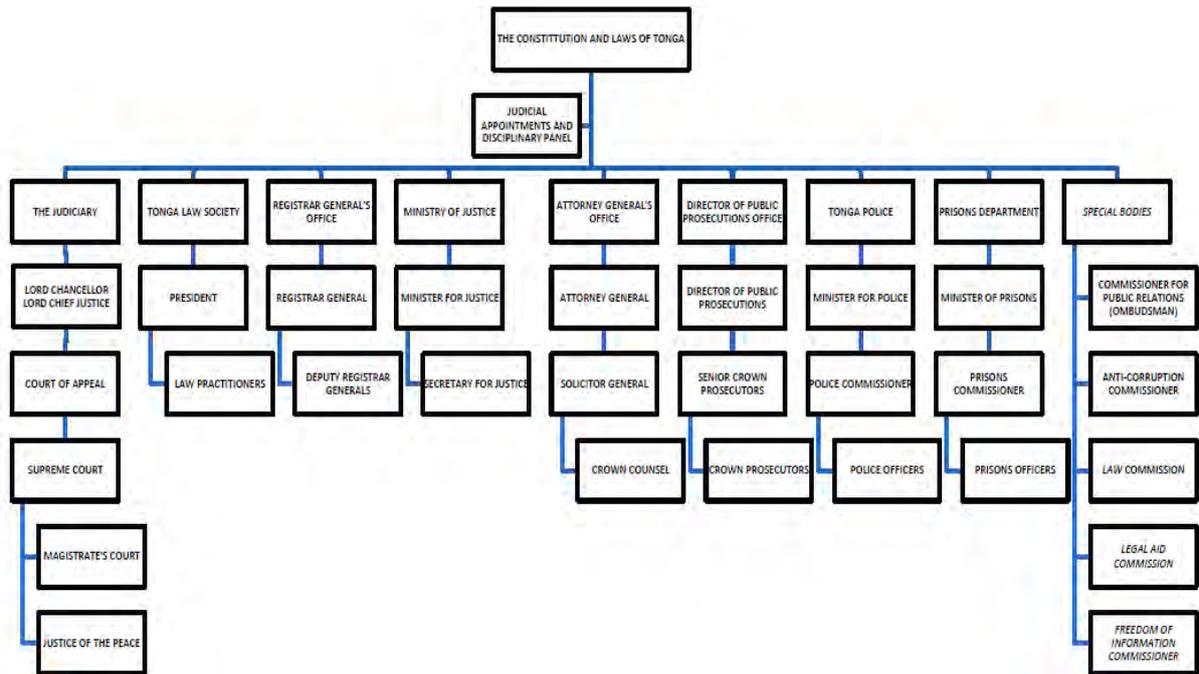
11. Judges are appointed by the King with the consent of the Privy Council. The Court of Appeal is presided over by the chief justice and its other members are judges from other Commonwealth countries. The Court of Appeal is the final court of appeal for most cases.

12. The Supreme Court has original jurisdiction in the more serious civil and criminal cases. The Land Court is concerned with questions relating to the ownership of land. The President of the Supreme Court is generally, though not necessarily, the chief justice. Appeals from the eight magistrates' courts are heard in the first instance by the Supreme Court.

13. The judiciary is independent and is presided over by a chief justice. The chief justice and other justices of appeal are foreign nationals usually from other Commonwealth jurisdictions and appointed by the King. The Judicial Committee (part of the Privy Council) has a Judicial Appointments and Discipline Panel composed of the Lord Chancellor, AG, Lord Chief Justice and five Law Lords. This committee advises the King on the exercise of his judicial powers and investigates complaints against judges.

14. The following chart represents an overview of the Tongan legal and judicial system with relevant agencies noted:

Figure 1.2: Overview of Tonga’s Legal and Judicial System



Source: Tonga’s PILON Country Report 2016 (Annex 1, p.15).

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

15. Tonga’s NRA identifies six high risk predicate crimes: (i) bribery and corruption; (ii) drugs – transnational; (iii) drugs - domestic; (iv) tax evasion; (v) trade-based crime; and (vi) immigration crimes (passport fraud).

16. High risk sectors include: (1) domestic and international banks; (2) MVTs; (3) lawyers; (4) accountants; and (5) real estate agents. Factors relevant to lawyers and accountants include their role as trust and company service providers (TCSPs) in the formation of trusts, companies, charities and the facilitation of business purchases.

17. Bribery and corruption pose a serious risk, with foreign criminals targeting and bribing higher officials for fraud and issuance of Tongan passports. Domestic drug consumption is an increasing concern, while transnational drug trafficking is also a concern based on Tonga’s geographical location making it a natural transit point for illicit drugs from South and Central America to Australia and (to a lesser extent) New Zealand. There are also growing risks from

cross-border cash smuggling - of particular concern given the significant cash economy in Tonga. There are increasing cases of undeclared cash intercepted by customs authorities.

18. The lack of measures to process an increasing number of cruise ship passengers also poses serious ML/TF vulnerabilities and risks to Tonga. Cruise ship passengers entering Tonga are considered to be 'in transit' and are not screened by immigration officials or required to declare movement of currency over the established reporting threshold.

19. Proceeds of crime in Tonga are generally used for day-to-day living, the purchase of houses (for example repayments on loans, noting that the purchase of land is illegal in Tonga) and to a lesser extent the purchase of moveable assets such as vehicles, payment of private school fees and donations to churches. There were very limited examples of attempts to send proceeds of crime offshore and of authorities detecting foreign proceeds of crime within Tonga.

20. In line with the NRA and other regional findings of risk, including open source material, the assessment team is of the view that the risk of terrorism in Tonga is low and that the risk of terrorist financing based on open source information appears low. In general, there is however lack of understanding amongst Tongan officials and the wider public regarding the risk (as opposed to the actual occurrence) of TF.

21. Tonga has not had any links or trade relationships with Iran or DPRK in the 5 years prior to the on-site visit (ending in late 2019). The possibility of evasion of PF sanctions is considered by the assessment team to be low.

Risk Assessment & Scoping of Higher Risks

22. Tonga's first national ML and TF risk assessment was concluded in 2018 and formally endorsed by Cabinet in October 2019, immediately prior to the on-site visit. The NRA process (started in 2015) was undertaken with assistance from the New Zealand government and used FATF guidelines as well as guidance from the World Bank and IMF. The NRA relied heavily on the views and experiences of representatives from both the public and the private sectors, and open-source information, with statistical information. Workshops with government and private sector entities were held in May 2015 and again in June 2017 to identify vulnerabilities, threats and consequences of ML/TF/PF. Government agencies were requested to provide information and case studies to support the NRA analysis. The NRA considered both ML and TF, with TF a lower area of focus due to a low risk of terrorism.

Scoping Note

23. Based on material provided by Tonga, the assessment team considered that the following are high risk crimes:

- a) *Bribery and corruption* - Bribery and corruption in government including among enforcement authorities, government employees and government officials. There have also been some cases involving higher levels of government, including most recently in 2018.
- b) *Drug trafficking* - Tonga is located within a Pacific transit-route for narcotic trafficking from South/Central America to Australia and New Zealand. Moreover, because of an increasing market within Tonga for methamphetamines and cannabis, Tonga is also a destination market.

- c) *Fraud and tax crimes* - Fraud-related crimes include counterfeit passports and embezzlement of funds. The Ministry of Revenue and Customs indicated before the on-site visit and in the NRA that it had about 50 prosecutions per year for 'tax evasion'. However, the 50 offences referred to in the NRA as tax evasion cases were confirmed by authorities to be revenue administration offences under section 34 of the Revenue Services Administration Act 2016 and not criminal tax offences but tax evasion is a concern for authorities.
- d) *Wildlife and environmental crimes* - Illegal fishing by foreigners in Tongan waters is a serious concern involving avoidance of fisheries quotas and duties. Some media reporting notes that due to increased supervision there has been a reduction in illegal fishing vessels in the south Pacific. The extent and types of environmental crimes occurring in Tonga are not well documented.
- e) *Illicit cross-border currency movements* - A number of large seizures of cash at Tongan borders in recent years have occurred with an increase in administrative penalties issued for non-declaration of cash. In addition, there has been an increase in cruise ships berthing at Nuku'alofa - in the last 5 years a total of 66 cruise ships with a total of 80,596 passengers have arrived. Passengers are not screened when disembarking or embarking and therefore it is not known how much undeclared cash is entering or exiting Tonga via these visits.

24. The assessment team also considered that there are sector-vulnerabilities as follows:

- f) *MVTS* - the remittance sector is estimated to be 40 per cent of GDP. Regional risk assessments note that monetary flows from Australia to the Pacific region (including Tonga) is low risk for ML and TF. The team considered this in the context of the application of relevant supervision measures applied to this sector.
- g) *Domestic and foreign banks* - the likelihood of ML/TF occurring through this sector is high. The NRA rates this sector as high risk. The team considers that vulnerabilities in this sector pose risks to Tonga.
- h) *Life insurance* - there are two life insurers in Tonga rated as 'medium-high risk' of ML and TF in a separate sectoral risk assessment (not in the NRA). Tonga knows little of this sector including the value of assets held. It is unclear why this rating is assigned and (noted later) Tongan authorities have a low level of understanding of the risks and activities of this sector due, in part, to the fact that the two life insurance companies are not required to be licenced and supervised.

Materiality

25. The economy has a large non-monetary sector and a significant dependence on overseas remittances – estimated at 40 per cent GDP (noted above)⁵ – from nationals residing in Australia, New Zealand and the United States. The economy has a growing tourism industry, as well as agriculture and fishing industry. But the economy is highly dependent on the economic conditions of its major trading partners (Australia, New Zealand and the United States). Downtrends in those economies result in lower remittances and export receipts. Lower remittances also lower most

⁵ The figure of 40 per cent is stated in Tonga's own 'National AML/CFT Strategy 2018-2022.' The IMF puts the figure (in 2017) at 27 per cent - see, IMF Working Paper, WP 17/90, 'Challenges in Correspondent Banking in the Small States of the Pacific 2017' at: <https://www.imf.org/en/Publications/WP/Issues/2017/04/07/Challenges-in-Correspondent-Banking-in-the-Small-States-of-the-Pacific-44809>.

household incomes and therefore reduce demand for goods and services all of which has an overall effect on economic GDP growth.⁶

26. The majority of Tongans are dependent on income from agriculture or fishing. According to figures from the World Bank, Tonga's GDP growth over the last five years averaged 2.3 per cent per annum. When adjusted by Purchasing Power Parity (PPP), the 2018 GDP per capita was equivalent to approximately 28 per cent of the global average.

Structural Elements

27. Tongan civil and governmental institutions are generally capable and committed. However, like many small Pacific jurisdictions, governmental institutions lack breadth and depth in technical skills that can put policy reform and project implementation at risk. Structural reform, including reforms related to AML/CFT, require relatively high levels of technical support for extended periods – much of which is a challenge for Tonga to develop and retain. Capacity constraints also suggest that reform agenda need to be tightly focused on key policies and systems in order to be sustained.

28. Tonga is politically stable with accountable institutions, the rule of law and an independent, efficient and capable judiciary. However there are corruption challenges, demonstrated by recent cases involving high level government officials. The NRA also reports bribery and corruption concerns within the lower levels of enforcement officers in Tonga's Police and Customs services, and with the Revenue authority. In addition, nepotism in the public service is a concern due in a part to the strong sense of 'kinship' in Tonga. In response to the corruption challenges faced by Tonga, the Anti-Corruption Commissioner Act 2016 was enacted. The Act establishes an Anti-Corruption Commissioner authorised to investigate corrupt conduct by current and former public officials. As at the time of the on-site visit, no one has been appointed as Commissioner.

Background and other Contextual Factors

29. Tonga is not immune from cross-border crimes. Tonga occupies a critical geographic point for the trans-Pacific movement of illicit drugs (noted earlier). The lack of measures to process the increasing number of cruise ship passengers visiting Tonga creates ML and TF vulnerabilities and risks. Passengers entering Tonga from cruise ships are treated as 'in transit' and therefore not processed by immigration officials (for visa purposes) nor are they required to declare cash over the established reporting threshold.

AML/CFT strategy

30. Tonga's National AML/CFT Policy was endorsed by Cabinet in October 2019 and outlines three broad strategies and actions to be undertaken between 2018 and 2022 as follows:

- a) **Enhance regulatory framework:** establish a co-ordination committee to address national ML/TF, PF risks and establish a risk mitigation strategy; progress changes to ensure FIU can collaborate and share information with international counterparts; and appoint anti-corruption commissioner and provide resources to support anti-corruption measures.

⁶ Ministry of Finance Quarterly Economic Report, March 2019 (<http://www.finance.gov.to/sites/default/files/2020-09/Quarterly%20Economic%20Update%20for%20March%202019.pdf>)

- b) **Enhance operational procedures:** develop systems and processes to capture data and case studies to support thorough analysis of ML/TF risk; consider unexplained wealth provisions in MLPCA to assist investigation and policing of corruption and bribery; further review the NPO sector; and consider current reporting levels and establish a programme to continually monitor and review risks.
- c) **Capacity building and supportive infrastructure:** undertake a review of staffing levels in relevant agencies to assess whether agencies are able to undertake their obligations.

31. These measures had not yet been implemented at the time of the on-site visit (late 2019). The strategy identifies a number of concerns in Tonga which partly explains the delay in implementing these measures, namely: a lack of LEA and supervisory capacity, obstacles to sharing information with international partners, and a lack of AML/CFT monitoring of the NPO sector.

Legal & institutional framework

32. Some key institutional elements for an effective AML/CFT system are present in Tonga while others are still developing. There is an independent and effective judiciary consisting of the Court of Appeal, the Supreme Court, the Magistrates Court and the Land Court. However, Tonga faces significant resource challenges including limited AML/CFT skills, expertise, staffing capacity and available funding for competent authorities. There is a lack of capacity and resourcing in LEAs and AML/CFT supervisors, including a lack of training/experience in investigating ML/TF. International information-sharing is also a challenge.

33. A number of agencies and authorities have AML/CFT functions as follows:

Table 1.1: Tonga's AML/CFT Agencies

Authority	Responsibility
National Reserve Bank of Tonga (NRBT)	Responsible for market entry, licensing, prudential monitoring and supervision of financial institutions, with the exception of moneylenders and credit unions. Established under the National Reserve Bank of Tonga Act 2016.
Transaction Reporting Agency (TRA)	Tonga's FIU and AML/CFT regulator/supervisor. A department of NRBT. TRA works with government agencies, law enforcement and private sector reporting entities, and receives and analyses STRs. MLPCA and the CTTOCA 2013 are relevant Acts.
Tonga Police (TP)	Primary law enforcement agency with mandate to investigate ML and TF. Two operational units in TP (Serious Organised Transnational Crime Unit (SOTCU) and the Drug Enforcement Taskforce (DET)) focus on detection and investigation of ML and TF.
Ministry of Revenue and Customs (MRC)	Responsible for collecting direct and indirect taxes, customs duties, managing the security and integrity of Tonga's borders and the movement of people and goods. MRC investigates the illegal transportation of currency at the border. The MLPCA gives MRC a role in investigating ML. A risk management unit has been set up in the Ministry of Revenue to carry out a specific review on higher risk tax matters.
Attorney-General's Office (AGO)	AGO is the Crown's First Law Officer involving advice to government, representing the Crown in civil litigation, criminal prosecutions, including ML,

	TF and predicate offences and legislative drafting. AGO is designated as the central authority for MLA and extradition.
Director of Public Prosecutions (DPP)	DPP is the crown prosecution service responsible for all criminal prosecutions including ML and TF under delegation from the AG.
Ministry of Commerce, Trade, Innovation and Labour (MTED) - Companies Registrar	Responsible for the registration and oversight of legal persons under the Companies Act 2016 (revised) and the Foreign Investment Act 2016 (revised). MTED manages the company registry with basic information on companies available to the public online.
Ministry of Foreign Affairs, immigration	Responsible for promoting and protecting Tonga's interests abroad including through diplomatic missions. Foreign Affairs and MRC operate under an MOU that delegates immigration functions to MRC.
Anti-Corruption Commissioner	Established under the Anti-Corruption Commissioner Act 2016. Authorised to investigate corrupt conduct of current and former public officials. Commissioner not appointed at time of on-site visit.
Tonga Shipping Registry	The shipping registry is part of the Ministry of Infrastructure and is open to Tongan citizens only. Foreign owned vessels may be registered, but the vessel must only operate within Tongan waters.
Inland Revenue Department (IRD)	IRD is part of the Ministry of Revenue and Customs. IRD administers tax legislation and is empowered to detect and investigate tax-related offences under the Revenue Services Administration Act 2016.
Tonga Law Society	Established under Law Practitioners Act 1989. Has oversight of the legal profession. Lawyers are admitted to practice by the Supreme Court.

34. The principal AML/CFT co-ordinating bodies are:

Table 1.2: Tonga AML/CFT Co-ordinating Bodies

Authority	Responsibility
Cabinet Committee on Serious Financial Crimes (CCSFC)	Established in 2013 as the co-ordinating body for AML/CFT measures and PF policy. Membership includes ministerial level officials from eight ministries covering the areas of finance, customs, police, economy and judicial areas.
Working Group on Serious Financial Crimes (WGSFC)	This working group supports the CCSFC and co-ordinates risk assessments. It consists of nine representatives at Chief Executive Officer level.

Financial sector and DNFBCs

35. Tonga is not considered a financial centre or an offshore centre for company/trust formation and registration. Tonga's financial sector is (regionally) small, lacks diversity and is relatively underdeveloped.

36. In 2016, NRBT estimated that 98 percent of payments in Tonga are transacted in cash, with 70 percent of salaries paid in cash. Financial inclusion is an issue in Tonga (as it is across Pacific countries) – overall 34 per cent of Tonga's population remains unbanked, but this rises to 60 per cent in the outer islands (according to NRBT in 2018) where financial access points are most limited. There is an increasing uptake of mobile money options, with 29,523 active mobile money accounts (June 2018) or approximately 46 per cent of the adult population. Although National Identity Cards are available, some individuals do not have official forms of identification, leading to difficulties in meeting CDD requirements.

37. The Financial Access Unit of the NRBT is focussed on policies to increase financial inclusion by (i) reducing the number of unbanked Tongans by ten per cent in 2020; (ii) increasing the number of MSMEs access to finance by 20 per cent in 2020 and; (iii) increasing the ten per cent of Tongan adults using mobile money accounts by 20 per cent in 2020. The below table shows the improvement in financial access in Tonga from 2015 to 2018.

Table 1.3: Financial Access Indicators in Tonga

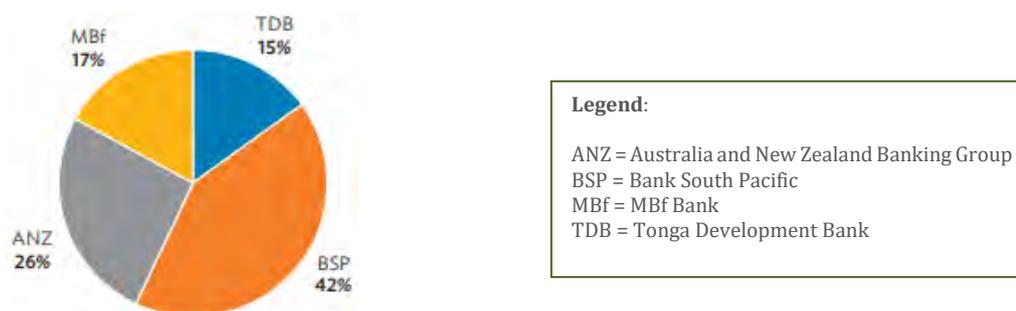
	2015	2016	2017	2018
Number of cash-in and cash-out access points per 10 000 adults⁷	32	79	84	93
Number of branches per 10 000 adults	2	2	3	3
Number of ATMs per 10 000 adults	3	3	4	4
Number of EFTPOS per 10 000 adults	26	70	74	83
Number of Agents per 10 000 adults	1	3	3	3
Number of Deposit Accounts per 10 000 adults	11 317	10 281	13 766	13 987
Number of active mobile money accounts per 10 000 adults⁸	-	-	2 564	4 613

Source: NRBT Annual Reports, 2015-2018

38. There are four licenced commercial banks in Tonga, two of which are branches of international banks, while the other two are locally incorporated. In 2017, the value of credit to the private sector as a percentage of GDP was 41%. The figure below shows the estimated percentage of total banking sector credit held by each bank in Tonga as at June 2018.

Figure 1.3: Tonga Banking Sector Credit 2018

(Total: TOP 428 million)



Source: Asian Development Bank (ADB)⁹

39. Tonga has four licensed and twelve registered MVTs, most of which are branches, subsidiaries, or agents of foreign-owned MVTs. Five MVTs can conduct transactions overseas, with the remainder only able to conduct inward remittance. One foreign-owned MVTs dominates the MVTs sector. More than 85 per cent of total overseas remittances are channelled through

⁷ Adult population (15 years old+).

⁸ Data on digital financial services not reported in NRBT annual reports prior to 2017.

⁹ Asian Development Bank (ADB), *Finding Balance 2019: Benchmarking the performance of state-owned banks in the Pacific*, citing NRBT.

MVTS. There are at least five insurance companies (general and life) in Tonga, at least two of which are life insurers.¹⁰

Table 1.4: Financial Institutions - Numbers and Activities

Financial Sectors	Number	Activities	% assets
Banks	4	Personal + business banking	76.1%
Credit Union	6	Personal banking	Unknown
Money Lender (major)	3	Lending (domestic)	Unknown
Non-bank, non-deposit taking lenders	280 (approx.)	Family/community-based entities lending a maximum of TOP 2 000 (US \$897) per person. Average loan amount estimated at TOP 200.	Unknown
Micro Finance	1	Small micro-loans, savings + life insurance	0.9%
MVTS (Forex Dealers)	12	domestic & x-border; currency x-change	1.1%
Life Insurers	2	Domestic	Unknown
General Insurer	3	General Insurance Policies	1.7%
Retirement Funds	2	Investing of retirement contributions and lending to members (RFB)	20.1%
Securities	0	N/A	

40. DNFBP sectors are much smaller in terms of turnover of business compared with the Tongan financial sector. DNFBPs consist of the following:

Table 1.5: DNFBP Numbers and Activities

DNFBP Sectors	Number	Activities
Lawyers	78	Domestic and cross border
Notaries	00	N/A
Accountants	11	Domestic and cross border
Real Estate Agents	1	Domestic and cross border
Precious Metal/Stone dealers	2	Domestic
Casinos	00	N/A
Trust and Company Service Providers (TCSP)	0	N/A

41. Of the 78 lawyers:

- 21 lawyers are employed with the Attorney General's Office (duties include legal advice to government, drafting legislation, criminal prosecutions for the Crown etc.);
- 26 lawyers are employed in other government ministries (legal advice to ministries, draft Bills etc.); and
- 31 lawyers are in private practice, seven of whom are overseas lawyers who appear in Tongan courts from time to time on an occasional practicing basis.

42. Tonga was unable to indicate the number of lawyers that operate trust accounts, but estimated the number to be about four of the 31 private practitioners listed above. Licenced lawyers are regulated by the Tonga Law Society under the Law Practitioners Act 1989 and may appear before any court, inquiry or commission; advise on any matter of law or legal procedure;

¹⁰ The words 'at least' are used because Tongan authorities indicated prior to, during, and after, the on-site visit that there was only one life insurance company in Tonga (Family Assurance Tonga Ltd). Subsequently, the assessment team determined that at least one other life insurer operated in Tonga (Capital Insurance Group, based in PNG). The team formed the view that Tongan authorities do not know the precise number.

draw legal instruments including instruments relating to land, instruments relating to real or personal estate, including settlement of trusts and company formation. To practice law in Tonga, a person must be qualified and deemed fit to admit by way of application to the Supreme Court of Tonga.

43. The 11 registered accountants in Tonga do not have a self-regulating body or a legislative framework that regulates their practice. Accountants are registered with MTED and operate in accordance with the provisions of the Company Act and their business license. The Ministry of Revenue approves tax agent status which requires a criminal history check, bankruptcy check, proof of qualifications and experience in the area. Non-Tongans must have a valid work permit and visa as part of market entry requirements.

44. With respect to real estate agents, as all land in Tonga belongs to the Crown (it is not possible to own freehold land) real estate agents deal in short or long term leasing arrangements in allotments, with or without the involvement of lawyers. Currently, the real estate sector has only one active real estate agent. There is no self-regulating body, legislative framework or market entry requirements for the real estate sector. Prior to commencing a business activity, real estate agents must obtain a business license from MTED. Real estate agents are registered with MTED and operate in accordance with the provisions of the Company Act and their business licence.

45. There are two DPMS in Tonga, mainly dealing with scrap metals and jewellery. DPMS are not subject to market entry requirements as there is no self-regulating body or legislative framework for the DPMS sector. DPMS are registered with MTED and operate in accordance with the provisions of the Company Act and their business license.

46. There are no casinos in Tonga. Gambling is prohibited in Tonga by section 82 of the Criminal Offences Act.

47. There are no independent trust and company service providers (apart from lawyers) who may provide such services in Tonga.

48. The MLPCA definition of 'cash dealers' includes a range of activities and DNFBPs as follows: insurers; insurance intermediaries; dealing in bullion; issuing, selling or redeeming travellers' cheques, money orders or similar instruments; payroll services; gambling houses; casinos or lotteries; real estate agents; dealers in precious metals and stones; law practitioners; accountants; and trust and company service providers.

Relative weighting of the different types of FIs and DNFBPs

49. This section sets out the relative weighting and importance of FIs and DNFBPs in Tonga as determined by the assessors, taking into account Tonga's NRA, materiality and context:

- most heavily weighted: banks and MVTS;
- heavily weighted: lawyers, accountants and real estate agents; and
- moderately weighted: credit unions and non-bank deposit takers.

Supervisory arrangements

50. NRBT is responsible for market entry and prudential supervision. The TRA (which is also the NRBT) is responsible for AML/CFT supervision for FIs and DNFBPs. At the time of the on-site visit, the TRA consisted of one NRBT staff member (less than full time) responsible for AML/CFT supervision.

International co-operation

1

51. The AGO is the competent authority for MLA and extradition. The Mutual Assistance in Criminal Matters Act enables competent authorities to assist foreign counterparts in obtaining information without a treaty or requirement for reciprocity. The Extradition Act is the legal basis for extraditing fugitive offenders. Requests under the Act may be made by a 'designated country' as listed in the Extradition (Designated Countries) Order. The Order lists 50 jurisdictions, including Tonga's regional partners.

52. TP is a member of INTERPOL. TRA has applied for membership in the Egmont Group of FIUs. Regionally, Tonga is a member of the Asset Recovery Interagency Network – Asia-Pacific (ARIN-AP), Pacific Islands Chiefs of Police (PICP), Pacific Islands Law Officers Network (PILON), Pacific Transnational Crime Network (PTCN), Association for Supervisors of Pacific Countries (AFSPC), Pacific Islands Forum (PIF), Oceania Customs Organisation (OCO) and Pacific Islands Tax Administrators Association (PITAA). Tonga works with its regional stakeholders to enhance good governance and security in the region.

Key Findings and Recommended Actions

Key Findings

- 1) Tonga has a high level National AML/CFT Policy but the policy does not adequately capture major high risk predicates and related ML/TF risks including transnational drug trafficking and domestic drug use, tax evasion, trade-based crime and passport fraud.
- 2) Tonga endorsed the 2019 NRA, with the document available to some key domestic authorities. Tonga plans to make the NRA publicly available online. The NRA identified major ML/TF risks, but focused predominantly on predicate offences and only consequentially on ML.
- 3) Tonga utilises informal channels and undertakes operational and informal engagements to assist with the understanding of its cross-border risks. However, Tonga did not consult systematically and regularly with its Asia-Pacific regional stakeholders and partners in the NRA process. This limited consultation and the lack of a sound estimation of cross-border fund-flows impacts Tonga's understanding of cross-border risks.
- 4) TF was assessed as 'low' risk in the NRA, however, Tonga conflated terrorism and TF in allocating this rating. Moreover, Tonga stated that very limited information was available to conduct the assessment of that risk, however, information from regional partners (such as Australia and New Zealand) would have better informed the conclusions and contributed to a better understanding of this risk.
- 5) Tonga's competent authorities, including LEAs, generally have a low understanding of ML risks, with a focus on predicate crimes and low understanding of TF risk.
- 6) Authorities do not understand the ML and TF risk associated with life insurance companies.
- 7) Private sector reporting entities, with the exception of banks, displayed little understanding of the nature of ML within their own sector.
- 8) Private sector entities all displayed a lack of understanding and appreciation of TF risks both within their own sector and more widely within Tonga.
- 9) At the policy level, the CCSFC acts as the national AML/CFT co-ordination mechanism with a mandate to cover PF co-ordination. However, in practice, the Cabinet Committee acts to a minimal extent in setting policy and priorities.
- 10) At the operational level, co-operation between agencies is strong and efforts are broadly addressed to mitigate the major ML risks identified in the NRA. The newly endorsed National AML/CFT Policy and the draft National Action Plan on Illicit Drugs provides high level commitment to address risk. Previous taskforces set up to combat illegal passports and illicit drugs further sought to address identified risks.

Recommended Actions

- a) Current gaps in the National AML/CFT Policy should be addressed with the development of additional strategies to mitigate risks from high risk predicates and related ML/TF crimes including transnational drug trafficking and domestic drug use, tax evasion, trade-based crime and passport fraud.

- b) Tonga should disseminate the current NRA to all domestic authorities and the private sector.
- c) Tonga should undertake more systematic and regular in-depth analysis and assessment of regional ML and TF threats in consultation with its Asia-Pacific stakeholders and partners including the APFIU, OCO, TSOC, PIFS, ADB, New Zealand, Australia, Fiji, Samoa and other partners; and feed the result into the NRA.
- d) Tonga should pay particular attention to examining and assessing the cross-border movement of funds systematically and regularly in order to improve the understanding of how Tonga may be used in ML transshipment and the impact of transnational crime and foreign corruption.
- e) Tonga should increase involvement of the private sector in its on-going risk assessments including updates and provide risk updates to the private sector on an ongoing basis.
- f) Reporting entities should be required to undertake their own risk assessments at the institutional level and share risk assessments and supporting information with authorities.
- g) Authorities should update Tonga's NRA on a regular basis and as risks change or emerge. Tonga should conduct thematic or further sectoral assessments in light of those changes and continue to provide the private sector/authorities with updated risk findings through more formal outreach programmes.
- h) Tonga should further strengthen the AML/CFT co-ordination structure at the policy-making level. This structure should continue to operate by meeting more regularly with increased focus on priority AML/CFT/CPF policy setting objectives and the mitigation of risks.
- i) Tonga should allocate greater resources to the TRA to support its AML/CFT co-ordination role, FIU analysis function and AML/CFT supervision mandate, with increased efforts from major departments including AG, TP, NRB, Customs, MTED and IRD.
- j) Given the resource constraints across various authorities and sectors, Tonga should implement a risk-based approach to AML/CFT including the development of enhanced measures for higher risks and simplified measures for lower risk. These measures should be reviewed regularly to ensure that resources are prioritised to the higher risk areas.

53. 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.1-2 and R.33.

Immediate Outcome 1 (Risk, Policy and Co-ordination)

Country's understanding of its ML/TF risks.

54. Tonga adopted its first NRA in October 2019. Workshops with government and private sector entities were held in May 2015 and again in June 2017 to identify vulnerabilities, threats and consequences of ML/TF/PF. Government agencies were requested to provide information and case studies to support the analysis and conclusions. Much of the information collected for the NRA (back to 2015) was out-of-date in 2019 when the document was endorsed and subsequent to 2017 there was no further engagement with the private sector. The environment, both within Tonga and within the Asia-Pacific region, could have and likely did change in the intervening four years from 2015 to 2019.

55. The NRA did not sufficiently consider the volume of threats associated with each predicate offence, and currently there is no sound estimation of illicit fund-flows within, outside and into Tonga. The NRA notes that the transnational movement of funds through Tonga is likely to be at least as significant in value as the movement of domestic proceeds of crime. The NRA identified the following risk ratings for FIs and DNFBPs, and it also included a brief analysis of the risks posed by NPOs and legal persons, but not legal arrangements (trusts):

Table 2.1: Tonga's Sector Risk Ratings in NRA

Sector	Risk Level
Money Transfer / Currency Exchange	High
Domestic & International Banks	High
Lawyers & Accountants	High
Real Estate (Agents & Conveyancers)	High
Companies	High
Life Insurance ¹¹	Medium-High
Credit Unions	Low
Non-Bank Non-Deposit Taking Lenders	Low
NPOs and Societies	Low

56. The NRA assessed predicate-crime and TF risks as follows:

Table 2.2: Tonga's Predicate-Crime and TF Risks in NRA

Threat	Consequence	Risk Level
Bribery and corruption	Major	High
Drugs - transnational	Major	High
Drugs - domestic	Major	High
Tax evasion	Major	High
Trade-based crime	Moderate	High
Immigration	Moderate	High
Fraud	Moderate	Medium
Environmental crime	Moderate	Medium
Illicit x-border currency movements	Minor	Medium
Terrorism/TF	Minor	Low

57. Bribery and corruption pose a high risk with high-level officials exposed for fraud and issuance of Tongan passports. Authorities demonstrated some awareness of this risk and believe that funds are integrated into the local financial system through the purchase of high value goods and day to day consumer spending.

¹¹ Although not included in the NRA, Tonga assessed the ML/TF risk associated with life insurance as 'medium-high' in a 'Sectoral Risk Assessment Tool'.

58. The NRA rates domestic drug consumption and transnational drug trafficking as a high risk for ML. These have been a concern for some time. Tonga is a transit point for drugs originating from overseas via vessels transiting through Tongan territorial waters to Australia and New Zealand. However, authorities consider it unlikely that illicit funds associated with these crimes are actually laundered in or through Tonga's financial systems. Authorities consider that the purchaser and seller of the drugs transmit funds at the point of origin or destination of the drugs, and that locals who facilitate these transactions would receive a small payment only.

59. In February 2019, Australia, New Zealand, Fiji and Tonga signed an agreement for a taskforce on transnational serious organised crime, which shares intelligence on a tactical level. The taskforce is working together to monitor illicit drug activities.

60. While Tonga has identified tax evasion as a high risk predicate crime, authorities have never prosecuted it as a criminal offence under section 44 of Revenue Services Administration Act 2016 (or any other Act). Instead, conduct amounting to tax evasion is pursued by authorities as an administrative offence under section 34 of the Revenue Services Administration Act 2016 (with no criminal penalties).

61. There is also a growing risk from cross-border cash smuggling – an area of particular concern given the significant cash economy in Tonga. There have been increasing cases of undeclared cash intercepted by Customs during recent years. However, their links with predicate offences and ML is not well understood.

62. TF was assessed as 'low' risk in the NRA however Tonga conflated terrorism and TF in allocating this rating. Moreover Tonga states that very limited information was available to conduct the assessment of that risk. Notwithstanding the lack of investigation and prosecution statistics (stated in the NRA), information from regional partners (such as Australia and New Zealand) could have better informed the conclusions and may have affected the rating. The NRA states that 'for the most part' where ML vulnerabilities exists they may be exploited for TF. The report then states that 'these may be assumed to be the primary terrorist financing vulnerabilities.' This assumption is not supported in the NRA and diverted attention away from where a potential threat should have been considered - namely the use of legitimate funds (or self-funding) for TF.

63. Tonga has pursued active informal international co-operation with its Asia-Pacific regional stakeholders and partners, and information indicates that formal international co-operation has also been sought by Tonga, but to a lesser extent. While information from informal channels provided some understanding of cross-border risks, this was to only a limited extent as Tongan authorities did not systematically and regularly consult with Asia-Pacific regional stakeholders and partners (including PIFS, APIFIU, OCO, PICIP Australia or New Zealand) in the preparation of the NRA. Tonga's understanding of cross-border risks is given high weight by the assessment team.

64. It is noteworthy that the Tonga's National AML/CFT Policy 2018-2022, issued after the NRA, identifies 'terrorism' as 'high risk' (rated 'low risk' in the NRA) but, unlike the NRA, does not risk-rate TF. In addition, the consequences of terrorism/TF are seen as 'minor'. This adds to Tonga's confusion about the appropriate levels of risk, including TF, in the country, and whether it is actually understood.

65. Authorities do not understand the ML and TF risk associated with life insurance companies. Authorities indicated that only one life insurance company operates in Tonga, however subsequent to the on-site visit the assessment team identified at least one other

company offering life insurance products of which authorities were unaware. Tongan authorities do not licence or supervise life insurance companies for AML/CFT and do not seem to be aware of the scope of that industry operating in the country. Consequently, the assessment of risk is not based on objective evidence and cannot be said to be reasonable.

66. Moreover, in relation to NPOs and their potential risk of exploitation for TF, although the 2019 NRA indicates that NPO risk is 'low', the NRA also states that '...the capacity of the MTED to provide meaningful oversight of this sector is minimal. While there are deficiencies in Tonga's understanding and assessment of the risk posed by this sector, there is little to suggest that the sector posed anything other than a low risk of TF.' There is no indication in the NRA, or with officials, that varying risks could be posed by domestic NPOs and by foreign NPOs. In addition, with minimal oversight available to the sector and with minimal evidence to support the assessment, the assessment of low risk is unreasonable.

67. In relation to other sectors, the NRA indicates that the real estate sector is 'high' risk and in explaining the risk, one of the matters outlined in the NRA relates to the risk of unregistered leases of allotment property involving undeclared cash from overseas. The risk outlined appears to involve the potential of cross-border cash movements and fraudulent lease transactions.

68. Another sector is the legal profession, also rated 'high' risk. Concerns with the legal profession lie in two critical areas: (1) settlement of trusts and creation/purchase of companies; and (2) vulnerabilities relating to lawyers' trust/client accounts. In conversation with government agencies and private sectors entities in real estate and the legal profession the risks outlined in the NRA (summarised in this paragraph) were not well understood by either.

69. Companies are assessed as at high risk of ML. However, the NRA does not consider all types of companies and whether there are varying risks with each type. There is no assessment of the magnitude of ML risk, nor a prioritised strategy to improve transparency and oversight of legal persons. In addition, there has been no assessment of the risk posed by varying forms of trusts (domestic or foreign trusts) and/or other legal arrangements. In discussions with officials it is apparent that they do not understand the risk posed by legal persons and trusts in Tonga.

70. In April 2019, TRA together with other LEAs and the WGSFC conducted a sectoral risk assessment which included the ML/TF risks associated with the type of business activity and the overall quality of AML/CFT controls. The findings of this assessment are to be used as a measure to guide the TRA in frequency and intensity of supervisory activity. Factors considered during the ML/TF assessment include the nature, scale and context, types of customers, distribution channels, jurisdictions, products and services and other relevant factors. The ML/TF assessment risk rated each industry into high, medium or low risk.

71. The 2019 sectoral risk assessment identifies banks, life insurance and MVTS as having the largest exposure to ML/TF risk, with general insurance, DPMS, lawyers, accountants, and TCSP assessed as medium risk.

72. The NRBT and TRA have some understanding of the ML/TF risks in the financial sector as a result of the NRA and the 2019 sectoral risk assessment. The TRA's understanding of ML/TF risks in the DNFBP sectors and in the life insurance sector appears to be limited, a function of the low level of engagement with those sectors.

73. In general, however, and bearing in mind the limited scope of information used to reach the risk ratings:

- AGO has a reasonable understanding and TP has some understanding of some major crime-types for ML. However, it is not clear that this is the case with TF. The NRA states that 'TF relates to raising or providing funds to be used to carry out terrorist acts.' This comment reflects a partial understanding of the scope of TF and therefore a misunderstanding of where risks may lie.
- The TRA has a mixed understanding of ML risks along with broad sector-related risks. However, it lacks an understanding and appreciation of TF risks within the specific sectors it supervises and/or regulates.
- Customs authorities broadly appear to understand the risks faced at Tonga's borders, particularly the issue of predicate drug trafficking. However, Customs lacks understanding of the ML risks associated with cross-border cash movements.
- Tax authorities do not fully understand how tax offences are related to ML as predicate offences.
- Financial institutions displayed a mixed understanding of ML/TF risks. Understanding amongst banks varies significantly, with some of the larger banks, supported by overseas head offices, having a more detailed understanding compared to smaller banks. There is limited understanding of ML/TF risk amongst smaller FIs.
- DNFBPs have some (or varying) understanding of the major predicate crimes, ML and TF within their own sectors.
- MTED plays a passive role in the registration of legal persons, co-operative societies, incorporated societies and other NPOs, and it lacks an understanding of the ML and TF risks associated with these entities.
- None of the public sector agencies spoken to by the assessment team understand ML and TF risks associated with trusts (foreign and domestic) or other legal arrangements, and it was indicated in meetings with officials that only the risks of ML in relation to charitable trusts were considered in preparation for the NRA. Other trusts, including foreign trusts, were not considered.

74. Overall, Tongan authorities have a low level of understanding of ML and TF risks in Tonga.

National Policies to address identified ML/TF risks

75. The National AML/CFT Policy 2018-2022 has three strategies: (1) enhancing the regulatory framework; (2) enhancing operational procedures; and (3) capacity building and supportive infrastructure. Cabinet endorsed the policy in October 2019, during the on-site visit. Authorities had taken measures prior to the on-site visit to implement some of the strategies in the policy. While generally in line with identified ML/TF risks in the NRA, some priority areas were omitted including increasing the allocation of resources to the TRA to enable comprehensive risk-based supervision. The National Policy 2018 – 2022 included strategies to address only one high risk predicate (corruption) but not the related ML risk. Other high risk predicates (transnational drug trafficking and domestic drug use, tax evasion, trade-based crime

and passport fraud) and the related ML risks were not addressed by the National Policy 2018 – 2022.¹²

2

76. In 2019 the government issued the National Illicit Drugs Policy. The policy focuses on six strategic areas and includes supply-reduction strategies and alternative development. It includes priorities that will assist in improving national co-ordination, identifying priorities for bilateral and multilateral assistance and efforts, improving information collection and management, research and analysis capabilities and ensuring the policy aligns with Tonga's national commitment on human rights.

77. In response to corruption challenges identified by Tonga, the Anti-Corruption Commissioner Act was enacted in 2007 and subsequently revised in 2016. The Act establishes an Anti-Corruption Commissioner authorised to investigate corrupt conduct by current and former public officials. However, since enactment, the substantive position of Commissioner has not been filled, and for only one year following enactment it was staffed by an 'acting Commissioner'.

78. In addition, Tonga has identified a number of laws, including parts of Tonga's AML/CFT framework, that need to be reviewed with urgency due to significant gaps or divergences from the international standards. However, those reviews, in particular the AML/CFT laws, have not yet commenced and are pending outcomes from this report.

79. Regarding operational procedures, the assessment team was provided with documentation including the TF Investigation Process (November 2019) and Procedures for freezing transactions (February 2019). However, since Tonga has assessed TF risk as low, implementation of this policy is considered as a secondary priority and, therefore, has not yet commenced.

Exemptions, enhanced and simplified measures

80. Authorities have not allowed any exemptions, enhanced or simplified measures on the basis of identified risks. Simplified CDD is allowed in section 16 of the MLPC Regulations, however as noted in the TC Annex (R.10) the MLPC Regulations are not enforceable and, in any event, no applications have been made under this section.

Objectives and activities of competent authorities

81. While TRA is the major co-ordination unit for AML/CFT issues, it is short-staffed. The current shortage in both human and technical resources in the TRA does not correspond to the evolving ML/TF risks and the increasing roles of the TRA, taking into consideration its co-ordination role, its AML/CFT supervision, and its functions in relation to STR analysis, strategic and other operational analysis, and public awareness/outreach responsibilities. These impediments lower the effective implementation of its various roles, especially the co-ordination role.

82. The lack of TRA resources has led to a reduction in comprehensive and targeted on-site and offsite assessments and outreach activity for FIs. Supervisory activity is now limited to quarterly spot checks on MVTs in regards to CDD and reporting requirements.

¹² A revised National Policy 2021 – 2023 has been provided to the assessment team in May 2021, after the on-site. Tax offences have been re-rated to medium risk but the justification for this was not clear. New strategies were added to capture drug, predicate and ML risks, and there were requirements for the implementation of risk-based supervision.

83. The AGO has shown a growing commitment for the prosecution of ML alongside predicate offences and for increasing the number of seizure and confiscation cases commensurate with Tonga's risk profile. The AGO has demonstrated leadership in charging and prosecuting ML in recent years. Impediments to successful prosecutions have been rectified as a matter of priority, and cases remain pending, but concerns remain in relation to resources to commit to addressing high risk areas of predicate crime.

84. There have been no investigations, prosecutions or convictions for TF in Tonga. Tonga has limited ability to identify and investigate TF, but the lack of prosecutions or convictions arising from TF activities is consistent with its TF risk profile. The AML/CFT Guidelines issued by TRA to reporting entities contain some red flag indicators of potential TF activity. However, the Guidelines are out of date, apply only to FIs, and in any event are unenforceable.

85. LEAs demonstrated some efforts to address the risks from predicate offences including transnational drug trafficking and domestic drug use, cash smuggling, and fraud (issuance of illegal passports). These were not all in line with risks identified in the NRA; however, as discussed above, due to the passage of time the NRA did not encompass emerging risks. Both TP and Customs have planned increases in budgets to tackle high-risk crimes. Customs has formed a Risk Assessment Unit as a unit within the enforcement department tasked with risk profiling and assessing risk levels to imports/exports. That unit has conducted its first risk-target mission and identified risk levels. These risk levels received higher-level endorsement. However, it was not demonstrated that the Risk Assessment Unit has prioritised objectives or activities to trace illicit funds or particular risks in line with identified risks.

86. TP has set up a National Action Plan for Illicit Drugs. Currently, the SOTCU is responsible for financial investigations, for all serious crimes in Tonga. TP has recently focused on both the growing illicit drug problem and illegal issuance of Tongan passports in line with Tonga's risk profile.

87. MTED has not prioritised objectives or activities to tackle predicate offences or ML in line with the risks identified in the NRA.

National co-ordination and co-operation

88. Tonga has increased its efforts to improve AML/CFT/CPF national co-ordination by establishing the CCSFC in 2013 and renamed -- and enlarged -- its coverage with the inclusion of the Ministry of Justice in 2018. The CCSFC focuses primarily on policy matters. Though formed in 2013, information provided showed that the Cabinet Committee was not very active in relation to setting National AML/CFT Policy until 2018 (prior to the on-site visit) when discussions focused on the upcoming mutual evaluation.

89. CCSFC is the highest-level co-ordinating body to set national AML/CFT priorities and enable ministerial-level support in policy co-ordination. Its major responsibilities include:

- a. Recommending national AML/CFT policies and strategies to Cabinet;
- b. Regularly reviewing those policies and strategies;
- c. Updating the NRA including sectoral risks assessments;
- d. Ensuring efficient and effective partnerships between government and the private sector in implementing AML/CFT policies and laws.

90. The assessment team was unable to meet with the Cabinet Committee during the on-site visit but, based on information provided by authorities, the team was not convinced that the

committee meets regularly to discuss AML/CFT strategy and policies beyond planning for the mutual evaluation process. The Cabinet Committee is supported by the WGSFC. Documents provided indicated that the WGSFC held (an unknown number of) formal plenary meetings, with issues discussed including national policies and strategies on AML/CFT/PF. The WGSFC was responsible for the drafting and implementation of policies and procedures to combat ML and TF. The WGSFC also participated in the 2019 sectoral risk assessment supporting the TRA's supervision function. However, Tonga did not provide details.

91. Co-ordination and co-operation at the technical level are supported by the WGSFC. The WGSFC exchanges information on operational matters across agencies and provides a mechanism for inter-agency co-operation. The Tonga Law Enforcement Agencies Committee (TLEAC) also operates as a mechanism to share input on operational matters. In addition, due in part to the relatively small size of Tonga's financial and non-financial sectors, inter-agency LEA co-operation seems to have been more readily achievable.

92. There is some co-operation and co-ordination at the operational level, particularly between the AGO and Police. In addition, there is evidence of information sharing and implementation of policies to combat predicate offences and, to some extent, ML. A MOU to facilitate co-operation and information sharing between LEAs came into effect in 2014 and ad hoc co-operation regularly takes place. However, IRD is unable to share tax information (including with Police and TRA). This undermines criminal investigations for financial crimes and related co-ordination. The lack of tax information for AGO, TP and TRA hampers effective financial investigations.

93. While, overall, there is evidence of domestic co-operation, there is no evidence that co-operation is focused on mitigating high risk areas for ML and no evidence that any co-operation occurs in relation to risk concern related to TF – even if that risk is seen as low.

Private sector's awareness of risk

94. There was very limited consultation with the private sector in preparing the NRA and no consultation, information-sharing and outcomes reporting to each sector since the NRA was adopted (during the on-site visit). Almost all private sector officials interviewed during the on-site visit were informed of the NRA just prior to the visit. Consequently, the full range of reporting entities were not familiar with the final content of the NRA and conclusions by the time of the on-site visit in late 2019. Tonga indicated during the on-site visit that it plans to make the NRA available online for relevant stakeholders and the public.

95. Private sector reporting entities, in general, (with the exception of banks) displayed little understanding of the nature of ML and TF within their own sectors. A few disagreed with the findings of the NRA. The assessment team however struggled to conclude that this agreement with the NRA meant that those sectors understood the risks directly relevant to them. In regards to TF, the private sector in general showed a much lower level of understanding.

Overall conclusion on Immediate Outcome 1

96. The adoption of Tonga's first ML and TF NRA in October 2019 during the on-site visit is a positive step. However, the private sector was generally unaware of the content and conclusions of the final adopted version of the NRA. Moreover, government agencies are not clear on how risk ratings were assigned. Agencies concentrate more on predicate offence risk than on the ML risk; and there is no clear understanding of TF risk. Overall, Tonga's authorities and the private sector have low levels of understanding of the ML and TF risks facing Tonga.

97. Tonga's National AML/CFT Policy 2018-2022 and the National Action Plan on Illicit Drugs demonstrate commitment to addressing risk, but the shortage of resources in TRA, the major co-ordination unit for AML/CFT, needs addressing. Domestic co-operation is generally good, but focus on ML issues is not a priority.

98. **Tonga has a low level of effectiveness for IO.1.**

Key Findings and Recommended Actions

Key findings

Immediate Outcome 6

- 1) There is limited use of financial intelligence by TP and Customs in predicate offence investigations, developing evidence, and tracing criminal proceeds related to ML.
- 2) Immigration and MTED do not use TRA's intelligence products in their predicate crime and supervision functions.
- 3) TP has limited experience in producing its own financial intelligence. Revenue and Customs has an established intelligence team but it does not use financial intelligence to target, profile or investigate identified predicate crimes or relevant ML offences.
- 4) No financial intelligence has been accessed or used to identify or investigate TF.
- 5) TRA has wide information gathering powers, but makes little use of information other than STRs in developing financial intelligence products.
- 6) TRA lacks sufficient staff and IT resources to effectively analyse STRs and produce financial intelligence.
- 7) TRA is unable to access tax information to support STR analysis due to strict tax secrecy laws. This lack of tax information potentially undermines the financial intelligence analysis for any ML case.
- 8) The range and scope of STRs received by TRA from reporting entities is limited. Most STRs are filed by larger banks and a large money remitter. No STRs are filed by DNFBPs.
- 9) The low number of STRs overall is not in line with Tonga's risks and is due in part to the requirement for reporting institutions to form a judgment, in addition to a suspicion, that the information may be relevant to a specific investigation or prosecution before filing an STR.
- 10) TRA and other competent authorities have good co-operative relationships and open exchange of information and financial intelligence.

Immediate Outcome 7

- 1) Tonga has investigated six ML cases; three were prosecuted; and one led to conviction. These cases aligned with Tonga's risk profile. The penalty applied after conviction was proportionate and dissuasive.
- 2) Tonga's investigations of predicate offences to ML are not in line with the identified high risks in the NRA. For instance, corruption is a high risk offence in Tonga yet the low number of investigations and prosecutions (all of which relate to passports) does not reflect the identified risks outlined in the NRA. Moreover Tonga has not yet appointed an Anti-Corruption Commissioner despite establishing the position a number of years prior to the on-site visit.

- 3) AGO identifies potential ML cases through its close involvement with TP. Customs and Immigration also identify cases. However, there have been no parallel investigations.
- 4) Limited capability to investigate financial crime and a lack of policy and guidance are obstacles to more robust and targeted ML identification and investigation.
- 5) Some ML cases identified are in line with Tonga's threats and risk profile, however there have been no cases related to drug offences or tax (despite both being identified as high risk ML offences). ML cases pursued are all for self-laundering relating to domestic predicate offences.

Immediate Outcome 8

- 1) There is no policy focus on confiscation of illicit proceeds,
- 2) Tongan authorities are increasing its focus on confiscating cash both as a penalty and as a dissuasive measure.
- 3) There is a focus on confiscating cash due to issues with managing and maintaining seized and restrained assets and the lack of a formal asset management system.
- 4) Screening and searching of inbound passengers and goods into Tonga at airport and sea border control points is not well resourced nor given high priority. However, there is an increasing number of fines applied to persons detected attempting to carry falsely/not declared currency across Tongan borders.

Recommended Actions

Immediate Outcome 6

- a) TRA should have greater resources in order to undertake its core work as an FIU, and to make the best use of its wide information gathering powers. Secondments from other key AML/CFT agencies to the FIU could be undertaken.
- b) Tonga should amend the MLPCA to delete the requirement that reporting entities must form a judgment, in addition to a suspicion, before filing a STR, that the information may be relevant to a specific investigation or prosecution.
- c) LEAs should more proactively use financial intelligence for predicate and ML investigations, which will require increased awareness of its benefits, and training.
- d) Tonga should amend the Income Tax Act, the Consumption Tax Act, and the Excise Tax Act to allow TRA to access tax information in support of STR analysis.
- e) TRA should conduct more outreach to reporting entities to encourage greater attention to red flag ML and TF indicators in transactions; and to provide guidance and feedback on the quality and quantity of STRs filed in order to increase its intelligence base.
- f) Tonga should create a more robust database for the maintenance and collection of statistics relating to IFTRs and other reports.

Immediate Outcome 7

- a) The Cabinet Committee on Serious Crime should set a priority for LEAs to identify and investigate ML, and LEAs should commit to focus on identifying ML conduct where appropriate.

- b) TP should pursue ML cases in parallel with their investigations of predicate offences serious offences where they occur, and make increased use of financial intelligence and the current legal framework.
- c) Tonga should prioritise the investigation and prosecution of tax offences and ML related to tax offences.
- d) All LEAs should be given greater financial investigations training to better identify and investigate ML. This should include development of internal policies to ensure a focus on both high risk predicate offences and ML investigations.
- e) Customs needs to prioritise ML detection and investigation at the border.
- f) The government should immediately appoint an Anti-Corruption Commissioner in keeping with the assessment of corruption as a high-risk predicate crime.

Immediate Outcome 8

- a) Tonga should implement a high level policy prioritising the restraint and confiscation of the proceeds of crime, including assets other than cash.
- b) Tonga should pursue confiscation for a broad range of assets, not just cash, consistent with Tonga's ML risk and predicate crime offending.
- c) Tonga should develop a confiscation policy or manual to guide procedures in relation to restraint, seizure, asset management and dealing with seized and confiscated properties.
- d) Customs should be given appropriate resources to allow screening and searching of incoming passengers and goods at airports and sea border control points.

99. 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 and R.29-32.

Immediate Outcome 6 (Financial intelligence for ML/TF and predicates)

100. The National Reserve Bank of Tonga (NRBT) is the TRA under executive order pursuant to section 11 of the MLPCA. Two staff members within the TRA function as an administrative-style FIU. The TRA receives, analyses and disseminates information relating to ML and TF. TRA has two staff members who are responsible for financial intelligence and AML/CFT supervision. Due to a lack of resources, TRA has undertaken limited strategic analysis. The TRA does not have a separate budget from the NRBT.

101. TRA has access to a number of government databases pursuant to section 11A(f) of the MLPCA to support its analysis functions. However, despite the ranking of tax crimes as high risk predicate crimes in the NRA TRA is unable to obtain tax records of taxpayers as the Revenue Services Administration Act 2016 prohibits such disclosure (section 57). See R.29.3 in the TC Annex, which provides that while the secrecy-overriding provision in MLPCA at section 23 is broad, the specific provisions in section 57 of the Revenue Services Administration Act, and the detailed exceptions in it, mean that tax secrecy cannot be overridden by the MLPCA.

Use of financial intelligence and other information

102. In the period from 2013/14 to 2018/19, the TRA disseminated 83 operational analysis products to police, immigration and MRC as displayed in table 3.1 below.

Table 3.1 TRA Disseminations to LEAs

Year	Police	Immigration	MTED	MRC	Total per year
2013/14	11	1	1	1	14
2014/15	5	0	0	6	11
2015/16	2	0	0	13	15
2016/17	1	1	1	8	11
2017/18	1	1	1	14	17
2018/19	7	0	0	8	15
				Total	83

103. TP is making some use of TRA financial intelligence (see table 3.2) including in the initiation of one ML case that was prosecuted by the AGO (see case example 3.1). In addition, TP produces its own financial intelligence, including from TRA source data, mainly in drug predicate offences. However, TP's experience in undertaking its own financial analysis is limited and Tonga did not provide any case studies. According to TP, the following table outlines the number of financial intelligence reports (STRs) that were received by SOTCU and led to investigations and referrals to AGO:

Table 3.2: Use of STR Intelligence Products by TP

Year	STRs received by TP (SOTCU)	TP investigations initiated by STRs	Lodged with AG
2013/14	2	0	0
2014/15	4	2	2
2015/16	2	0	0
2016/17	1	1	1
2017/18	5	2	0

104. Immigration and MTED are not using TRA's intelligence products in their predicate crime and supervision functions due in part to a failure to understand the benefits of that information.

105. Revenue and Customs has an intelligence team that liaises with TRA (a team of one person in customs intelligence to which STRs are disseminated). However, Revenue and Customs did not demonstrate any use of financial intelligence to target, profile or investigate identified predicate crimes or relevant ML offences.

106. Tax authorities have made use of financial intelligence in tax investigations; however, the use is not in support of tax crimes but predominantly in support of tax administration offences and the collection of tax arrears.

107. The case example below details a case initiated by financial intelligence in conjunction with a fraud report, resulting in two ML investigations and charges (ultimately the ML prosecution was unsuccessful):

Case example 3.1: Fraud ML case initiated by STR

On 28 March 2014, Mrs Hulita Potemani was befriended by Mr Jet Larry Iketau on Facebook and, on 31 March, she was requested to open an account under her name and to receive funds on his behalf, which he would later advise her to send to him. Unbeknownst to Mrs Potemani, Mr Iketau (with associates) had unauthorised access to an account of Mr and Mrs. Holt, who ran a resort business in Tonga. On 31 March Mr Iketau transferred TOP 25 000 (US \$11 211) from the Holts' account to Mrs Potemani's account. Mrs Potemani was then instructed to withdraw the funds and send them to a recipient in Singapore.

On 1 and 2 April Mrs Potemani made two attempts to send funds abroad, to Singapore and then to South Africa. On both occasions she claimed that the funds were for people she knew and intended for legitimate purposes. These attempts to send the funds were unsuccessful because the money remitter was suspicious of the nature of the transactions and believed that she was responding to a phishing scam and because there was no supporting documentation.

On 2 April under instructions from Mr Iketau, Mrs Potemani purchased electronic equipment to the value of TOP 7 577 (US \$3 398) which she took to DHL to send to Mr Iketau.

The money remitter filed an STR with TRA. At the same time, the bank filed a suspected fraud report with Police on the unauthorised transfer of funds from the Holts' bank account. Upon receiving the STR, TRA disseminated its analysis to TP to further investigate. TRA assisted TP with the investigations.

Mrs Potemani was charged with receiving and two counts of ML and was convicted of receiving. She was acquitted of ML for technical reasons.

R v Hulita Potemani (Criminal Case No: CR166/2014)

108. Apart from this one case example, there are no other indications from Tonga of the effective use of financial intelligence to combat high-risk predicate crimes or ML. There has been no financial intelligence utilised or sought in relation to TF, which is in line with Tonga's risk.

109. In conclusion, there is minimal evidence that Tongan authorities effectively use financial intelligence products from TRA to support investigations, develop evidence and trace criminal proceeds related to ML and associated predicate offences.

STRs received and requested by competent authorities

110. TRA has a range of powers to access financial and other information from domestic authorities. This power is exercised by formal letter of request. Up to one week is the usual response time, but in urgent cases responses can be received within hours of a request. Once received, TRA initiates a process of analysis for the production of financial intelligence products to be disseminated to LEAs. It can also request Overseas Exchange Transactions from the NRBT and border cash reports from Customs.

111. The table below shows the type and number of reports received by TRA from 2013 to 2019.

Table 3.3 Reports Received by TRA 2013-2019

Reports	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
STRs	16	24	20	22	31	23
CTRs	3 986	4 138	7 087	8 668	10 892	14 068
IFTRs	79 754	73 371	110 821	532 213	641 188	653 188
BCRs	20	36	52	80	108	97

112. The number of STRs filed is not in line with Tonga's risks. The larger banks and one large money remitter demonstrated greater filing of STRs than others did. STRs were not filed by other

financial institutions or by DNFBPs, which is not in line with Tonga's risks. The following table provides a breakdown of the number of STR reports by institution from 2013/14 to 2018/19.

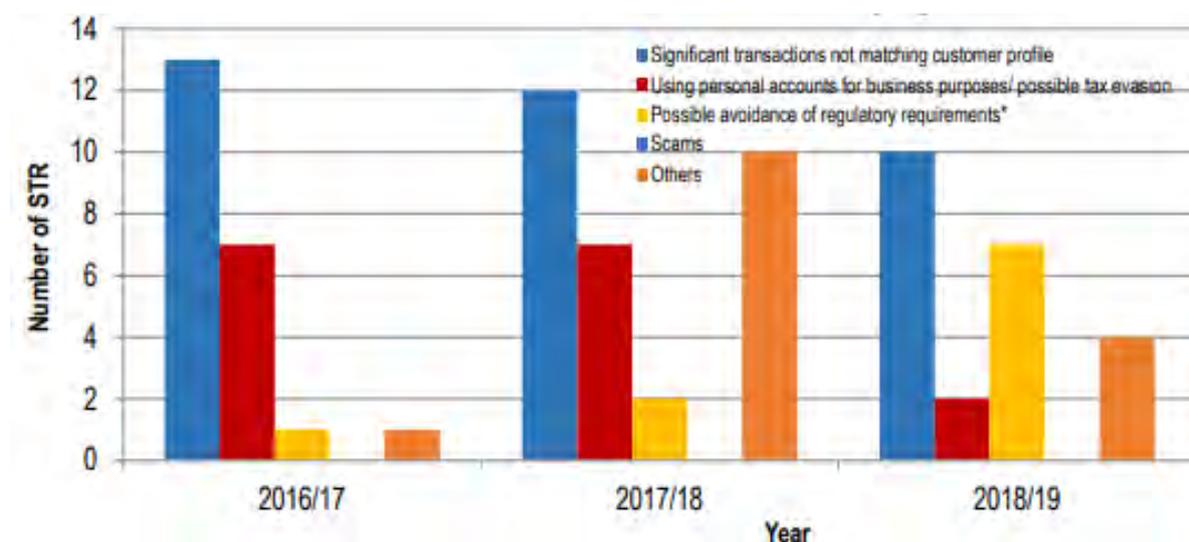
Table 3.4 Breakdown of filed STRs by institution

Institution	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Banks	13	21	18	19	26	19
MVTS	3	2	2	1	5	3
Others *	0	1	0	2	0	1

* Includes NRBT, foreign FIUs and the public.

113. As illustrated by the figure below, TRA reported that the majority of STRs were triggered by significant transactions inconsistent with the customer's known background; possible indicators of avoidance of regulatory requirements such as structuring of transactions and possible avoidance of Exchange Control related requirements; or the use of personal accounts for conducting business transactions. The remaining STRs were related to several indicators such as transactions of adverse media reported persons, third party transactions and atypical business transactions. TRA was unable to provide detailed information relating to the types of predicate crimes involved in the STRs received and consequently the assessment team was not able to conclude whether STRs related to high risk predicate crimes or ML.

Figure 3.1 Suspicious Transaction Reports by Type



114. The deficiency identified in the TC Annex at R.20 in relation to STR reporting appears to have a serious effect on the filing of STRs and may explain the low number of STRs filed. As noted in the Annex, reporting institutions are required by the MLPCA to form a suspicion of criminal activity and then form an additional judgment that the information they hold in relation to a transaction may be relevant to an investigation or prosecution. This added step restricts what would otherwise be considered suspicious activity and therefore restricts the extent of otherwise valid STR filings by reporting institutions. TRA issued the 'AML/CFT Guidelines for Financial Institutions and Cash Dealers' in 2015 to assist FIs and DNFBPs in applying national AML/CFT measures. These guidelines cover red flag indicators and STRs, but do not contain the requirement for this additional step. The Guidelines are intended to give effect to the MLPC Regulations, however, the Regulations are unenforceable, and apply only to the financial institutions.

115. TRA authorities were not clear on the extent to which they use information other than STRs in the production of financial intelligence. TRA indicated that it has access to CTRs and international transactions but does not always have information on international transfers. TRA stated that it relies primarily on the reports provided by banks through their economic department and MVTS through their non-bank department. There is also no indication that after receipt TRA uses border cash reports in the production of financial intelligence.

116. Additional information requests also include requests for information from the private sector such as bank account opening documents and transaction histories. The following table outlines the number of TRA requests for additional information from reporting entities from 2015-2019.

Table 3.5 TRA Requests for Additional Information 2015-2019

Year	Banks	MVTS	All FIs (Banks + MVTS)
2015	1	1	2
2016	7	1	8
2017	12	2	14
2018	13	0	13
2019	13	0	13

Operational needs supported by FIU analysis and dissemination

117. TRA undertakes operational analysis and conducts limited strategic analysis in quarterly reports, identifying trends in STRs, CTRs and BCRs received. These quarterly reports are published on the NRBT website.

118. STRs disseminated from TRA to TP go to SOTCU. However, due to TRA capacity constraints, TP usually produces its own financial intelligence, relying on TRA source documents particularly related to drug predicate offences. TP also uses TRA source documents for its passport taskforce. However, TP has limited experience in undertaking financial analysis.

119. LEAs rely on TRA to provide information (in particular STRs and BCRs), and to a lesser extent for assistance, with financial investigations. There is co-ordination and co-operation between TRA and LEAs, with TRA providing information to TP in the course of some criminal investigations. Of the 14 STRs noted in Table 3.2, five assisted in initiating investigations, three of which went on to be filed with the AG for prosecutions. However all related to passport fraud and none to other higher risk predicate offending.

120. TP and Customs understand the benefit and use of financial intelligence and have sought additional information from TRA to support their operational needs. For example, TRA had a significant role in the taskforce established to combat the illegal issuance of passports. Immigration and the Companies Registrar have not sought any additional information from TRA upon receipt of financial intelligence.

Table 3.6 Police and Tonga Revenue and Customs Requests for financial intelligence

Year	No. of requests
2014	0
2015	2
2016	3
2017	8
2018	7
2019	4

Co-operation and exchange of information/financial intelligence

121. TRA is the central AML/CFT co-ordinator that allows for the open exchange of information and intelligence among key stakeholders and the private sector. TRA has MOUs with TP, Revenue and Customs, Ministry of Foreign Affairs and Trade, AGO and MTED (which includes the Companies Registrar) to facilitate the exchange of information and intelligence. TRA is a member of the WGSFC.

Case example 3.2: TRA financial analysis to assist LEA process

In July 2019, the AGO sent to TRA a request for information on Mr X.

Mr X is a Filipino national who currently has an application for naturalisation. Counsel responsible for the file noticed transactions in his bank account which seemed peculiar and referred the file for review.

Mr X is an employee at a hairdresser salon, however his bank account reveals large deposits over the course of 12 months. AGO requested TRA analysis on Mr X's account as the transactions did not match his profile.

After conducting analysis, TRA confirmed that the transactions were inconsistent with Mr X's financial profile. The information provided by the bank did not eliminate TRA's suspicion that he could be sourcing funds from elsewhere. There has been a request to the bank to provide a further update with any information that may support Mr X's source of funds.

In the event that the source of funds deposited to Mr X's account cannot be substantiated by the bank then this would be a trigger to filing a STR with TRA.

122. TRA has signed two MOUs with foreign FIU counterparts (Bangladesh and Chinese Taipei), and is a signatory to the 'Association of Pacific Islands FIUs' for the exchange of information under which TRA provides assistance to other Pacific Island FIUs. An example of this is a request for confirmation of CDD information received from a Pacific Island FIU in 2016. TRA has demonstrated a certain level of engagement to co-operate and exchange information with partners, has submitted an application for membership in the Egmont Group and is fully engaged in the application process.

123. TRA intelligence is disseminated via email (with encrypted attachments) and secure-hand delivery. There are physical systems and processes in place for the security of information within TRA. Financial intelligence products contain caveats that protect and restrict sharing with third parties without first obtaining permission from TRA. However, there is an ongoing concern for the physical security of TRA mail which is copied and stored on the NRBT-wide file management system.

Overall conclusion on Immediate Outcome 6

124. TRA has access to a wide variety of financial intelligence and other relevant information, although it is unable to access tax information. In addition, it was unclear to what extent TRA uses information other than STRs in the production of financial intelligence. The number of STRs received by TRA is low and is not in line with Tonga's risks. This may be due to the requirement for reporting institutions to form a judgment that the information may be relevant to an investigation or prosecution. TRA's ability to undertake its core work is undermined by a lack of resources. TP and Customs develop their own intelligence, but there is little evidence of the effective use of financial intelligence to develop operational analysis and to identify and trace criminal proceeds related to ML and TF. The development and use of financial intelligence by TP and by Customs is focussed on predicate offences. Financial intelligence in relation to TF has not been utilised or sought.

125. **Tonga has a low level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

126. High risk ML predicate crimes in Tonga include: (i) bribery and corruption; (ii) drugs – transnational; (iii) drugs - domestic; (iv) tax evasion; (v) trade-based crime; and (vi) immigration crimes (passport fraud).

127. ML offences are investigated by Tonga Police (TP) and Customs. The AGO prosecutes all ML cases. Within TP, the Serious Organised Transnational Crime Unit (SOTCU) and the Drug Enforcement Taskforce (DET) focus on detection and investigation of ML. SOTCU investigates cases worth more than TOP 100 000 (US \$44 843) and DET investigates drug-related ML cases. TP investigates all other ML cases, including general predicate crimes. Customs investigates the illegal transportation of currency at the border.

ML identification and investigation

128. There are 10 officers working in SOTCU, three of whom are dedicated to financial investigations. However, between September 2015 and March 2018 all staff within the SOTCU were deployed to the passport taskforce. Following the disbanding of the task force, SOTCU officers have been working closely with all police officers to assist wherever financial investigations are required. The TP Executive has approval to increase the unit's staffing from 10 to 17 to implement more effective investigations of serious financial crime, ML, cybercrime and transnational organised crime.

129. Tonga lacks a strategic policy relating to ML investigations. The government seems to be focused on passport fraud and drugs, as opposed to other predicate crimes and as opposed to ML as a secondary offence. Predicate offences such as corruption and trade-based crime are rated as high risk and require a more robust and focused response. While the position of Anti-Corruption Commissioner was established in Tonga a number of years ago, the government has yet to appoint a Commissioner.

130. Police officers outside the SOTCU lack formal training in financial investigations including ML investigations. There have been no parallel ML investigations.

131. AGO identifies ML through its close involvement with TP in investigations. The AG is involved often in the early stages of an investigation and provides legal advice on relevant charges.

132. Between 2010 and 2018, a small number of STRs were disseminated to TP resulting in eight investigations. While there is a working relationship between LEAs and TRA, this relationship is generally unstructured. In the two ML cases identified by Immigration and Customs, TRA was able to assist TP with the provision of intelligence relevant to those cases.

133. The police identify ML to a lesser extent. Many officers do not have the expertise to identify ML and then investigate the facts relating to the ML offence itself. There is a preference to charge and investigate predicate offences. TP see impediments to investigating ML as follows:

- Weaknesses within TP to identify ML conduct (particularly in cases that fall below the SOTCU threshold); and to conduct financial investigations;
- No policy or guidance on investigating ML and it has not historically been a priority;
- A preference to investigate predicate offences as the penalty is generally considered sufficient;
- The challenge of proving the conversion, concealment, disguise and transfer of property in the context of ML offences in Tonga being very straightforward laundering cases.

134. Customs has identified two ML cases. Customs has one risk officer; five intelligence officers, four members of a post-clearance audit team; 12 frontline officers at the airport; and seven frontline officers at the wharf. Standard Operating Procedures assist and guide customs officers in identifying or detecting any suspicious movement of goods at the main ports. Intelligence can be shared with other LEAs.

135. IRD is unable to share tax information or intelligence with LEAs to pursue other general criminal offences including ML. This is a material impediment to the ability of the Inland Revenue to identify and refer ML cases and impacts on effectiveness in light of the high risk attributed to tax crimes in the NRA.

136. Authorities provided examples of operational level co-ordination, particularly between TRA and the Police, leading to ML charges. In particular, the Tonga Law Enforcement Agencies Committee (TLEAC) enables live exchanges of operational information.

137. In total authorities have investigated six ML cases. Three ML cases proceeded to prosecution and one resulted in a conviction based on a guilty plea:

- i. The case of 'Qian' prosecuted for ML but did not succeed in light of challenges proving the predicate offence of failing to declare cash. Authorities sought to identify the relevant predicate offence in this case but were hampered by an inability to undertake complex financial investigations to determine the source of the funds.
- ii. The Potemani case (case example 3.1). Ms Potemani was charged with one count of receiving and two counts of ML. Potemani met a person on Facebook and over time was compelled to open bank accounts in her name and names of her friends. Her accounts were then used to transfer money between various accounts. Some of the funds transferred were a result of account hacking from other Tongan nationals. Potemani believed that the money was stolen or obtained under circumstances amounting to a criminal offence. However, in relation to the ML charge the court found that the ML charge was not proven because the predicate offence could not be proven. In particular, that the debiting of one customer's account and the crediting of another does not involve any transfer or taking of property from one to another. While the MLPCA does not require the crown to prove which serious crime had been committed, the court found there is still an

obligation on the Crown to produce sufficient evidence from which an inference can be drawn that the property in question derived from criminal activity. As a result of the Potemani case, the AG sought to amend the law on theft to adequately capture electronic transfers in the definition of theft, in order to overcome any future challenges.

- iii. The Pousini case resulting in one ML conviction - see case example 3.3 below.

Case example 3.3: ML conviction

In 2017 Miss Salome Pousini pleaded guilty to one count of embezzlement and one count of ML.

Miss Pousini was employed with an insurance company. During her employment, Miss Pousini was coerced into withdrawing money from the company's accounts for the personal use of her superior, TM. From May to July 2016 TM gave Miss Pousini 14 signed blank cheques, instructing her to withdraw specific amounts from the bank. She also told Miss Pousini to add an additional amount for herself.

Miss Pousini completed the cheques, cashed the cheques at the bank and in doing so received money for her own purposes totalling TOP 34 000 (US \$15 247). She used part of those funds to purchase a motor car and gave some funds to a friend to hold in the bank. The rest of the funds are unaccounted for.

In giving money to a friend to deposit into her bank account, authorities considered this constituted hiding or concealing the money. The court noted the seriousness of the embezzlement charge and sentenced Miss Pousini to 1 year 5 months imprisonment for embezzlement and to six months imprisonment for ML to be served concurrently. The sentences were then fully suspended on certain conditions.

R v Salome Pousini (Criminal Case No: CR 15/2017)

138. The AG directs investigations and handles prosecutions in relation to ML. Some complex matters were before the Court as at the time of the on-site visit. In a 'low proceeds of crime environment' (such as Tonga), the AG office is still seeking to identify and prosecute ML charges, although the cases above demonstrate that there have been challenges in this regard.

139. There has been some ML training for investigators to increase the identification and investigation of ML as follows:

Table 3.7 ML training undertaken by TP

Training / Workshop	Year	Sponsored by	No. of participants from TP financial investigations staff*
Financial Literacy	2015		1
Money Laundering	2015	New Zealand	1
Money Laundering	2016	Australia	2
Money Laundering	2016	New Zealand	6
Financial Investigations	2018	Fiji	2

* The same individual staff member attended all except the 2016 NZ training

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

140. While the three cases prosecuted for ML noted above align with the risk profile (embezzlement, corruption related issues, the issue of false passports and cross border cash couriers), authorities are missing opportunities to pursue ML for other high-risk predicate offences. The NRA notes a number of offences prosecuted in Tonga between 2012 and 2017 and states that the offences 'could result in money laundering.' The following table is inserted:

Table 3.8 Predicate offences prosecuted that *could* result in ML

Offence	2012	2013	2014	2015	2016	2017
Illicit trafficking in narcotics and psychotropic substances	24	9	5	8	16	15
Fraud	2	5	1	5	2	2
Robbery or theft	100	94	35	59	4	15
Smuggling (including customs, excise duties and taxes)	0	0	1	0	1	0
Forgery	2	2	3	3	7	5
Participation in organised criminal group and racketeering	0	0	0	0	0	0
Terrorism/ terrorism financing	0	0	0	0	0	0
Illicit arms trafficking	0	0	0	0	0	0
Corruption and bribery	0	0	0	0	0	1
Extortion	0	0	0	0	0	0

141. It is not clear why ML was not pursued for some of these offences. However it is noted that:

- illicit trafficking in narcotics is rated as high risk – 77 potential ML cases relating to this predicate crime occurred in the time frame indicated; and
- fraud is rated as medium risk – 17 potential ML cases could have been prosecuted.

142. Against the backdrop of increasing illicit drug offences in Tonga and a specialised taskforce dedicated to drug offences, there have been no ML investigations pertaining to drug offences. Tonga provided the following figure relating to the increasing rate of illicit drug offences:

Figure 3.2 Illicit drug offences 2008 - 2017

143. In relation to theft offences, the definition of the offence in the criminal law prior to 2015 was deficient but only in relation to electronic transfers of money (as noted in a case cited in the Supreme Court of Tonga on 18 May 2015). However table 3.8 above notes a number of theft or robbery offences (307 in the time span given) that ‘could have’ been prosecuted for ML but were not.

144. The NRA states that Tonga is concerned with the offence of tax evasion, rates the risk of this offence as high, and notes that the Ministry of Revenue and Customs prosecutes approximately 50 cases a year of tax evasion; however, tax evasion is not listed in the table above. Officials confirmed in separate meetings that the cases referred to in the NRA as tax evasion were in fact dealt with as administrative offences not as criminal offences, noted in IO 1.

Types of ML cases pursued

145. There is some concern that Tonga is missing opportunities to pursue ML cases as evidenced in the discussions above. With only three cases so far pursued but many more that 'could' have been pursued (to use Tonga's own choice of words) particularly in relation to what Tonga has assessed as high risk predicates, Tonga is not allocating its resources to mitigating its ML risks.

146. This is due in part to a lack of expert analytical capability in the form of forensic accountants or specialist financial analysts. The types of cases that the limited number of staff in TP are capable of investigating are simple self-laundering cases. The ML cases that have been prosecuted in Tonga have all been for self-laundering. There is no evidence that professional money launderers operate in Tonga, nor is Tonga seen as a destination point for foreign proceeds of crime. While authorities advise that complex ML methods are generally not employed in Tonga and that proceeds of crime are used largely to fund lifestyle expenses including, cars, home loans and school fees, Tonga's lack of expert financial investigative capacity and capability inhibits its ability to detect more complex ML cases than self-laundering.

Effectiveness, proportionality and dissuasiveness of sanctions

147. The penalty for ML is imprisonment for a period not exceeding 10 years or to a fine not exceeding TOP 500 000 (US \$224 215). In the context of other serious offences in Tonga, sanctions for ML are proportionate to the risk profile of Tonga, however, may not be adequately dissuasive in the event of serious transnational ML.

148. Cases that have proceeded through the courts by experienced judges have shown a careful consideration of the sentence. There has been only one penalty handed down for ML resulting in a suspended six-month imprisonment sentence. While that sentence may appear low, it was given in light of a number of mitigating factors.

149. Judges in Tonga are drawn from more developed countries in the region (Australia and New Zealand) and are well placed to preside over complex ML cases.

Application of alternate criminal justice measures

150. Tonga does not employ alternative criminal justice measures when a ML conviction is not possible.

Overall conclusion on Immediate Outcome 7

151. In the period under review, TP has investigated six ML cases of which three were prosecuted by AGO with one of those cases resulting in a conviction. Customs has not investigated any cases of ML. Tonga is not targeting its efforts to mitigate high risk predicate and ML cases due to a lack of institutional capacity. The authorities are aware of the occurrence of ML offences related to high risk crimes (drugs in particular) but lack the resources and expertise to effectively respond; and when they do respond, it is for simple self-laundering cases.

152. **Tonga has a low level of effectiveness for IO.7.*****Immediate Outcome 8 (Confiscation)****Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

153. Tonga does not have a policy or strategy to pursue the proceeds of crime and confiscate criminal proceeds or property. However, actions taken by authorities, in particular the AG's office, demonstrate an increasing focus on cash seizures and forfeiture.

154. Tonga has a reasonable legal framework, enabling conviction-based confiscation of proceeds of crime, instruments and benefits of proceeds. Conviction is not required in the case of forfeiture linked to TF. Police and the AG have a wide range of powers to identify and trace proceeds of crime although it is not evident that this is occurring to a large extent. Further powers are contained in the Customs and Excise Management Act for the seizure and forfeiture of items including instrumentalities of smuggling and other customs offences.

155. Authorities are able to pursue property of corresponding value through the imposition of pecuniary penalty orders (PPOs), which requires criminal conviction for a serious offence. However, if identified property can be linked to TF, the competent authority can apply to the Court for forfeiture of that property, without a conviction. There has been limited use of the conviction-based confiscation regime and the restraint provisions and none for TF.

156. The AG is the sole authority to apply for confiscation, PPOs and restraining orders in the Courts. There is an increasing focus on restraint and confiscation although the successes in forfeiture are all cash seizures rather than restraint orders.

157. Overall, there is a growing trend to confiscate cash both as a penalty and as a tool to dissuade offenders. However, as noted in IO.6 and IO.7 the weaknesses in authorities' ability to conduct financial investigations hampers their ability to utilise the full restraint and confiscation provisions in the MLPCA.

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

158. The AG first undertook confiscation in 2017 and has registered fifteen confiscation proceedings for cash relating to drugs. As stated above, these are all taken under the cash seizure provisions of the MLPCA. Authorities advise that the decision to confiscate cash under these provisions was to avoid issues with maintaining seized and restrained property and the lack of a formal asset management system. Authorities do not have the human resources nor do they have the budget to establish an asset management scheme. Further, the authorities are concerned about the exposure to costs should assets deteriorate in value while under their management.

Table 3.9: Amounts seized and confiscated under the MLPCA

Year	Amount seized	Amount confiscated
2015	0	0
2016	0	0
2017	TOP 43 302 (US \$19 418)	TOP 33 046 (US \$14 819)
2018	TOP 159 641 (US \$71 588)	TOP 5 382 (US \$ 2 413)
2019	TOP 188 198 (US \$84 394)	TOP 35 636 (US \$15 980)
TOTAL	TOP 391 141 (US \$175 400)	TOP 74 064 (US \$33 213)

159. Land cannot be bought or sold in Tonga as it belongs to the Crown, but may be leased. Therefore, authorities are not able to confiscate land and it becomes difficult when an offender has used proceeds of crime to build property on leased land. In one case, while authorities were able to prove that proceeds of crime funded the construction of a building on land, they could not restrain or confiscate that property or the building.

160. Authorities are able to secure pecuniary penalty orders when an offender cannot realise property that is the proceeds of crime. However, this is yet to be applied in practice.

161. In April 2018 Tonga's 'Confiscated and Forfeited Assets Funds' was established to manage criminal funds confiscated or forfeited. The fund is administered by the Minister of Finance. As of December 2019:

- 30 applications have been made to the Supreme Court to restrain or forfeit cash:
- TOP 362 712 (US \$162 651) has been seized.

162. TP has seized and confiscated instruments of crime following conviction:

- In 2018, 125 instruments of crime were seized/confiscated.
- In 2019, 121 instruments of crime were seized or confiscated including mobile phones, sim cards, audio recorders, laptop and computer devices, memory cards, and listening devices.

163. TP has co-operated domestically and internationally on a case involving confiscation. In 2012, a joint operation was conducted with TP, Customs, the Australian Federal Police, Australian Customs and Border Protection Service, the United States Drug Enforcement Agency and the Cook Islands Police (see case example 8.4). During the investigation, a yacht which was shipwrecked on a Tongan island was searched, with 204 kg of cocaine, a number of credit cards and currency from the United States, the Dominican Republic and Poland located and confiscated.

164. Tonga did not indicate any further information in relation to whether TP conducted a search of the yacht; who seized the cocaine, cash and the credit cards; and whether authorities seized and/or disposed of the contraband.

Confiscation of falsely or undeclared cross-border transportation of currency/bearer-negotiable instruments

165. The NRA notes risks from undeclared cross-border cash movement and it is accepted that Tonga has a significant cash-based economy.

166. Tonga has a legal framework in place for the declaration and identification of cross border movement of funds. Screening and searching of inbound passengers and goods into Tonga at airport and sea border control points is not well resourced nor given high priority. There is one scanner available to screen incoming luggage at Tonga's main international airport. There is no scanner at the other international airport in Vava'u, however all exiting luggage and carry-on luggage is screened. Questioning of inbound passengers to assess and identify cash and drug carrying passengers is minimal, limited screening of passengers and luggage carries a high risk of cash and illicit drugs being introduced into Tonga. Two police dogs are available for screening of passengers and luggage for illicit drugs, cash and firearms.

167. There are provisions enabling the confiscation of goods used in smuggling, packages which have goods concealed which are not declared or are packed so as to deceive customs, dutiable goods found in the possession of or in the baggage of a passenger that has not been

declared in accordance with the Act. Customs may also forfeit any ships or aircraft that are used in smuggling, or found to be fitted in any way for the purpose of smuggling. Any goods liable to be forfeited as above may be seized by a customs officer. However, customs officers were not able to discuss implementation of this section and advised that they do not utilise these provisions.

168. Further provisions exist under the MLPCA for cash seizure at the border. The MLPCA also contains separate provisions enabling the confiscation of cash seized and suspected of being the proceeds of crime. Officers may then detain cash if they suspect the cash is intended for use in a crime, is undeclared cash intended for use in lawful conduct, or is recoverable cash (which is not defined). No criminal conviction is required for these provisions. However, authorities were not able to articulate how the system works in practice in respect of cash seized, and which agency would manage and potentially confiscate such cash. This could be because there are two legal regimes that deal with cash confiscated at the border (the MLPCA and the Customs and Excise Management Act). This was considered by the Court in *Rex v Qian*, CR 158/2018 (10 May 2019) which confirmed that the MLPCA was the applicable law. In practice, where criminal conduct is suspected, Customs will pass the matter, along with the cash, to TP.

169. There is an increasing number of detections of persons attempting to carry cash in excess of the restricted amount across Tongan borders. Numerous cases of false declarations and failure to declare relating to cash being carried across Tonga's borders have been dealt with under customs laws rather than MLPCA as authorities consider there is no requirement to prove that the cash are proceeds of a crime as is required under AML legislation. The below table demonstrates some examples of penalties imposed by customs.

Table 3.10: Penalties imposed by Customs authorities for undeclared cash

Notice date	Details of undeclared cash	Sanction	Result
07/01/2016	Cash US \$5 122 + NZD \$365	Administrative penalty	Fine
29/11/2016	Cash US \$4 359 + RMB 3 821	Administrative penalty	Fine
08/10/2016	Cash	Administrative penalty	Fine
14/10/2016	Cash US \$4 919	Administrative penalty	Fine
10/11/2016	Cash US \$6 000	Administrative penalty	Fine
09/09/2017	Cash (US \$4 911 + NZD \$55)	Administrative penalty	Fine
09/09/2017	US \$118 003	Administrative penalty	Fine
12/12/2017	Cash TOP 10 778	Administrative penalty	Fine
15/05/2018	Concealed Cash (US \$ 54 275 + AUD 10 050 + NZD 9 490 + FJD 1 700 + TOP 2 015)	Prosecution	Guilty & fined
18/01/2019	Concealed Cash NZD \$10 000	Prosecution	Ongoing
18/01/2019	Concealed Cash US \$29 750	Prosecution	Ongoing

170. Further examples include:

- In 2018 a Chinese Tongan national was stopped at the international airport after he was found to have strapped to his body approximately TOP 150 000 (US \$67 265) in foreign currency. He was convicted for failure to declare the cash and was fined TOP 15 000 (US \$6 726).

- In 2019, two Chinese Tongan nationals were stopped at the international airport after they were found to have strapped on their bodies an amount equivalent to TOP 75 000 (US \$33 632). This case was before the Courts as at the time of the on-site visit.

3

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

171. All of the matters involving confiscated cash thus far relate to the issue of drug dealing/use and trafficking which is reflected in the statistics. Authorities have not yet restrained or confiscated assets pertaining to other high risk predicate crimes due primarily to challenges in conducting financial investigations and managing the assets.

Overall conclusion on Immediate Outcome 8

172. Although confiscation of criminal proceeds, instrumentalities and property of equivalent value is not pursued as a policy objective in Tonga, actions taken by authorities demonstrate an increasing focus on cash seizures and forfeiture. However, weaknesses in authorities' ability to conduct financial investigations impedes their ability to utilise the full restraint and confiscation provisions available in the MLPCA. The matters involving confiscated cash are all in relation to drug dealing, drug use and trafficking. Tongan authorities have not yet restrained or confiscated assets in relation to other high risk predicate crimes, mainly due to challenges in conducting financial investigations and in managing the assets involved. An increasing number of cases of false declarations and failure to declare cash being carried across Tonga's borders have been dealt with by imposing a financial penalty under customs laws. There have been no convictions or confiscations for TF or terrorism activity, which is consistent with Tonga's TF risk.

173. **Tonga has a low level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key findings

Immediate Outcome 9

- 1) As discussed in R.5, there are moderate shortcomings in Tonga's TF offence, including the need for a link to a terrorist act for an individual undesignated terrorist; no definition of 'funds'; and no provision covering the financing of travel.
- 2) There have been no investigations, prosecutions or convictions for TF in Tonga, which is consistent with Tonga's risk profile. However, Tonga has limited ability and no experience in identifying and investigating TF. If a TF case was identified, Tonga would likely seek assistance from LEA counterparts in New Zealand and Australia.
- 3) There has been little outreach to reporting entities on the issue of TF. The AML/CFT Guidelines provide some red flag indicators of TF to assist reporting entities, but are out of date.
- 4) Across the public and private sectors, Tonga lacks the ability to identify TF should it occur.
- 5) The term of imprisonment or fine for a natural person convicted of TF is proportionate and dissuasive. For legal persons, the fine only is not proportionate and dissuasive in the case of foreign FIs operating in Tonga.
- 6) Tonga does not seem to be integrating TF into its broader national strategies and is not applying alternative measures for TF.

Immediate Outcome 10

- 1) Tonga has a legal framework to implement TFS relating to terrorism and TF, however, as outlined in R.6 the framework has moderate shortcomings. These deficiencies include shortcomings in relation to the type of property that can be frozen. Given the low TF risk of Tonga, no positive matches against the UN consolidated lists have been recorded.
- 2) The authorities do not have a strong understanding of TFS. The lack of implementation of TFS is not consistent with the requirements of the FATF Standards or Tonga's UN obligations.
- 3) Tonga has not assessed the TF risks to NPOs in line with requirements under R.8, and therefore is not applying focussed and proportionate measures to protect NPOs from TF abuse.

Immediate Outcome 11

- 1) Tonga's exposure to WMD-related sanctions evasion of PF is relatively low. Tonga has no links or trade with Iran or DPRK in the last 5 years. No designated entities have been identified operating in Tonga, or moving funds/assets in or through Tonga.
- 2) As discussed in R.7, Tonga has major shortcomings in its framework to implement TFS relating to PF.
- 3) While larger banks and money remitters have adopted their parent organisations' PF processes and are screening transactions, all other FIs and DNFBPs are not conducting screening. No funds or assets have been identified or frozen in Tonga.

- 4) There has been no outreach or guidance to REs on the issue of TFS relating to PF, and Tonga is not monitoring and ensuring compliance with TFS for PF.

Recommended Actions

Immediate Outcome 9

- a) Tongan authorities should address the deficiencies in the TF offence as outlined in R.5.
- b) Tonga should continue to integrate TF into its national strategies of terrorism and regional obligations.
- c) Tonga should enhance its capacity to identify TF should it occur including by:
 - i. Continued monitoring of the threats of TF (both domestically and globally) and vulnerabilities within Tonga to TF.
 - ii. Undertaking outreach and guidance to reporting entities on indicators for TF.
 - iii. Updating the AML/CFT Guidelines to reflect new legal requirement to file STRs in relation to TF, and expanded to include more red flag indicators.
- d) Tonga should enhance its capacity to investigate TF should it occur including by:
 - i. Enhancing LEAs capacity to conduct financial investigations; and
 - ii. Strengthening co-operation and co-ordination with regional partners, primarily Australia and New Zealand.

Immediate Outcome 10

- a) Tonga should implement a legal framework that complies with R.6 to enable freezing without delay to take place should terrorist or TF funds be identified in Tonga.
- b) Improve implementation of TFS obligations by all FIs and DNFBPs particularly in sectors less compliant through clear direction and targeted outreach. Tonga should gazette updated UN listings to notify the public, while TRA and NBRT should circulate latest notifications of UN listings to reporting entities to increase TFS reporting.
- c) Consistent with R.8, Tonga should assess the risks posed by NPOs, including any at higher risk, and implement measures to address the risks identified.

Immediate Outcome 11

- a) Tonga should legislate to create a comprehensive obligation to implement the requirements of R7, and should develop procedures, policies and publicly available guidelines on PF.
- b) Tonga should support TFS implementation by FIs and DNFBPs including by conducting outreach on obligations to apply TFS in relation to PF including indicators of sanctions evasion, and Tonga should supervise all FIs and DNFBPs for compliance with obligations.
- c) Tonga should continue to enhance PF related co-operation and co-ordination.

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

Immediate Outcome 9 (TF investigation and prosecution)

175. As discussed in IO.1, the assessment of TF threats and vulnerabilities in the NRA is not comprehensive.

Prosecution/conviction of types of TF activity consistent with Tonga's risk profile

176. There have been no investigations, prosecutions or convictions for TF in Tonga. Tonga has limited ability to identify and investigate TF. The lack of TF prosecutions and by implication, convictions, is consistent with Tonga's TF risk profile (low). However, there is a concern that in coming to this risk rating Tonga conflated terrorism and TF (see IO.1) despite the fact that the two are separate offences and may give rise to separate risk ratings if assessed separately.

177. The CTTOCA provides a legal framework for prosecuting TF. There are moderate shortcomings in that framework including the following: the need for a link to a terrorist act for an individual undesignated terrorist; the absence of a definition of 'funds' which creates uncertainty as the scope of the activity included in the offence; and no provision covering the financing of travel.

TF identification and investigation

178. TRA has not received any reports of suspected TF from the private sector and no such activity has been detected through its analysis process. The TF Investigation Process Manual outlines steps to be taken and the respective roles of domestic agencies in any TF investigation. SOTCU would facilitate and co-ordinate a TF investigation including regional and international intelligence and information exchanges. The SOTCU would work in conjunction with TRA and other domestic agencies. If required, TRA would also seek information and intelligence from Australia and New Zealand and other countries to assist with their investigation. The manual confirms the requirement for regular debriefings with a range of agencies in order to comprehensively investigate the matter domestically.

179. As outlined in IO.6, TP and TRA have some capacity constraints in conducting financial investigations and both require greater resources and training in order to improve their financial intelligence capability. If TF were detected in Tonga, TP would likely seek assistance from counterparts in Australia and New Zealand.

180. It is not clear if reporting entities have the capacity and experience to identify TF – while on the one hand Tonga is a small country there has been very little outreach to the private sector on TF. Larger foreign and FIs and MVTS rely primarily on guidance and screening systems of their parent companies.

181. The AML/CFT Guidelines issued to reporting entities contain some red flag indicators of potential TF activity to assist in identification. However, those Guidelines are out of date as noted in R.34 and contain confusing references. Moreover, while the Guidelines are designed to give effect to MLPC Regulations across both financial institutions and DNFBPs, the Regulations are unenforceable and, in any event, apply only to the financial institutions.

TF investigation integrated with and supportive of national strategies

182. The CCSFC is mandated to consider TF. The WGSFC is mandated to support the Cabinet Committee in its functions. It is not clear that these structures operate in practice to co-ordinate or set policy relating to TF, likely, because these structures prioritise the most pressing risks

facing Tonga which does not include terrorism or TF rated as low in the NRA. However, as noted in IO.1 discussions, and contrary to the NRA, terrorism is rated as 'high' in the National AML/CFT Strategy 2018-2022. That strategy (adopted in October 2019) includes measures to strengthen the AML/CFT system including TF issues.

183. The Law Enforcement Agency MOU to deal with serious organised crime, including transnational organised crime, came into effect in 2014. The MOU provides for interagency co-operation and operational co-ordination for serious criminal matters in Tonga, including the sharing of information between agencies.

184. Discussions with TP revealed a continued assessment of the security profile of the region, both proactively and in response to identified attacks (such as the Christchurch attacks in New Zealand in 2019). Immigration officials noted that citizens of countries considered to be higher risk (whether for terrorism or other reasons) are required to obtain a permit to enter Tonga, and authorities are vigilant in conducting background checks prior to entry for such citizens.

Effectiveness, proportionality and dissuasiveness of sanctions

185. The penalty of imprisonment of up to 25 years or a fine not exceeding TOP 500 000 (US \$224 215) or both, for natural persons is proportionate and dissuasive. However, for legal persons a fine not exceeding \$1 000 000 (US \$448 430) is not dissuasive in the case of foreign legal persons operating in Tonga (for instance foreign banks and foreign NPOs).

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

186. It is not clear what, if any, alternative criminal justice, regulatory or other measures would be used by Tonga to disrupt TF in the event it would not be practicable to secure a TF conviction.

Overall conclusion for Immediate Outcome 9

187. There have been no investigations, prosecutions or convictions for TF in Tonga. While this is not inconsistent with Tonga's risk profile, technical shortcomings in Tonga's TF offences limit the scope of potential TF cases to be investigated and prosecuted in accordance with Tonga's TF Investigation Process Manual and with assistance from foreign law enforcement partners. The assessment team has placed significant weight on Tonga's limited ability to identify and investigate potential TF. Sanctions for legal persons are not dissuasive in the case of foreign legal persons operating in Tonga.

188. **Tonga has a low level of effectiveness for IO.9.**

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

Implementation of targeted financial sanctions for TF without delay

189. Tonga has a legal framework to designate UN 1267 and UN 1373 entities for TFS, however that framework has deficiencies, noted in the TC Annex at R.6:

- 1267: the CTTOCA automatically incorporates UN designations into domestic designations without any further processes. While there is a provision allowing for publication of the sanctions lists in the Gazette, authorities confirmed that this was an

administrative procedure rather than a legal requirement. However, the established procedure of publishing notice in the Gazette ceased some time ago and updated lists are no longer Gazetted. Notifications of UN listings are not circulated to reporting entities or the public.

- 1373: the framework in the CTTOCA to list persons and entities under 1373 including procedures for de-listing exists, but no designations have been made. The AG is the competent authority for that purpose. Also, Tonga has not received a request from any foreign authority to use their UNSCR 1373 process.

190. TRA issues email notifications to FIs on a monthly basis, focusing mainly on OFAC lists. Other than the email notifications, TRA has not conducted outreach to reporting entities on their obligations to implement TFS for terrorism.

191. The majority of the banks interviewed indicated that they have commercial screening systems provided by the parent companies in place and can easily identify designated individuals and entities. There is also backup support from the parent companies for screening. The major remittance company (a foreign exchange dealer) also indicated that it has screening systems in place supported by the parent company. Generally the larger FIs indicated a clear understanding of the need to screen transactions and client bases against the UN lists, however smaller FIs and all DNFBPs did not demonstrate screening procedures and are not screening all transactions against relevant UNSCRs.

192. Overall in all FIs and DNFBPs, there was a lack of knowledge of freezing procedures and a lack of understanding of their obligations to freeze, should funds be identified in Tonga.

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

193. Tonga has not implemented a targeted approach to NPOs. Tonga has two main types of NPOs - those registered under the Charitable Trusts Act and those registered under the Incorporated Societies Act (both revised in 2016). As at March 2019, it was estimated that there were 711 incorporated societies and 184 Charitable Trusts registered respectively. This figure is an estimate, as registration of NPOs in Tonga with MTED is not mandatory and NPOs are not supervised.

194. As discussed in R.8, Tonga has not identified which NPOs fall within the FATF definition. However, Tongan competent authorities advise that the majority of the NPOs were established to raise funds among family members or community members for development purposes (e.g. agricultural), or churches receiving donations. Tongan authorities have a generally sound understanding and overview of the NPO sector, including the estimated percentage of the number of charitable trusts in operation, the major nature of incorporated societies, what kind of activities they undertake, and what kind of preventive measures are in place to monitor the NPOs. NPO registrations are centralised with the MTED, and information is available on request. However, Tonga is unaware of the number of unregistered NPOs.

195. Tongan authorities are yet to undertake an assessment of the TF threats to NPOs, identify at-risk NPOs, and review whether the current measures taken by MTED are adequate. The NRA did discuss NPO risks broadly (see IO.1) noting that NPOs were at low risk for TF abuse, and the team agreed with these findings. However:

- Tonga conducted some awareness raising campaigns with unregistered NPOs, but it was not clear that the outreach included information to NPOs on ML/TF risk. Other NPOs were not aware of the outreach.
- NPOs that wish to make occasional remittances abroad need to apply for a license first. Transfers must be carried out via financial institutions, in which case NPOs must open a bank account requiring incorporation documents. Unregistered NPOs therefore would be unable to carry out financial activities involving foreign remittances.
- NPOs are required to submit Financial Statements to MTED (the Charitable Trusts Act and the Incorporated Societies Act) however this is not currently enforced and submissions are on a voluntary basis. According to authorities, approximately only 10 per cent of NPOs file annual statements.
- MTED previously rejected an NPO application for matters unrelated to TF.
- Tonga is investigating NPOs where suspicion of criminal abuse is identified (see case example 4.1).

Case example 4.1 – Review procedure carried out on higher risk NPOs

In July 2019 TRA received a request from the AGO for any information regarding suspicious activity of a NPO and its founders. AGO triggered the enquiry as one of the NPO's founders was facing charges in Tonga concerning a drug case, with his trial set for November 2019. The founder had been deported to Tonga after spending 8 years in jail overseas for drug dealing.

AGO advised that the NPO was set up by deportees, with the primary mission of helping deportees. Whilst the NPO's mission statement might be commendable, the concern was the risk that it might also be a front for criminal activity.

TRA sent the request for information on the NPO's founders and Chairman (6 persons in total), to all financial institutions. The response was provided to the AGO with information obtained only on the Chairman of the NPO. The rest of the individuals did not hold accounts with any of the financial institutions. The NPO continues to operate.

196. Tonga provided no further information in relation to the NPO in the case example above, in particular whether the authorities have conducted further or continuous monitoring on this NPO.

Deprivation of TF assets and instrumentalities

197. There are some gaps in relation to the type of property that can be frozen under section 13 of the CTTOCA. The gaps include freezing funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by a specified entity. Funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons and entities are also not covered (see R.6).

198. To date, no FIs or DNFBPs in Tonga have reported any positive matches against the UN consolidated lists, and no property has been frozen.

199. To date, Tonga has not identified, investigated, prosecuted or confiscated assets in a criminal TF case (see IO.8 and IO.9).

Consistency of measures with overall TF risk profile

200. All authorities and private sectors interviewed took a reactive approach in relation to TFS. Given the low TF risk identified, the team sees opportunities for a stronger TFS framework to be put in place along with increased outreach.

201. The lack of implementation of TFS is not consistent with the requirements of the FATF Standards or Tonga's UN obligations. Notwithstanding, the lack of positive matches against the UN consolidated list by banks and the major remittance company, and lack of property frozen is consistent with the available open source material that suggest Tonga's TF risk is lower.

202. While there is no evidence to suggest the NPO sector in Tonga is at a higher-risk of TF abuse, Tonga has not implemented any targeted measures to prevent TF abuse.

Overall conclusion for Immediate Outcome 10

203. As highlighted in R.6, Tonga has moderate shortcomings in its TFS for terrorism and TF regime with only banks and the major remittance company conducting screening. These FIs have not had positive matches against the UN consolidated list or frozen any funds, consistent with Tonga's TF risk profile. No other FIs and DNFBPs are implementing TFS for TF. While Tonga has undertaken some measures aimed at protecting all NPOs from financial crime abuse these have not been targeted measures to prevent TF abuse of NPOs.

204. **Tonga has a low level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

205. Overall, Tonga's exposure to WMD-related sanction evasion is relatively low for a number of reasons:

- i) There have been no sanctioned entities identified as operating in or moving funds or assets through Tonga.
- ii) The shipping registry is open to Tongan citizens only and includes fishing vessels, inter-island coastal passenger and cargo ferries, certain pleasure crafts and small fishing operators. It may register foreign owned vessels but those vessels must operate within Tongan waters. All registrations in existence at the time the registry was closed in 2002 were automatically cancelled and re-registration was required.
- iii) Tonga has not had any links or trade relationships with Iran or DPRK in the last five years.

Implementation of targeted financial sanctions related to proliferation financing without delay

206. Tonga has not implemented any measures against PF and does not have a legal framework or process in place to implement UNSCRs 1718, 1737 and 2231 (see R.7). There has been no outreach or guidance to reporting entities on the issue of TFS relating to PF. In the event of funds coming into Tonga that are owned or controlled by a designated entity, authorities would not have a legal framework to apply.

207. The Cabinet Committee on Serious Financial Crime is mandated to co-ordinate matters with respect to PF in Tonga however the Committee has not yet taken any steps to actively co-ordinate or consider issues relating to PF. Importantly, some key agencies responsible for

issues relating to PF sanctions evasion, such as the Ports Authority and the Maritime Authority, are not involved in the Cabinet Committee.

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

208. As at the date of the on-site visit (October 2019), no funds or other assets of designated persons/entities had been identified or frozen in Tonga.

209. TRA has not issued any guidance on PF-related sanctions or guidance on the requirement to identify assets and funds held by designated persons and entities. In practice, many of the banks and MVTs would be able to identify a sanctioned person if they sought financial services through their comprehensive sanctions screening software. In the event this occurred however, authorities would have to closely consider the available legal provisions to enable action to be taken. For those without sanctions screening software, it was not evident that any screening was taking place. In mitigation of this, TRA advises that the majority of clients are Tongan clients with local names and that any foreign name would give reason for the RE to further investigate.

210. Customs has confirmed that their clearance systems are linked to PF-related sanctions and consignments from these two jurisdictions will be placed for clearance examination. The intelligence team at Customs is established in order to focus on intelligence-led profiling of passengers, cargo and freight companies. The intelligence team therefore carries out desk-based profiling and physical inspections of cargo and warehouses. However, more broadly, Customs authorities do profile every shipment and examine cargo manifests provided to them, at least four hours prior to port entry. Immigration authorities advised that they had previously received intelligence on PF-related sanctions but that the intelligence was not applicable or relevant to Tonga.

211. The Tongan Ports Authority is responsible for monitoring the movement of vessels through Tonga. The Ports Authority advised that in the event that an actual or suspected vessel connected with DPRK it would notify the Maritime Authority who have connections with the International Maritime Organisation. The Tongan Ports Authority carries out a security assessment of every vessel entering Tongan waters, prior to arrival which includes details of previous ports the ship has moored at. Likewise, the Ministry of Fisheries monitors all vessels passing through Tongan waters.

FIs and DNFBPs' understanding of and compliance with obligations

212. Foreign banks and one foreign remitter, have adopted their parent organisations' PF guidance, have provided awareness to their staff on PF-related sanctions and designations and conduct regular checks (through automated screening processes) against PF-related sanctions. All other FIs and DNFBPs have a very limited understanding of TFS related to PF obligations (noting that Tonga has no legal framework for R.7) and are not screening all transactions against the relevant UNSCRs.

Competent authorities ensuring and monitoring compliance

213. Tonga does not have a legal system in place to require financial institutions and DNFBPs to implement PF-related sanctions. Consequently, supervisors are not monitoring those reporting entities for sanctions screening.

Overall conclusion on Immediate Outcome 11

214. As highlighted in R.7, Tonga has major shortcoming in its TFS for PF regime. While foreign banks and money remitters have adopted their parent organisations' PF processes and are screening transactions, all other FIs and DNFBPs are not conducting screening. No funds or assets have been identified or frozen in Tonga. Tonga is not monitoring and ensuring compliance with TFS for PF.

215. **Tonga has a low level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key findings

- 1) The requirements of the MLPC Regulations are not enforceable.
- 2) Notwithstanding their unenforceability, the Regulations cover only 'financial institutions' and not DNFBPs.
- 3) The scope of the Regulations needs to be expanded to cover all 'regulated institutions' as defined in the Regulations. That term is not, however, used in individual regulation-sections. Instead the regulations apply only to 'financial institutions'- a separately defined term in the MLPCA.
- 4) In addition, some significant gaps in preventive measures still remain in relation to CDD, PEPs and wire transfers and there is no requirement for regulated institutions to undertake risk assessments, which contributes to a generally low understanding of risks.
- 5) There are technical deficiencies in risk mitigating measures including CDD. Foreign banks and larger MVTs to some extent implement head office requirements but there is no evidence that DNFBPs apply any risk mitigating or CDD measures.
- 6) The understanding of AML/CFT obligations and ML/TF risk varies from adequate to limited among sectors. The banks and one large MVTs demonstrated a greater understanding, with other MVTs having a lesser understanding. DNFBPs have no understanding of either ML/TF risk or their AML/CFT obligations.
- 7) The major banks demonstrated a good understanding of their obligation to identify beneficial ownership information. Other FIs and DNFBPs did not demonstrate the same level of understanding.
- 8) Banks apply measures to manage their risks associated with correspondent banking, including seeking senior management approval when entering a relationship and undertaking due diligence.
- 9) Banks were aware of the requirement to screen customers against UNSCR lists and PEP lists (despite the absence of a legal obligation to screen against domestic PEPs). The major banks have screening software to assist in screening. Other FIs and DNFBPs did not demonstrate an understanding of their obligations nor did they have measures in place to address those obligations.
- 10) Banks and one MVTs provider submit approximately 30 STRs per year, with one bank responsible for the majority of these. No DNFBPs have submitted STRs. This appears to be due to a lack of understanding of this and other requirements.

Recommended Actions

- a) Tonga should develop and implement enforceable requirements for all reporting entities to undertake ML/TF risk assessments.
- b) Tonga should immediately make the MLPC Regulations enforceable and include a range of remedies and penalties for any breaches.

- c) The scope of the Regulations needs to be expanded to cover all DNFBPs (currently the regulations apply only to ‘financial institutions’).
- d) Tonga should also pursue amendments to the full range of deficient preventive measures, prioritising R.10 (CDD), R.12 (PEPs) and R.16 (wire transfers).
- e) More outreach including one-on-one engagement, industry forums and written guidance is required across all regulated sectors and related industry associations involving:
- i. the NRA including updates and how it applies to the private sector;
 - ii. AML/CFT obligations;
 - iii. the ongoing sharing of contemporary ML/TF risks faced by Tonga that would impact FIs and DNFBPs and recommending actions to mitigate those risks.
 - iv. STR reporting including related indicators.
- f) Industry groups, associations and self-regulatory bodies should be encouraged by Tongan authorities to undertake AML/CFT-related outreach activity to their members to raise awareness of the importance of appropriate responses to ML and TF risks in their sectors and to raise awareness of their AML/CFT obligations.
- g) Development of sector specific guidance for all REs on ML/TF risks and AML/CFT obligations including application of enhanced measures should occur and consideration be made of the stages both FIs and DNFBPs are at with their understanding of risk and obligations.
- h) Regular follow-up assessment activity should occur to ensure FIs and DNFBPS are adopting measures in line with outreach and guidance.

216. 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.

Immediate Outcome 4 (Preventive Measures)

Weighting of Sectors

217. Based on their relative importance and Tonga’s risks, context and materiality, implementation issues have been weighted as follows:

- most heavily for the banking sector and MVTs;
- heavily for lawyers, accountants and real estate agents (assessed as high risk in the NRA); and
- moderately heavy for credit unions and non-bank deposit takers (assessed as low risk in the NRA).

218. The conclusions under IO.4 are based on interviews with a range of private sector representatives, statistics and case examples, as well as input from the supervisors, including on their findings during supervisory activities.

*Understanding ML/TF risks and AML/CFT obligations**Risk understanding*

219. The banking sector demonstrated some awareness of their risks and the AML/CFT requirements imposed on them as well as the purpose of preventive measures. But meetings with entities across the private sector revealed serious concerns about the levels of understanding of risks and the implementation of preventive measures.

220. The level of understanding of risk within the various sectors varied significantly among FIs and DNFBPs. There is no legislative requirement for FIs and DNFBPs to undertake an assessment of the ML/TF risk their business faces, which impacts on understanding of risks.

221. Banks: Risk understanding among the banks was the highest on a relative basis. But banks (both foreign and domestic) were unable to clearly differentiate customer risk, product risk and risk related to delivery channels within their institutions. Banks were asked if they agreed with the NRA assessment of risk in the banking sector ('high risk'). Some banks indicated that they did not agree with this assessment. While TRA disseminated the NRA to the Banking Association, TRA has not utilised industry associations and self-regulatory bodies to assist with dissemination and ongoing discussion of ML/TF risk issues.

222. Some banks advised that they had undertaken assessments of risk in line with head office requirements (ranging between every six months to every two years). Some of the banks discussed providing formal training on ML risks including using examples of previous suspicious transactions to assist in future identification. Some banks advised of risk rating their customers and training staff on the requirements to understand client risks.

223. MVTS: 90 per cent of remittances take place through one remitter. There was a lack of risk understanding in this sector among remitters and one (not the major remitter) indicated that they were not aware of the NRA assessment concluding that their sector was rated high risk. MVTS staff from the major remitter said they undertake online AML/CFT training and there are weekly discussions of AML/CFT issues. They advised of systems that are alerted to higher than expected transactions occurring by a given customer and the risks associated with the use of cash versus no-cash. They also advised of the frequent refusal of business to customers due to risk, including when enhanced measures are applied in regard to transactions associated with countries that are known for scams. But beyond this, to a more informed institution-specific understanding of inherent, systemic and residual risk, an in-depth understanding unique to their own sector was lacking amongst the remitters generally.

224. DNFBPs: Risk understanding is very low to non-existent among all the DNFBPs. None of the DNFBPs spoken to (lawyers, accountants, DPMS and the sole real estate agent) had undertaken an internal institutional ML/TF risk assessment and all were unfamiliar with the concept or purpose of such an assessment. The NRA indicated that in the real estate sector that there are risks associated with unauthorised sub-leasing of registered allotments to foreign nationals in cash, however the real estate agent spoken to was unaware of this risk.

225. Life Insurance companies: Tonga did not provide information that established the level of understanding within the sector. The assessment team did not speak with any of the life insurance companies in Tonga despite a request to speak with at least one. The assessment team is not satisfied, therefore, that life insurance companies understand their ML and TF risks.

226. Non-bank non-deposit taking lenders: These entities were not interviewed during the on-site visit.

Non-enforceability of the MLPC Regulations

227. As noted in the TC Annex, the MLPC Regulations contain measures for all reporting entities in Tonga including CDD, record-keeping, STRs, internal procedures and controls, and others. However, those Regulations are not enforceable as there are no remedies or penalties provided in the Regulations or in MLPCA for their breach.

228. Moreover, while DNFBP sectors are covered in the MLPCA, due to a distinction drawn in the MLPC Regulations, even if those Regulations were enforceable, the requirements set out apply only to financial institutions. More specifically, the term 'regulated institution' is defined in the Regulation to cover financial institutions and cash dealers (the latter of which includes all DNFBPs), but that term is not used in the Regulations. Instead, the Regulations provide at each section that they apply to 'financial institutions' defined in the MLPCA as covering everything but cash dealers.

Understanding AML/CFT obligations

229. There has been very little outreach to DNFBPs by authorities on AML/CFT obligations. Preventive measures are contained in the MLPCA and the unenforceable MLPC Regulations:

- MLPCA: both FIs and DNFBPs are required to comply with basic AML/CFT obligations (i.e. carrying out CDD on their clients/customers, keeping of customer records, reporting of possible suspicious transactions etc.) under the MLPCA. However, the Act is very general in nature and leaves detailed measures to the Regulations;
- MLPC Regulations: as noted above the measures in the Regulations are not enforceable and in any event, there is very little understanding among non-bank reporting entities of the obligations contained in the Act and in the (unenforceable) Regulations.

230. Banks: banks demonstrated understanding of their AML/CFT obligations due mainly to obligations required of them by foreign head offices and many went beyond domestic requirements. Although some banks advised that they had undertaken assessments of risk in line with head office requirements, it was not evident how the banks had adjusted approaches to the application of preventive measures in line with those findings of risk.

231. Other FIs: To support compliance with AML/CFT obligations, smaller MVTS rely primarily on the AML/CFT Guideline issued by TRA in 2015 which provides a summary of AML/CFT requirements.

232. MVTS: Money remitters also rely primarily on the AML/CFT Guideline. The major MVTS provider had a good understanding of obligations. This MVTS provider also appoints an AML/CFT officer and evidenced support from the regional head office in New Zealand as well as their US head office, including screening and monitoring of customers. Smaller FIs had limited-to-no understanding of AML/CFT obligations.

233. DNFBPs: All DNFBPs spoken to during the on-site visit (lawyers, accountants and the one real estate agent) had very low-to-no understanding of their AML/CFT obligations and there has been very little outreach to DNFBPs on these issues. DNFBPs were not aware of the 2015 AML/CFT Guideline.

234. Life Insurance companies: Tonga did not provide information that established the level of understanding within the life insurance sector. The assessment was unable to meet with life insurance representatives. The assessment team therefore formed the view that these entities do not understand their risk.

Application of Risk Mitigation Measures

235. A significant deficiency noted above is the non-enforceability of the MLPC Regulations which detrimentally affects the application of risk-based measures in Tonga across most sectors. For large foreign FIs this has a more limited impact on effectiveness as these FIs implement parent jurisdiction AML/CFT requirements, but for smaller local FIs and all DNFBPs this significantly impacts on effective application of risk mitigation measures.

Financial Sector

236. While technical compliance deficiencies exist in Tonga with respect to the application of risk mitigation measures, banks and larger MVTs nevertheless apply some measures such as screening and applying enhanced measures for domestic PEPs, collecting beneficial ownership information for wire transfers and seeking senior management approval for new correspondent banking relationships. FIs referred to examples of refusing business in order to reduce their ML/TF risk, including in situations where they were unable to obtain details of beneficial owners.

237. The establishment of these risk-mitigating measures appears to be driven largely by head office policies and procedures in overseas jurisdictions as opposed to local laws and regulations. This was evident in the case of larger FIs who applied measures such as verifying more than one identification document to overcome potential identification discrepancy issues with Tongan drivers licences, establishing the source of funds for some transactions and applying greater scrutiny over some customers, for example by reviewing AML/CFT policies of MVTs prior to opening accounts for them.

238. Some smaller FIs with no foreign parent policies implemented and applied measures to the lower end of what is required, for example CDD and record keeping. The understanding and implementation of enhanced customer due diligence and STR reporting were examples of measures not being met.

DNFBPs

239. There is no evidence of implementation of AML/CFT preventive measures in any of the DNFBP sectors. Separately during the on-site visit DNFBPs did not demonstrate implementation of any risk mitigating measures.

Application of enhanced or specific CDD and record keeping requirements

240. In practice, the standard CDD measures appear to be being carried out by FIs which was confirmed by supervisors. Prudential supervisors noted that when undertaking inspections, all relevant records can be obtained. They also indicated that they would consistently receive accurate and timely CDD records from FIs as part of the controls around NRBT approval for certain threshold international transfers. Spot checks undertaken by TRA also confirmed that adequate CDD information was retained. Hence, record keeping requirements appear to be being implemented but for reasons other than the perceived enforceability of the MLPC Regulations.

241. FIs demonstrated an understanding of the need to collect beneficial ownership information for customers that are legal persons, with some instances of refusing customer onboarding when beneficial information could not be obtained. One FI indicated that they undertake ongoing monitoring of beneficial ownership information.

Table 5.1: Prudential team on-site supervision of CDD measures

Year	Banks	MVTS
2015	Nil	8
2016	1	8
2017	1	12
2018	Nil	12
2019	1	12

242. DNFBPs that met with the assessment team did not demonstrate application of CDD measures.

Application of EDD measures

Financial Sector

243. The MLPCA and MLPC Regulations require the application of EDD for customers likely to pose a higher risk of ML or TF. Part B to the Schedule of the MLPC Regulations gives further guidance as to what relevant factors a reporting entity may take into consideration when determining if a customer is high risk, however, as previously noted, those Regulations are not enforceable. The AML/CFT Guidelines of 2015 provide some guidance on the steps to be taken and set out examples of EDD procedures. The AML/CFT Guidelines also recommend that reporting institutions develop graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk customers.

244. Some of the FIs (both local and foreign) raised an issue relating to inaccuracies of birth dates on Tongan driver's licences and implemented enhanced measures to overcome this – for example increasing the required minimum of identification documents for verification to two documents, such as drivers licence and national ID document. However, this practice did not apply across the board with entities requiring different levels of identification. For example, one of the banks required only one identification document which could include a driver's licence and therefore may lead to discrepancies in CDD verification.

PEPs

245. FIs rely on lists of PEPs obtained from a variety of sources to screen and carry out EDD. Banks in Tonga do not tend to have local accounts with foreign PEPs. Despite the legal definition of PEPs in the MLPCA, which excludes domestic PEPs, larger FIs have screened for domestic PEPs and undertake enhanced due diligence procedures on the full spectrum of PEP types. Of those FIs applying measures with respect to PEPs, many noted the need to keep the list updated as they change. FIs also noted that due to Tonga's small population, changes become widely known relatively quickly and therefore banks are more readily able to identify PEPs. Others noted that they monitor media reports for adverse reporting to guide further measures and that they meet with PEPs in person to discuss their financial position. Smaller FIs do not take any measures with respect to PEPs.

246. The application of measures in relation to PEPs was demonstrated during the investigation of illegal passports in Tonga leading to the arrest of a senior government official. As a result of the investigation the TP provided a list of potential PEPs involved in the matter to TRA for further investigation. TRA notified all banks to provide them with a list of their PEP-clients and from those lists, TRA specified a sample for whom they would undertake further file inspections. In some instances, TRA also inspected some family member accounts of PEPs. The exercise demonstrated to supervisors that banks were taking adequate measures with respect to the monitoring of PEP accounts.

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Correspondent Banking

247. The three foreign banks rely on head office correspondent banking policies and processes to ensure adequate standards of due diligence is undertaken. The one local bank (who has six correspondent banking relationships with large established international and regional banks) demonstrated some measures to mitigate the risks associated with correspondent banking, including understanding their business and reputation from publically available sources and ensuring senior management approval. Although they had only established relationships with larger, more reputable banking institutions, they were aware of the risks and measures associated with avoiding any direct or indirect links with shell banks. Despite the unenforceability of the MLPC Regulations (including the Regulations on correspondent banking) all banks indicated during the on-site visit that they secure senior management approval for correspondent banking relationships before entering into those relationships.

New Products/Technology

248. While domestic laws do not require assessments of risk for new products or technologies, some of the larger FIs have undertaken assessments of ML/TF risk prior to introducing new products or technologies.

Wire Transfers

249. During meetings with reporting entities, all FIs demonstrated an understanding of the required originator and beneficiary information with certain of this information provided to TRA in the form of reporting of international fund transfers. Financial institutions do not apply any *de minimis* threshold to cross-border wire transfers. The MLPC Regulations which contain the wire transfer rules are not enforceable.

Targeted Financial Sanctions related to TF

250. The banks and larger MVTS are screening for targeted financial sanctions and although there had been no matches they were aware of policies and processes in how to deal with any matches of possible sanctioned entities.

Higher-risk countries identified by FATF

251. Again noting no domestic legal requirement to implement measures with respect to higher-risk countries identified by the FATF, the banks and larger MVTS were aware of countries listed by the FATF as high risk. However this was not evident across all reporting entities. There was also some understanding of other high risk countries, for example risks linked to tax havens.

DNFBPs

252. None of the DNFBPs undertake enhanced or specific measures due primarily to their lack of understanding of AML/CFT obligations and technical deficiencies that do not include DNFBPs in the MLPC Regulations (and more broadly the unenforceability of those Regulations).

Reporting obligations and tipping off

253. Between 20 and 30 STRs are submitted per year by the four banks and one MVTs provider. Overall, the number of STRs submitted is low, with some larger FIs submitting very few STRs intermittently. No STR has been a catalyst for a criminal investigation or forfeiture of proceeds of crime action. Of the STRs submitted, none obviously or apparently relate to Tonga's ML/TF risk profile as identified in the NRA. There have been no STRs related to TF which is consistent with Tonga's TF risk.

254. No DNFBPs have submitted STRs. No effective outreach had been conducted on AML/CFT reporting obligations by relevant authorities to DNFBPs. Lack of understanding of this requirement as well as ML/TF typologies and risk indicators contributes to the lack of STR reporting by DNFBPs.

255. There is limited understanding of obligations relating to tipping off and how to apply measures to prevent it from occurring.

Internal controls and legal/regulatory requirements impeding implementation

256. Larger FIs generally have better AML/CFT compliance procedures due to overseas head office requirements which appear to meet, and in some cases go beyond, Tongan requirements. Some FIs with no offshore head office also appeared to meet and go beyond local requirements. Smaller FIs and all DNFBPs have little to no understanding of the obligation for internal controls. The unenforceable MLPC Regulations require FIs to adopt and implement policies and practices to deter and prevent ML/TF, however this does not extend to DNFBPs.

257. In one instance, the application of AML/CFT preventive measures by the overseas head office impeded the ability of local agents to adequately report concerns to TRA. In particular, in the case of one money remitter in Tonga, the AML/CFT screening programmes were dealt with entirely by head office meaning that key information was not able to be obtained by the Tongan agent and therefore passed on to TRA.

258. Large FIs provide staff with internal training designed to strengthen internal AML/CFT controls and procedures. There was no evidence of internal training by DNFBPs. TRA does however provide bi-annual training to all reporting entities, and training upon request to any reporting entity.

259. FIs and DNFBPs did not identify any issues with legal or legislative requirements that impede implementation of FATF requirements.

Overall conclusions on Immediate Outcome 4

260. The banking sector demonstrated some awareness of their risks and AML/CFT obligations. Overall entities across the private sector have limited understanding of risks and the implementation of preventive measures. Of significance is the unenforceability of the MLPC Regulations. This has a more limited impact on effectiveness for larger foreign FIs as these FIs

implement parent jurisdiction AML/CFT requirements, but significantly impacts application of effective risk mitigation measures for smaller local FIs and all DNFBPs. Standard CDD measures and record keeping requirements are largely implemented. The number of STRs submitted is low, with some larger FIs submitting very few STRs intermittently and no STRs filed by DNFBPs. There has been no outreach by authorities to DNFBPs on AML/CFT reporting obligations. The unenforceable MLPC Regulations require FIs to adopt and implement policies and practices to deter and prevent ML/TF, however this does not extend to DNFBPs.

261. **Tonga has a low level of effectiveness for IO.4.**

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CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key findings

- 1) Tonga has some controls in place to prevent criminals and their associates from entering the market. However, there are deficiencies in the scope as money lenders and credit unions are not required to be licensed, and accountants, real estate agents and DPMS are not subject to market entry requirements.
- 2) Life insurance companies are not required to be licenced and supervised for any purpose.
- 3) The supervisors have some understanding of Tonga's overall ML/TF risks, and some understanding of the ML/TF risks in the financial sector, but their understanding of the risks in the various DNFBP sectors and in the life insurance sector is limited.
- 4) TRA is not adequately resourced to undertake AML/CFT supervision in Tonga. No DNFBPs have been the subject of any type of supervisory activity. The application of sanctions for non-compliance is limited.
- 5) The AML/CFT Guideline, although it needs updating, provides a framework for AML/CFT obligations for FIs and DNFBPs.
- 6) There has been little outreach to FIs, and no effective outreach to DNFBPs, on AML/CFT obligations.

Recommended Actions

- a) Tonga should continue to enhance its licensing/registration regimes to ensure there are fit and proper controls for all FI and DNFBPs.
- b) Tonga should further develop, implement and enforce a comprehensive AML/CFT regulatory and supervisory framework for all FIs and DNFBPs including ensuring the enforceability of the MLPC Regulations.
- c) Tonga should continue to develop and enhance sectoral risk assessments for the financial and non-financial sectors and increase engagement with DNFBPs.
- d) TRA needs more resources to undertake AML/CFT supervision to undertake outreach (for example, the provision of ML/TF typologies and risk indicators) and supervisory activity to enhance FIs and DNFBPs understanding of AML/CFT obligations. If external recruitment is not possible, authorities should draw on other resources including from the prudential supervision team within the NRBT to assist with supervision. Reliance on industry associations and self-regulatory bodies for outreach work could also occur.
- e) TRA should impose effective, proportionate and dissuasive sanctions for AML/CFT breaches.
- f) Tonga should update and develop the 2015 AML/CFT Guidelines and increase outreach to FIs and DNFBPs regarding their AML/CFT obligations and ML/TF risks, including preventive measures.

262. 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, R.34 and R.35.

Immediate Outcome 3 (Supervision)

263. When assessing the effectiveness of preventive measures and AML/CFT supervision, the assessment team gave the highest importance to banks, followed by money transfer services and currency exchange businesses and then credit unions, money lenders and life insurers. Among DNFBPs, accountants and lawyers were given particular importance. All these sectors warrant close consideration as DNFBPs are not supervised for AML/CFT compliance in Tonga, and currently there is only limited supervision of FIs.

264. TRA is responsible for the AML/CFT supervision of FIs and DNFBPs and currently dedicates the equivalent of less than one full time equivalent staff member to undertaking this function. The NRBT is responsible for market entry and prudential supervision but not for all financial institutions.

265. The lack of TRA resources has meant that previously used AML/CFT supervisory methods such as comprehensive and targeted on-site and offsite assessments and outreach activity for FIs has reduced. The most recent comprehensive AML/CFT on-site inspection occurred on a large FI in 2013, the last on-site was undertaken in 2019 and the last sanction imposed by TRA was a warning letter issued to a bank in 2017. Since then, supervisory activity has been limited to quarterly spot checks on MVTs in regards to CDD and reporting requirements. No AML/CFT supervisory activity has been undertaken for any DNFBPs or life insurance companies.

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

Financial Institutions

266. Tonga has a market entry licensing framework for all FIs, except life insurance companies, credit unions and money lenders all of whom are currently not required to be licensed. Market entry and licensing of FIs is undertaken by the NRBT Prudential Supervision team who are resourced to carry out this function. A framework for ongoing monitoring exists. Some license applications have been refused and others have been revoked. Credit unions are registered with the MTED however no fit and proper checks are carried out.

267. The licensing process for FIs involves completion of a detailed application form requiring the names and contact details and identification information of major shareholders and senior management and an attestation that they have not been involved in a lawsuit, declared bankrupt and convicted of any criminal offences. Required information also includes an explanation of relevant industry experience and the purpose of undertaking the intended business, other businesses operated, banking references, funds source and destination countries and their estimated total as well as transaction limits. Any application must also be accompanied by a feasibility study and business plan.

268. Overseas applications involve the NRBT making contact with the home country to ascertain whether it is appropriate to grant a licence. The NRBT has relied on Tongan based

embassies to obtain certain vetting information to assist with decisions relating to license applications that include overseas applicants.

269. To assist applicants and licensees, in 2014 the NRBT published a Prudential Statement that outlines the fit and proper criteria, including additional criteria for significant shareholders and directors, the information that must be provided to the NRBT and the timeframes to provide that information. Compliance with the Prudential Statement is enforceable through section 33 of the Financial Institutions Act.

270. FIs are obliged to notify the NRBT of any changes to the licensing application information. In addition, annual compliance reporting is required by licensees which is a further opportunity for the NRBT to be made aware of changes.

271. Activities have been undertaken by authorities to detect any unlicensed activity by MVTs. In 2015, the NRBT undertook a 'mystery shopper' exercise to identify any unlicensed businesses offering services that require licensing as a MVTs. Those that appeared to offer such services were issued with a warning letter.

Case example 6.1: 2015 Mystery shopper exercise

In 2015, the NRBT undertook a mystery shopper exercise to identify any illegal (i.e. unlicensed) MVTs operators. Businesses were identified through receiving information from the general public and community that certain small businesses were exchanging currencies. The exercise then involved attendance at the businesses identified and asking for an exchange of cash. The businesses identified during the exercise received a formal letter from the NRBT warning them that they needed to obtain a license to provide such services.

Life Insurance

272. There are at least two life insurance companies in Tonga: Family Assurance Tonga Ltd., which is a locally-owned company and offers a range of products including single-premium life insurance policies and Capital Life, a subsidiary of a PNG company Capital Group. At the time of the on-site visit, Tonga was unaware of the number and nature of life insurance companies in the country. This is partly a function of the fact that life insurance companies are not required to be licenced or supervised, and the TRA (and other authorities) have not been monitoring the business environment in this respect. There may be other life insurance companies operating in Tonga without knowledge of the authorities.

DNFBPs

273. Tonga also has a good market entry framework for some DNFBPs, with the exception of accountants, DPMS and real estate agents that do not have any such requirements.

274. There are 78 lawyers registered in Tonga. Of these, 47 are in government ministries and 24 are private sector resident lawyers. The remaining 7 lawyers are overseas residents who appear in Tongan courts from time to time. There are no notaries in Tonga. The Law Society of Tonga is the self-regulating body for lawyers. Sections 15 and 16 of the Law Practitioners Act 2016 (revised) gives the Law Society its functions and powers. To practice law in Tonga, lawyers are admitted to practice by application to the Supreme Court of Tonga. To be registered on the

Roll, the Lord Chief Justice must be satisfied as to the person's character and suitability to be a law practitioner. Lawyers must also secure a valid practising certificate after admission.

275. There are eleven registered accountants in Tonga. Accountants do not have a self-regulating body or a legislative framework that regulates their practice. Accountants are registered with MTED and operate in accordance with the provisions of the Company Act and their business license. The Ministry of Revenue approves any tax agent status which requires a criminal history check, bankruptcy check, proof of qualifications and experience in the area. Non-Tongans must have a valid work permit and visa as part of the market entry requirements. The real estate sector is very small - there are four real estate agents in Tonga, with only one currently active. The real estate business is focused mainly on rent leases as land selling is prohibited in Tonga. The real estate sector does not have a self-regulating body or a legislative framework that regulates its practice and is therefore not subject to market entry requirements. Real estate agents are registered with MTED and operate in accordance with the provisions of the Company Act and their business licence. Prior to commencing a business activity, real estate agents must obtain a business license from MTED.

276. DPMS must be registered with MTED and operate in accordance with the provisions of the Company Act and their business license. There are only two DPMS in Tonga who deal mainly with scrap metals and jewellery. The DPMS sector does not have a self-regulating body or legislative framework to regulate the business for AML/CFT or other professional conduct and is therefore not subject to market entry requirements.

Supervisors' understanding and identification of ML/TF risks

277. The NRBT and TRA have some understanding of the ML/TF risks in the financial sector as a result of the NRA and a sectoral risk assessment undertaken in April 2019 that identifies the level of risk of each industry. The findings of this assessment are to be used as a measure to guide the TRA in frequency and intensity of supervisory activity. Findings of supervisory activity are then intended to be used to further enhance this risk assessment by identifying the level of ML/TF risk at the individual entity level.

278. TRA's understanding of ML/TF risks in the DNFBP sector appears to be limited, which is not surprising given their low level of engagement with this sector.

279. As for the life insurance sector, although a separate 'sector assessment' indicates that the risk is 'medium-high' the 'AML/CFT Risk-Based Supervision Workbook' published in the same month (May 2019) by the NRBT indicates that the risk is 'medium.' There is no explanation in either document for the differing assessments in this regard.

280. It is unclear whether the sector risk assessment was discussed with insurance companies. The risks in this sector are not well understood, particularly in light of the fact that single-premium life insurance policies can be issued.

Risk-based supervision of compliance with AML/CFT requirements

281. The 2019 sectoral risk assessment identifies banks and MVTS as having the largest exposure to ML/TF risk. TRA has an intended schedule of supervisory activity that focusses more frequent and intense activities on these higher risk sectors. However, this schedule is yet to be implemented and given current resourcing it is not clear when it will commence and whether it can be achieved.

282. The lack of TRA resources has resulted in an absence of any effective risk-based AML/CFT supervision of FIs and no on-site or offsite supervision of DNFBPs or life insurance companies. This lack of activity has limited the quantity of STR reporting to a small portion of the regulated sector. The following table shows the volume of supervisory activity that has been undertaken by TRA:

Table 6.1: Supervisory Activity Undertaken by TRA

Supervisory activity	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Training	0	3	3	5	2	0
On-site examination	2	2	8	12	12	2
Targeted on-site examination	5	3	1	0	1	5
Quarterly spot checks	4	4	4	4	4	4

Figure 6.1: Details of Tonga's AML/CFT on-site inspections

Full comprehensive on-site assessment

In 2013 TRA undertook a full comprehensive on-site of one of the larger banks. The process involved the issuing of a letter of notification advising of TRA's intention and listing the information and documents the FI was required to produce to TRA. In preparation for the on-site assessment TRA assessed the information and documents received and then followed up with a list of customer files that they intended inspecting during the on-site.

The on-site assessment involved verification of the provided information and documents (which consisted mainly of policies), checking customer files to confirm required information was collected and verified, interviewing of key staff to understand their role and knowledge with AML/CFT and live demonstrations of customer onboarding and facilitation of various transactions. TRA then undertakes a closing meeting outlining preliminary findings and follows up with its written findings.

For this particular on-site assessment, TRA advised of concerns in regard to policies not being tailored for the Tongan risk environment, inadequate staff training, shortcomings with CDD requirements and monitoring and record keeping (relating to records destroyed during the 2006 civil riots). The bank is required to make a response to these findings and remediation is to follow with oversight by TRA.

Spot checks

The NRBT undertakes regular on-site and offsite spot checks on MVTs providers which focus on obligations. These checks typically involve checking that all necessary reports have been provided to TRA, some CDD checks, confirmation of licensing information provided by them and checking that they are maintaining the correct licensing information with the NRBT, for example advising of a change in CEO or senior management.

Spot checks involve prudential, supervisory and at times research staff meeting with the MVTs. The spot checks are less formal and often involve the NRBT and TRA staff providing guidance in response to queries made by the MVTs. A formal report is not provided by the NRBT or TRA and instead any issues identified are communicated verbally during the visit. Tongan authorities advised that they find these checks more efficient than comprehensive on-site assessments and they result in more frequent engagement with the MVTs.

283. Tongan authorities were unable to explain to the assessment team what is meant by 'spot checks' (in this case example) and whether they are thematic in nature. No detail was forthcoming in this respect.

Remedial actions and effective, proportionate, and dissuasive sanctions

284. Remedial actions available to supervisory authorities include a range of sanctions to impose for failures to comply with AML/CFT requirements, including issuing warning letters, replacing or restricting the powers of those that control a business and banning individuals from employment. However sanctions do not extend to any breaches of the MLPC Regulations. The MLPCA also allows for the suspension, restriction and withdrawal of a financial institution's licence. There are no provisions that allow for the issuing of infringement notices, pecuniary penalties and only limited criminal sanctions for breaches of MLPCA requirements. Section 14(a) of the MLPCA sets out a penalty of a fine up to \$150 000 (upon conviction) for failing to report a STR. Section 18A sets out a provision for any obligations contained in Part 2 of the MLPCA for which no penalty is specified, which includes a sanction of up to 2 years imprisonment and/or a fine up to \$20 000 (US \$8 600) for an individual or \$100 000 (US \$43 000) for a body corporate.

285. With the exception of some licensing revocations, no use of sanctions for identified non-compliance has occurred since the issuing of a warning letter to a bank in 2017 in regard to its failure to provide AML/CFT training to staff.

286. No sanctions have ever been applied to DNFBPs or insurance companies for non-compliance.

287. Overall, Tonga has not issued effective, proportionate or dissuasive sanctions, which is likely due to the lack of AML/CFT supervision conducted. Further, the limitations of any available penalties for breaches of MLPC Regulations impacts Tonga's ability to apply sanctions.

Impact of supervisory actions on compliance

288. As there are very low levels of supervisory activity and sanctions, the impact of supervisory actions on compliance is negligible. More impact was evidenced by the reporting entity's head office standards and expectations and pressures from correspondent banking relationships. The lack of impact is evidenced by a low and relatively dormant volume of STR reporting over the past five years.

289. Neither DNFBPs nor life insurance companies have had AML/CFT supervision.

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

290. There has been limited outreach to FIs, with some entities referring to training undertaken by TRA on AML/CFT and industry meetings that occurred until 2017.

291. The limited outreach and supervisory activity undertaken by TRA to FIs has resulted in some understanding of AML/CFT obligations, however there is very low understanding of ML/TF risk by FIs.

292. No AML/CFT outreach has been conducted with DNFBPs or life insurance companies on their AML/CFT obligations. A very limited amount of outreach was undertaken in 2015 on the NRA where some DNFBPs were consulted on ML/TF risk.

293. While the 2015 AML/CFT Guideline is a constructive development and provides a framework of the AML/CFT requirements for FIs and DNFBPs, there are limitations with the Guidance (noted in the TC Annex) and it requires updating.

Overall conclusion on Immediate Outcome 3

294. Market entry controls in the FI and DNFBP sectors are extant, with the exception of the life insurance sector, credit unions and money lenders. There are some examples where authorities have refused and revoked licenses for FIs but the lack of licencing in the life insurance sector and the offering of high risk products is a concern.

295. While a risk-based framework has been established that focusses resources on higher risk businesses, current AML/CFT supervisory resources are not sufficient to implement it. Prior to the development of this framework, supervisory activity while minimal, focussed on the higher risk entities - banks and MVTS. Given that no risk-based AML/CFT supervision has occurred, there is little positive impact on reporting entities, no effective, proportionate and dissuasive sanctions have been issued and reporting entities have outdated guidance as guidelines.

296. **Tonga has a low level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key findings

- 1) Tonga has not identified and assessed the ML/TF risks associated with all types of legal persons. Neither has Tonga identified and assessed the ML and TF risks associated with legal arrangements including domestic and foreign trusts.
- 2) Tonga's Companies Registrar only keeps basic information on companies. Information on beneficial ownership is not required to be kept by companies nor reported to the Companies Registrar.
- 3) Risks posed by bearer share and nominee shareholders/directors for companies are not mitigated by any additional measures or requirements.
- 4) There is no information on how many and what types of trusts operate in Tonga.
- 5) There are no measures in place to ensure that trusts are sufficiently transparent to prevent them from being misused for criminal purposes.
- 6) While the legal framework is in place to provide for proportionate and dissuasive sanctions against non-compliance of the information requirements, the registrar is not equipped with sufficient resources for verifying the information and implementation of the requirements, and no enforcement actions were taken in certain non-compliance cases.

Recommended Actions

Tonga should:

- a) Undertake a comprehensive risk assessment of the risks posed by all types of legal persons and legal arrangements, including foreign trusts to identify where the risks are and to develop policy to address those risks. Tonga should consult private sector entities, including FIs and gatekeepers, on the landscape of foreign and domestic trusts in Tonga.
- b) Conduct outreach to the private sector to assist their understanding of the operation of, and risk associated with, legal persons and legal arrangements.
- c) Require legal persons and trustees of legal arrangements to maintain adequate, accurate and timely beneficial ownership information of those natural persons who ultimately own or control those structures.
- d) Resource the Companies Registrar's office with sufficient capacity to verify the information on basic ownership filed and carry out enforcement action against non-compliance.
- e) Implement appropriate measures to ensure that trustees obtain and hold the full range of information required by R.25.1.
- f) Implement measures to mitigate the risks posed by bearer shares and nominee directors/shareholders.

297. 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.24-25.¹³

Immediate Outcome 5 (Legal Persons and Arrangements)*Public availability of information on the creation and types of legal persons and arrangements*

298. Information on the creation and types of legal persons, including companies (local and foreign), incorporated societies and co-operative societies is publicly available in Tonga. However, no information relating to the creation and types of trusts (foreign and domestic) and other legal arrangements, if any, is available to the public.

299. At, the time of the on-site visit there were:

- a) 638 companies incorporated in Tonga, including:
 - 605 local companies;
 - 33 foreign companies;
- b) 797 incorporated societies; and
- c) 35 co-operative societies.

300. Tonga has not provided information on the number of domestic or foreign trusts settled or operating in Tonga. In addition, while trustees must pay tax on income generated from property held in trust, no information was provided by authorities on the number of trusts that have filed income tax returns. Meetings with private sector entities indicated that foreign trusts have opened bank accounts in Tonga.

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

301. According to the 2019 NRA, companies are rated as high risk of ML and TF. Incorporated societies and co-operative societies were not separately assessed, notwithstanding that there is a comment in the NRA which states that 'not-for-profit organisations and societies' are rated low risk. The NRA does not differentiate between incorporated societies and co-operative societies (despite separate legislative regimes). Also it is not clear what, if any, risk relates to foreign companies (the NRA refers generally to 'companies').

302. There has been little analysis on qualitative and quantitative data to enable a comprehensive understanding of the potential risks associated with the misuse of companies.

303. In discussion with the private sector, little understanding was displayed in relation to ML and TF risks relating to different types of legal persons. Banks indicated that they were 'vigilant' towards the risks associated with shell companies (no apparent business purpose and little or no issued share capital) and have refused to open accounts for some legal persons that appeared to be shell companies. Beyond that, banks were not familiar with the risk posed, more generally, by the four main types of legal persons in Tonga. Apart from banks, other types of financial institutions (e.g. MVTs) and DNFBPs (including lawyers) displayed virtually no understanding of ML and TF risks relating to legal persons in Tonga.

Mitigating measures to prevent the misuse of legal persons and arrangements

304. Nominee shareholders and nominee directors, as well as bearer shares and bearer share warrants are not prohibited and there are no mitigating measures in Tonga, legislative or otherwise, to prevent their misuse and exploitation for money laundering and terrorist financing. The risks associated with bearer shares and bearer share warrants are however mitigated to

¹³ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

some extent by circumstances. The Companies Registrar observed that bearer shares and bearer share warrants are rarely, if ever, used in Tonga.

305. Although there is no requirement to use service agents, such as lawyers or accountants, in the incorporation or secretarial management of the companies or trusts in Tonga, professional lawyers and accountants manage a small number of companies and trusts ancillary to their primary professional services. The lack of compliance with AML/CFT requirements and the lack of understanding of ML and TF risk within DNFBP sectors means that any risk that might be mitigated by the use of professionals is diminished by their lack of risk-understanding and the lack of enforceable AML/CFT regulation.

306. Under the Companies Act, companies which do not file annual returns within six months after the designated filing date will be struck off from the register. MTED manages an electronic system able to automatically detect companies which fail to comply with the filing requirement. But incorporated societies, incorporated charitable trustees, and co-operative societies managed by MTED, are still managed with a paper filing system and no case management system is in place to track their annual filing requirements and compliance.

307. The Companies Registrar operates as a passive registry which does not verify the information supplied to the registrar at the time of company incorporation or as an on-going basis. The enforcement team of MTED consists of five staff members which are tasked with, amongst other duties, carrying out inspection to verify the existence and correct location of companies in line with the business license. However, because of staffing constraints, the enforcement team appears to lack oversight in ensuring record kept by companies themselves is accurate and up-to-date.

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

308. Tongan authorities have indicated that although the company register contains useful information about the legal ownership of domestic legal persons, and the legal control of both domestic and overseas legal persons, the information is not necessarily kept up-to-date. In any case, it contains no information about the beneficial ownership and control of legal persons (i.e. the natural person(s) who ultimately own(s) or control(s) the legal person). MTED does not have the resources or expertise to confirm or investigate the validity or invalidity of the information provided by legal persons. Competent authorities understand that this is a ML and TF risk however, there has been no assessment to identify, assess and understand how legal persons present higher ML/TF risks.

309. Under section 85 of the Companies Act, shares in a company may be transferred by entry of the name of the transferee on the share register. However, companies are only required to report changes in shareholders to the Registry in annual returns, meaning that there is potentially a one-year time gap for third parties such as FIs, DNFBPs and LEAs seeking to rely on the public information to ascertain the information from the public registry which might be outdated unless additional verification is conducted. For competent authorities, they may use their investigative powers to inspect the share register or register of members which contains up-to-date information about shareholders.

310. Beneficial ownership information beyond the legal ownership is not required to be kept by companies nor reported to the Companies Registrar. Such information could be obtained by TRA from the FIs under the MLPCA or by the LEAs through their investigation powers (including production orders or search warrants) however for foreign companies this may prove difficult. The accuracy and up-to-date nature of the information on beneficial ownership wherever held is

dependent on the extent to which information is collected, updated and adequately verified by FIs – there are however no enforceable obligations on FIs to collect that information (the MLPC Regulations are not enforceable). However, case example 8.1 outlines a case in which Tonga has demonstrated the ability to provide beneficial ownership information held in FIs in response to a MLA request.

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

311. Tonga did not assess the risks of ML and TF with respect to trusts, including foreign trusts, and other legal arrangements, except to mention charitable trusts (in the context of incorporated societies) and to mention in the NRA that the settlement of trusts by lawyers and accountants as well the operation of client accounts (trust accounts) is a vulnerability to lawyers and accountants.

312. Trusts (i.e. trustees) doing business in Tonga may become clients of DNFBPs and subject to the limited CDD requirements of DNFBPs under the MLPCA (which requires only ‘identification’ of the customer’). Tongan residents may act as trustees of a trust. Since a trustee is included in the definition of ‘cash dealer’ under the MPLC Act, a trustee would be required to observe the relevant CDD requirements in that Act. However, and significantly, the detailed CDD measures in the MLPC Regulations are not enforceable (noted in the TC Annex). Therefore such DNFBPs, along with FIs, do not have enforceable obligations to identify beneficial owners as defined in the FATF Glossary, of trusts.

313. Competent authorities did not demonstrate the use of their powers to obtain information on parties to a trust. In practice, competent authorities need first to have the information that will enable them to identify the trustee or intermediary involved in the trust to request further information from FIs or DNFBPs. Related tax return filings under the Income Tax Act may assist to identify the trustees and other parties to a trust arrangement, but Tongan authorities were not able to collate such information, and it remains untested whether and with what timeliness the authorities could secure relevant information.

Effectiveness, proportionality and dissuasive sanctions

314. On average, 180 companies are struck off every year for failing to file annual returns. Electronic notices are automatically generated to notify the subject companies of the designated filing date. At the expiry of six months from the deadline, companies are struck off if they have not filed. MTED have not applied sanctions against persons who have not complied with the information requirements under the Companies Act. During the on-site visit some legal persons did not comply with the statutory requirements but no enforcement action had been taken by authorities.

Overall conclusion on IO.5

315. Tonga has not assessed the ML/TF risks associated with all forms of legal persons. Nor has Tonga assessed the ML and TF risk associated with domestic and foreign legal arrangements, including trusts. There is a system of recording basic information of legal persons, but there are no enforceable obligations on trustees, FIs and DNFBPs to collect beneficial ownership information relating to legal persons and legal arrangements. There is also a lack of enforcement for non-compliance.

316. **Tonga has a low level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL CO-OPERATION

Key Findings and Recommended Actions

Key findings

- 1) Tonga has a reasonable legal framework for international co-operation in MLA and extradition. Processing of MLA and extradition requests is given high priority.
- 2) In the period under review, Tonga has received and completed two MLA requests including one request for evidence, financial intelligence and beneficial ownership information, which was completed in a timely manner. However, on one occasion the use of formal diplomatic channels caused delays.
- 3) From 2015 to 2019 Tonga has not made any MLA requests including for ML and TF and has only made one extradition request. This is not consistent with Tonga's ML risk profile, but is consistent with its TF risks.
- 4) There is no simplified extradition procedure for consenting persons who waive formal extradition proceedings.
- 5) Tonga prefers to use informal channels for international co-operation and TRA, TP, Customs and Immigration have good working relationship with regional counterparts, are involved in international and regional co-operation organisations and have signed MoUs with their regional counterparts. Tonga is actively seeking or providing assistance through established virtual private networks, emails or phone.
- 6) Basic information of companies was shared with other jurisdictions through MLA or informal channels. Foreign authorities were also able to access basic information from the online registrar. There is limited evidence suggesting that Tongan authorities were able to provide international assistance on exchange of beneficial ownership information which is only accessible through FIs. Tonga is not a financial centre or an offshore centre for company/trust formation and registration.

Recommended Actions

- a) Tonga should pursue more MLA requests and extradition requests relating to ML and associated predicate offences where necessary.
- b) Tongan authorities should streamline the process of MLA and extradition allowing direct transmission of requests at Central Authority levels as provided under the statutory framework. To facilitate this, Tongan authorities should publish contact information of the Central Authority and the process for MLA and extradition requests for reference by foreign jurisdictions.
- c) Training and resources shall be deployed to the Central Authority in handling extradition matters and to the LEAs on the use of MLA and extradition.
- d) A case management system should be implemented to streamline and prioritise internal processes in the Central Authority with the growth of caseload.

317. 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.

Immediate Outcome 2 (International Co-operation)*Providing constructive and timely MLA and extradition*

318. The AG is the Central Authority for MLA and extradition. MLA and extradition requests are given high priority and generally processed in a timely and constructive manner. The processes for executing requests are clear. All outgoing and incoming MLA requests and extradition requests are transmitted via diplomatic channels, although the statutory framework does allow for direct transmission between central authorities.

319. Four lawyers in the AG's Office are tasked with processing extradition and MLA requests in addition to their other duties.

MLA requests received

320. The Mutual Assistance in Criminal Matters Act (MACMA) provides the legal framework that enables formal requests to be processed by Tonga in relation to investigations, prosecutions and other related proceedings concerning serious offences against the law of any foreign states without a treaty or requirement for reciprocity.

321. From 2012 to 2019, the AGO received and completed two MLA requests (one from New Zealand and one from Australia) - fraud and drug cases. Tonga took on average seven months to respond to the MLA requests, which is considered to be timely taking into consideration the range of assistance sought in the requests. Although the statutory framework allows for direct transmission of requests between central authorities, in practice, MLA requests are received and sent by Tonga via diplomatic channels. In one case, considerable delays occurred in execution due to the time taken for the request to be routed from the central authority to the Ministry of Foreign Affairs of the requesting jurisdiction.

322. Tonga has demonstrated the ability to identify assets and provide information (including evidence, financial intelligence and beneficial ownership information) related to ML and associated predicate offences in response to a MLA request (see case example 8.1).

Case example 8.1: Executing request for MLA assistance

In May 2018, AGO received a MLA request from a Pacific region jurisdiction in connection with a fraud investigation. AGO approved the MLA request on the date of receipt and forwarded the request to TP for obtaining the requested TP records on individuals, company records from MTED on Tongan companies and search warrant for bank records including beneficial ownership information of the subject accounts. The requested assistance was fully executed by December 2018.

Extradition requests received

323. The Extradition Act is the legal basis for extraditing fugitive offenders. Requests under the Act may be made by a 'designated country' as listed in the Extradition (Designated Countries) Order, which includes Tonga's regional partners. As stipulated in the TC Annex at R.39, it is unclear if Tonga would be able to process an extradition request based solely on multilateral conventions to which Tonga and the requesting jurisdiction have acceded.

324. From 2012 to 2019, AGO received three extradition requests from designated countries. In 2015, two requests were received: one from Australia and one from the United States, both of which were executed in a timely manner. In 2019, one request was received from a Pacific Island country which was being processed at the time of the on-site visit in 2019. The process for the

Australian and US cases took approximately 16 months for the fugitive to be sent to the requesting country:

- The Australian extradition request related to a charge of murder against a Tongan national. The fugitive contested his/her extradition in the Tongan Court of Appeal.
- The US request concerned a wire fraud offence. The fugitive also appealed to the Court of Appeal but like the Australian case was returned to the US for trial.

325. The processing timeframe of both extradition requests was reasonable, taking into account the court process and limited court sessions in the Court of Appeal. No concerns were raised by the requesting states in relation to the delay caused while appeals were heard.

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

8

326. Tonga made one extradition request to the US in 2016 in relation to a murder case, which was refused by the US; the fugitive could not have free legal representation in Tonga and thus a fair trial could not be guaranteed. Tonga has made no outgoing MLA requests for ML, associated predicates or TF cases. The lack of outgoing requests for ML and associated predicate offences is not commensurate with the risk profile of Tonga, which tends towards transnational crime because of its geographical location as a transit point for illicit activities, such as the growing trend of drug trafficking. The lack of outgoing MLA requests in relation to TF is consistent with Tonga's TF profile as assessed by authorities.

327. On-site meetings with Tongan authorities indicated that the law enforcement agencies prefer to use informal channels for co-operation with their counterparts and seldom consider MLA requests as investigative tools, as informal channels were considered to be more effective. While informal co-operation is generally a faster means of obtaining the information requested, there are circumstances with transnational elements where formal MLA requests are required, such as the evidential use of materials in domestic proceedings and pursuing the seizure and confiscation of assets relating to ML and associated predicate offences overseas.

Seeking and providing other forms of international co-operation for AML/CFT purposes

328. Tongan LEAs, the FIU and supervisors can provide and seek international co-operation (see R.40) other than MLA and extradition and do so on a regular basis. Tongan LEAs, the FIU and supervisors have good working relationships with their counterparts, are involved in international and regional co-operation organisations and have signed MoUs with their regional counterparts. The ability to share information informally is enhanced by Tonga's presence in various regional bodies. Agencies are able to seek or provide assistance on regular and spontaneous basis through established secure private networks, emails or phone.

TRA

329. Tonga is not yet a member of the Egmont Group, but has submitted an application for membership and is fully engaged in the application process. TRA is a member of the Association of Pacific Islands FIUs, together with 14 other countries in the Pacific region. In 2019 it signed bilateral MoUs for information sharing and co-operation with Chinese Taipei and Bangladesh. TRA is also actively seeking to enter into MoUs for information sharing with other jurisdictions by the end of the on-site visit.

330. Under s.11B of the MLPCA, TRA can share information with a foreign FIU based on a prior agreement or when such agreement has not been entered into, on terms and conditions agreed upon between the FIUs.

331. The following table shows the number of requests received and sent by TRA with the FIUs of Australia, Fiji and Papua New Guinea:

Table 8.1: Requests received and made by Tongan TRA with foreign counterparts

Requests	2016	2017	2018	2019
Received from foreign FIUs	0	1	2	0
Made to foreign FIUs	1	1	1	1

332. All requests above were executed and processed by TRA in a timely manner. TRA has also demonstrated that it seeks assistance from foreign counterparts as required (case examples 8.2 and 8.3).

Case example 8.2: International request for information to TRA

In July 2018, the FIU of a country in the South Pacific region sought assistance to obtain bank account information from TRA in respect of suspected money laundering of funds generated from illegal forestry, fishing and corruption in the requesting country. Illicit funds were allegedly transferred to Tongan bank accounts. The information requested was collected from the FIs and sent to requesting FIU.

Case example 8.3: TRA request for information to international agencies

In August 2016, NRBT was conducting a required due diligence check for a new applicant for banking license. NRBT made a request, through TRA, to the FIU of a country in the Pacific region, seeking to ascertain the beneficial ownership information of certain companies in Australia. The foreign FIU disseminated the information as requested, which assisted the screening process conducted by NRBT.

Supervisors

333. Under sections 19(2) and 39A(2)(c) of the National Reserve Bank of Tonga Act, NRBT is empowered to disclose information and data to foreign regulatory, supervisory or monetary authorities, or to public international financial institutions.

334. Tonga is a member of the Association for Financial Supervisors of Pacific countries with nine countries in the region. Central banks of the South Pacific Islands meet regularly to discuss matters of importance to banking. A recent example is the Pacific Cyber risk regulation and supervision project.

335. In addition to their presence in regional bodies, supervisors liaise with the other supervisors and FIUs in the Pacific region on a regular basis by email or telephone for AML/CFT purposes. Because of the informal nature of this information exchange, no statistics were provided by bank supervisors as to timeliness of the type of co-operation.

Police

336. TP actively co-operates with foreign counterparts through its presence in the Pacific Transnational Crime Network (PTCN) via TCU (which includes TP, Revenue and Customs) with 20 other countries since 2003 and Transnational Serious Organised Crime Pacific Taskforce

(TSOCPT) with Australia, Fiji and New Zealand since 2019. In 2018, Tonga joined INTERPOL and since then has been receiving and sending requests for information through the INTERPOL channel.

337. Although there is no express provision governing the sharing of information with foreign entities, there is no prohibition in law which precludes TP from disclosing information which it has lawfully received to any appropriate authority for TP purposes necessary to enable it to carry out its official duties.

338. The following table sets out the requests for information exchange received and sent by TP:

Table 8.2: Exchange of information with PTCN

	Sent from Tonga TCU to PTCN		Received by Tonga TCU from PTCN	
	2018	2019	2018	2019
Number of requests for information	17	6	13	26

Table 8.3: Exchange of information with INTERPOL

	Sent from Tonga Police to INTERPOL	Received by Tonga Police from INTERPOL
Requests for information or assistance	9	13
Spontaneous information dissemination	Information not available	40

339. TP has not refused any request for assistance received and the incoming requests were generally processed by TP within one week to two months. This period of time is reasonable considering the nature of assistance sought from other jurisdictions. Most requests for information exchange originated from or were sent to Pacific island jurisdictions.

340. Acting on the information disseminated via LEA channels, TP was able to carry out covert operations and combat crime in Tonga (case example 8.4).

Table 8.4: Information received by the Tonga National Central Bureau (NCB) (for information)

Deportee Notification	21
Cybercrime information	18
Information related to lost/stolen passports	1

341. TP has also worked collaboratively with LEAs in the Pacific region and carried out a transnational joint operation for illicit activities across the region (case example 8.4).

Case example 8.4: International co-operation – LEAs information exchange

In 2011, as a result of information exchange among the Tonga Police, New Zealand Police and the New Zealand Custom Services, Tongan Police carried out a successful controlled delivery of pseudoephedrine leading to an arrest of a syndicate in Tonga.

Courier package containing 4kg of ContacNT was sent from China transiting through New Zealand en route to Tonga, and declared as a steam water boiler consigned to a Tongan Police Officer. A further package containing more ContacNT was addressed to the same Police officer. Six persons were arrested as a result of the successful controlled delivery upon LEA's information exchange.

342. TP works collaboratively with LEAs in the Pacific region and carries out transnational joint operations for illicit activities across the region (case example 8.5).

Case example 8.5: International co-operation – LEAs joint operation

In 2012, two crew members allegedly set sail from Panama on a yacht where a significant amount of cocaine was loaded on board. The cocaine was tracked through the Cook Islands to Tonga and was believed to be destined for Australia.

The yacht was shipwrecked on a Tongan island, with the cocaine concealed in the hull, one crew member deceased and the other one missing. The volume of cocaine seized was 204kgs with a market value of AUD 116 million. LEAs also confiscated credit cards found on board.

This drug haul was detected as a result of intelligence sharing and surveillance amongst several countries, involving the assistance of TP, Customs, and LEAs from Australia, USA and the Cook Islands.

Customs

343. Customs is able to exchange information and intelligence through the World Customs Organization (WCO) of regional intelligence offices and the Oceania Customs Organisation (OCO) along with 23 Pacific jurisdictions. In addition, section 125(3) of the Customs and Excise Management Act allows Customs to share information with foreign Customs organisations where there is an agreement.

344. The following table sets out the requests for information exchange received and sent by Tonga Customs:

Table 8.5: Requests for information exchange received and sent by Tonga Customs

Year of Requests	Received by Tonga Customs			Sent from Tonga Customs		
	WCO	OCO	Non-counterparts	WCO	OCO	Non-counterparts
2016	15	52	10	-	4	-
2017	418	132	116	-	24	83
2018	79	313	129	-	148	95
2019	31	585	284	22	370	204

345. The requests were generally processed within 24 hours which is considered to be timely. Customs collaborates with counterparts in WCO/OCO, in particular with the international liaison personnel located in the Pacific region, and non-counterparts whose contacts were established through networking during regional workshops or meetings. The top five countries which exchange information with Tonga Customs are Samoa, Fiji, New Zealand, United States and French Polynesia.

Case example 8.6: International co-operation – Information shared with Tonga

In 2015, the customs agency of a Pacific Island country shared information on an Asian family transiting to Tonga who carried a number of packages declared as tea but suspected to be tobacco.

Upon receiving the intelligence, the family arriving into Tonga was questioned and their luggage and belongings were thoroughly inspected by Customs. During the inspection Customs identified tobacco concealed inside tea packages. Interrogation of the family was further conducted and charges were laid against them.

Revenue

346. Tonga has not entered into any taxation information exchange agreements with foreign counterparts and has no statutory basis to share information with international agencies. The MRC is a member of the Pacific Islands Tax Administrators Association and regularly engages in that forum for sharing and receiving information on regional trends and issues. Strict tax secrecy in Tonga prevents information sharing of personal data.

Immigration

347. Tongan immigration regularly seeks and offers assistance with immigration counterparts in the Pacific region. It is a party to the Pacific Immigration Development Committee, which is an intelligence platform, and regularly issues news bulletins analysing risks and the latest trends for immigration-related offences. It also communicates with counterparts using an instant messenger group chat established for spontaneous exchange of intelligence and maintains official email contacts of counterparts for communicating on immigration issues raised in a particular country. No statistics were provided on informal information exchange with counterparts.

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

348. Tonga is not a financial centre or an offshore centre for company/trust formation and registration.

349. Tonga can share basic information in relation to legal persons and limited beneficial ownership information. Foreign authorities are able to access basic information of companies and businesses directly from the online registrar free of charge. LEAs can also obtain the information for sharing with overseas counterparts upon request.

350. Since the Companies Act does not require the collection or recording of information on beneficial ownership, such information can only be obtained from FIs and other reporting entities. Tonga has demonstrated that it was able to exchange BO information of legal persons with foreign agencies by formal or informal channels (see case examples 8.1 and 8.3 above).

351. No information is available for demonstrating Tonga's co-operation in providing and responding to requests to identify and exchange beneficial information relating to trusts. There are no enforceable requirements on FIs and other reporting entities to collect this information from legal persons or legal arrangements.

Overall conclusions on Immediate Outcome 2

352. Tonga has a reasonable legal framework for MLA and Extradition and provides constructive and timely assistance when requested. The level of formal international co-operation sought by Tonga does not appear to be consistent with its risk profile, although Tonga has demonstrated co-operation collaboratively through informal channels. There is limited evidence that Tonga receives and makes requests for beneficial information for legal persons and legal arrangements.

353. **Tonga has a moderate level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This Annex provides a detailed analysis of Tonga's level of compliance with the FATF 40 Recommendations as at the date of the on-site visit in October 2019 and is limited to the analysis of technical criteria for each Recommendation. Matters relating to Tonga's ML and TF risks and context are contained in the main body of this report. Ratings for some Recommendations contained in this Annex are weighted against identified ML and/or TF risks as required by the 2013 assessment methodology.
2. Tonga's previous mutual evaluation report was adopted by the APG in 2010 and is available at www.apgml.org. References to that report occur in this Annex at relevant sections of the analysis for comparative purposes.

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

3. This 2012 Recommendation was not assessed in the 2010 MER.
4. *Criterion 1.1* – Tonga's first NRA was endorsed by the Cabinet Committee on Serious Financial Crime (CSSFC) in October 2019 immediately prior to the on-site visit. The NRA is framed with reference to the FATF Guidance on Risk Assessments and the World Bank's risk assessment model. The NRA identifies and assesses threats (ML and TF) as well as sectoral vulnerabilities. Analysis of each is supported by limited explanations of the vulnerabilities and threats within each sector supported by case examples. The analysis sets out the jurisdictions from which ML threats come, but information to justify the conclusions is lacking. The analysis also indicates the most vulnerable channels for transferring illicit proceeds, but there is limited supporting evidence for the conclusions. As Tonga has limited statistical information available, the NRA relies heavily on the views and experiences of government agencies, and publicly available information. Tonga did not consult with the private sector nor with its regional stakeholders including regional organisations (PIFS, OCO, UNODC, PICP, etc.) and regional allies (e.g. Australia, New Zealand, Fiji, Samoa, etc.) in the identification and assessment of risks. There is also a lack of quantitative data (including statistics). Tonga's first NRA presents a limited analysis of the ML threats (and less so the TF threats) facing Tonga.
5. *Criterion 1.2* – The CCSFC is the co-ordination body responsible for the assessment of risks and the co-ordination of AML/CFT measures. It was established in 2013 and in 2018 was expanded to include the Ministry of Justice. CCSFC comprises Ministerial level officials from eight ministries, covering finance, customs, TP, economy and judicial areas. The WGSFC supports the CCSFC through designation of the AGO (the immediate past Chairman) as the authority to co-ordinate Tonga's risk assessment. Representation in the Working Group is at Chief Executive Officer level or equivalent (nine CEOs). The CCSFC is also mandated to co-ordinate national policy on counter proliferation financing.
6. *Criterion 1.3* – There is no requirement to update the NRA on a periodic basis to take account of emerging or changing risks. Paragraph 29 in the NRA document provides as follows: 'Establish a programme to continually monitor and where necessary review the risks.' However, the NRA itself does not establish such a programme nor is there a mechanism in any rule, regulation or direction requiring fixed or periodic reviews to keep the NRA assessments up-to-date and relevant. The National AML/CFT Policy 2018-2022 does not address this issue.

7. *Criterion 1.4* – Tonga does not have a mechanism to provide information on the results of the NRA to all relevant competent authorities, SRBs, financial institutions, and DNFBPs. The National AML/CFT Policy 2018-2022 does not provide any such mechanism. And while some consultation had taken place prior to finalisation of the NRA, there has been no outreach on NRA results since endorsement in November 2019.

Risk mitigation

8. *Criterion 1.5* – During the on-site visit CCSFC endorsed the National AML/CFT Policy 2018-2022 that sets priority measures to be taken in line with the findings of the NRA. Although there is no framework within that policy for Tonga to apply a risk based approach to allocating resources and implementing measures to prevent or mitigate risk, Tonga has applied some measures commensurate with its risk profile. In 2016 TP established a taskforce to address the issue of illegal passports resulting in a number of criminal investigations. TP also established a drug taskforce in 2018 dedicated to combating the growing use of methamphetamine domestically. The NRA recognised corruption as a high-risk predicate, and in 2016 the Anti-Corruption Commissioner Act established the office of the Anti-Corruption Commissioner – although no one has been appointed to the office as yet.

9. *Criterion 1.6* – Tonga has not applied any exemptions on the basis of risk despite some sectors assessed as low risk.

10. *Criterion 1.7* – Regulation 15 of the MLPC Regulations requires FIs to apply EDD for customers posing high risk of ML/TF, including taking reasonable measures to establish the source of wealth and funds, and the requirement of senior management approval. Part B of the MLPC Regulation Schedule outlines relevant factors in determining if a customer is higher risk, and outlines that further EDD procedures may include certification of documents, a requirement of additional documents and the development of independent contact with the customer. However, those regulations are not enforceable (see R.10 for detailed discussion on enforceability of the MLPC Regulations).

11. *Criterion 1.8* – There are no measures in place to allow simplified measures for some FATF Recommendations. While Regulation 16 of the MLPC Regulations allows FIs to apply to TRA for simplified CDD those Regulations are not enforceable.

12. *Criterion 1.9* – TRA is mandated under the MLPCA to supervise reporting entity's compliance with AML/CFT requirements. However, there are no established procedures, or practices for TRA to monitor compliance. There are no enforceable requirements in relation to risk-based CDD, record keeping, STR reporting, and internal procedures, policies and controls. See analysis of R.26 and R.28 for further information.

13. *Criterion 1.10* – There are no requirements for FIs or DNFBPs to take steps to identify, assess and understand their own ML/TF risks.

14. *Criterion 1.11* – There are no detailed requirements for FIs or DNFBPs to have policies or procedures to manage and mitigate identified risks. Part V of the MLPC Regulations includes a requirement for financial institutions to adopt internal procedures, policies and controls to manage and mitigate risks, but the Regulations are unenforceable.

15. *Criterion 1.12* – there are no provisions enabling simplified measures on the basis of identified risks. Although Regulation 16 of the MLPC Regulations includes provisions for simplified customer due diligence for financial institutions in circumstances where the ML/TF risk is lower and

Part C of the MLPC Regulations Schedule outlines circumstances under which the ML/TF risk may be lower, the Regulations are not enforceable.

Weighting and Conclusion

16. Tonga endorsed its first NRA in 2019 but the information in support of the assessments was limited with a lack of key consultations across the private sector and regional stakeholders; there appear to be no requirements to update the NRA to take account of emerging risk or changes; there has been no outreach on the conclusions reached in the NRA; there is no requirement for a risk-based approach to supervision or the application of enhanced or simplified measures. In 2013, Tonga established the CCSFC, supported by the WGSFC, as the co-ordination body responsible for the assessment of risks, and the co-ordination of AML/CFT measures. Tonga has applied some measures in relation to illegal passports, drug trafficking and corruption to prevent or mitigate ML/TF commensurate with its risk profile. Tonga does not require reporting entities to take steps to identify and assess their own risks, nor to have policies and procedures in place to enable risk mitigation and monitoring. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Co-operation and Co-ordination

17. Tonga was found largely compliant with former R.31 in the 2010 MER. Deficiencies included: no formal policies, mandates, or regular information sharing across LEAs to provide an informed intelligence response. This was mitigated to some extent by the generally good co-operation and co-ordination at an agency to agency level, based on policy and practice.

18. *Criterion 2.1* – The national AML/CFT policy 2018-2022 was endorsed by the Cabinet Committee in October 2019 (during the on-site visit). The policy is based on the findings of the NRA and includes three broad strategies: Enhancing the regulatory framework; enhancing operational procedures; and capacity building and supportive infrastructure. The national AML/CFT policy does not include a requirement for regular review.

19. *Criterion 2.2* – The Cabinet Committee on Serious Financial Crime is responsible for determining national AML/CFT policies and for co-ordination. It is a cross-sector body with designation at ministerial level. The Working Group on Serious Financial Crime provides support to the Cabinet Committee.

20. *Criterion 2.3* – The Working Group on Serious Financial Crime includes designated representatives (at ministerial and CEO level) from the Ministry of Justice, TRA, Finance, Revenue and Customs, Trade and Economic Development, Foreign Affairs, Solicitor General, TP, and NRBT. The Working Group is required to meet at least once every two months and must keep the Cabinet Committee updated on developments relating to serious financial crimes. It must also propose policies, strategies and legislation on investigations, prosecutions and sanctions for serious financial crime.

21. At the operational level, the Working Group must implement directions from the Cabinet Committee's mandate, or any other directions from the Cabinet Committee. Other similar bodies such as the Tonga Law Enforcement Agencies Committee (TLEAC) also enable operational level co-ordination among the same agencies for serious financial crimes. An MOU signed between the LEAs of Tonga facilitates information sharing and co-operation and collaboration in the investigation and

prosecution of all serious crimes punishable by imprisonment of not less than 12 months, including money laundering, terrorist financing and terrorism.

22. *Criterion 2.4* – The Cabinet Committee and the Working Group are also responsible for counter proliferation financing (CPF), with CPF recently included in the Terms of Reference of the Cabinet Committee.

23. *Criterion 2.5* - There are no data protection provisions in Tonga and no specific agency to oversee privacy. Relevant authorities cannot therefore co-operate and co-ordinate between authorities to ensure compatibility of AML/CFT requirements with data protection/privacy rules and other similar provisions.

Weighting and Conclusion

24. Tonga has a national AML/CFT/CPF co-ordination body and related working groups to set national policy and exchange information domestically, and Tonga's national AML/CFT policy 2018-2022 is based on the findings of its NRA. However, there is no requirement for the national AML/CFT policy to be regularly reviewed. Tongan authorities cannot co-operate and co-ordinate with relevant agencies to ensure the compatibility of AML/CFT requirements with data protection and privacy rules. **Recommendation 2 is rated largely compliant.**

Recommendation 3 - Money laundering offence

25. In the 2010 Tonga was rated partially compliant for the criminalisation of ML. The ML offence lacked coverage of the material and physical elements of the ML offence under the Palermo Convention. Certain offences under the designated categories of offences were not fully covered and the scope of the definition of property was limited. The penalty was not considered dissuasive and proportionate to other serious offences in Tonga. There was also a lack of effective, proportionate and dissuasive civil or administrative sanctions. The MLPCA has since been amended to address some of these deficiencies.

26. *Criterion 3.1* – Tonga criminalises ML in section 17 of the Money Laundering and Proceeds of Crime Act 2016 (MLPCA). The key physical and material elements of the ML offence are largely covered. However, the second limb of Article 6 (6(1)(b)) of the Palermo Convention is not criminalised in Tonga. In order to prove ML in Tonga the Crown must establish that a person possessed property, with knowledge or having reasonable grounds to believe it is proceeds of crime by either:

- a) the conversion or transfer in order to conceal; or
- b) concealing or disguising the true nature, origin of the proceeds of crime.

27. Tongan authorities advise there is no provision in law inhibiting criminalising the second limb of Article 6 and further that the requirement to prove the conversion or concealment of the property poses challenges in prosecuting the ML offence. It is also not evident that it is an offence to assist a person to evade the consequences of their actions.

28. *Criterion 3.2* – Tonga uses a threshold approach to criminalise ML offences. The term 'serious offence' is defined in section 2 of the MLPCA as any offence with a maximum penalty of imprisonment or other deprivation of liberty for a period not less than 12 months or more severe penalty. It also applies extraterritorially to foreign offences that pass the dual criminality test and attracts the same penalty of imprisonment or deprivation of liberty, or more severe penalty. A range of offences within

each category of FATF designated offences fall within this threshold but there are shortcomings (see c.3.3).

29. *Criterion 3.3* – Not all FATF designated offences fall within the definition of ‘serious offence’. The threshold excludes the following predicate crimes:

- Illicit arms trafficking: relating to illicit manufacturing and transfer and delivery of arms are not captured under Tongan law and unlawful acquisition and purchase, though criminalised under section 14 (6) of the Arms and Ammunitions Act, only attracts a fine of \$20.
- Environmental crimes: most do not attract a penalty of imprisonment.
- Insider trading and market manipulation are not offences Tonga does not have a stock exchange.

30. It is noteworthy that many environmental crimes are not predicate crimes to ML but environmental crimes generally are rated as medium risk in the NRA.¹⁴

31. *Criterion 3.4* – The ML offence encompasses persons who acquire, possess or use property knowing or having reasonable grounds to believe or suspect that the property is derived directly or indirectly from the commission of a serious offence. The term ‘property’ at section 2 of the MLPCA means ‘cash and all other real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible, and includes an interest in any such property including any legal document or instrument, including electronic or digital, evidencing title to, or interest in, such assets.’

32. *Criterion 3.5* – Section 17(2) of the MLPCA provides that ‘for the purposes of proving a money laundering offence ... it is not necessary to prove which serious crime has been committed.’

33. *Criterion 3.6* – The ML offence extends to conduct that occurs in another country that constitutes an offence in that country and would have constituted an offence in Tonga if committed domestically. The definition of serious offences in section 1 of the MLPCA deems the definition of a serious offence to include an offence against the law of a foreign state, in relation to acts or omissions which, had they occurred in Tonga, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months, or more severe penalty, including an offence of a purely fiscal character.

34. *Criterion 3.7* – Section 17(4) of the MLPCA provides that nothing in the Act ‘prevents a person who committed an offence that generated the proceeds of crime from being convicted of a ML offence in respect of those proceeds of crime’ under section 17(1).

35. *Criterion 3.8* – Section 17(3) provides that ‘knowledge, intent or purpose required as an element of an offence in subsection (1) may be inferred from objective factual circumstances’.

36. *Criterion 3.9* – The penalty for ML is imprisonment for a period not exceeding 10 years or to a fine not exceeding TOP 500 000 (US \$224 215) or to both. In the context of other serious offences in

¹⁴ Only the following environmental crimes meet the serious offence threshold: Illegal importation of fish (s.65 of Fisheries Management Act); Dumping wastes or other matter (s.52 of Marine Pollution Prevention Act); Waste related Offences (s.24(1)(2) Waste Management Act); Contravention of Parts II and III (s.42 of Hazardous Wastes and Chemicals Act); Contravention of Part IV (s.42 of Hazardous Wastes and Chemicals Act); Offence to dump hazardous waste (s.6(b) of Environment Management Litter and Waste Control Regulation).

Tonga, penalties for ML are proportionate and dissuasive to the risk and context profile of Tonga for natural persons.

37. *Criterion 3.10* – ‘Body corporates’ convicted of ML are liable to a fine not exceeding TOP1 000 000 (US \$448 430). The term ‘body corporates’ is not defined in the MLPCA or in the Interpretation Act. However, section 31 of the Interpretation Act is a saving provision; it provides that every provision in every Act relating to offences punishable on conviction shall unless the contrary intention appears, be deemed to refer to bodies corporate as well as to persons...’ The term ‘persons’ is defined in section 2 of that Act to include ‘any body of persons corporate, or unincorporate’ which is wide enough to include any type of legal person.

38. While authorities confirm that the monetary penalty is the highest monetary penalty in Tongan law, this penalty is not proportionate and dissuasive for certain legal persons such as banks (in particular, foreign banks) and other financial institutions who may be convicted on ML. It is also not clear if there are any parallel proceedings that could take place with respect to legal persons, and if so, whether the imposition of this fine precludes parallel proceedings as the law is silent on this issue.

39. *Criterion 3.11* – Sections 4 to 11 of the Criminal Offences Act provides for the following ancillary offences to all criminal offences in Tonga including ML:

- attempts (section 5);
- directly or indirectly commands, incites, encourages or procures;
- facilitating the commission of an offence;
- abetment (section 8);
- conspiracy to commit (section 15).

40. There do not appear to be any offences of ‘participation in’ or ‘association with.’

Weighting and Conclusion

41. Tonga has a reasonably comprehensive ML offence, however the ML offence does not apply to the acquisition, possession or use of property knowing that property is the proceeds of crime and the full range of ancillary offences are not included. Moreover, Tonga does not criminalise the full range of predicate offences including illicit arms trafficking, environmental crimes and insider training/market manipulation. **Recommendation 3 is rated partially compliant.**

Recommendation 4 - Confiscation and provisional measures

42. Tonga was rated partially compliant with former R.3. Deficiencies included: ML was not defined as a serious offence, therefore proceeds of a ML offence could not be confiscated under the MLPCA Act, confiscation of instrumentalities or property of corresponding value was not covered and there was no practical application of the confiscation provisions of the MLPCA Act. The MLPCA has since been amended to address these deficiencies.

43. Tonga has different statutory regimes that enable confiscation of proceeds of crime as follows:

- Conviction-based confiscation (section 28 of the MLPCA);
- Forfeiture of terrorist property (CTTOCA and MLPCA);

- Forfeiture of property (Tonga Police Act).

44. *Criterion 4.1* – Sections 28 and 34 of the MLPCA allows forfeiture of ‘tainted property’ following conviction of a serious offence and forfeiture of terrorist property.

45. (a) ‘Tainted property’ is defined at section 2 broadly enough to include property laundered and held by criminal defendants or by third parties.

46. (b) The same term includes proceeds of, including income or other benefits derived from such proceeds, or instrumentalities used or intended for use in, ML and predicate offences. ‘Benefits derived’ is defined at section 9 of the MLPCA to meet the further requirements of this criterion and extend to benefits obtained or otherwise accruing to another person at the request or direction of the first.

47. (c) Section 25 of the CTTOCA allows forfeiture of terrorist property. Section 2 defines ‘terrorist property’ as property that has been, is being, or is likely to be used to commit a terrorist act; or property that has been, is being, or is likely to be used by a terrorist or terrorist group; or property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity. This section does not extend to property that is the proceeds of TF or property derived or generated from a terrorist that is not a specified entity (as defined in section 2, which is either a 1267 or 1373 entity). Section 35C of the MLPCA also permits forfeiture of terrorist property. ‘Terrorist property’ is defined in similar terms to the CTTOCA definition.

48. (d) Section 39 of the MLPCA allows forfeiture of property of corresponding value. Section 28 allows forfeiture of property of corresponding value by virtue of subsection (d) of the definition of tainted property.

49. *Criterion 4.2* – Tonga has the following measures in place for competent authorities:

50. (a) the MLPCA provides the following powers to identify trace and evaluate property subject to confiscation: property tracking and monitoring (section 21); general monitoring orders (section 78); searches (sections 20, 49-53); general inspections (section 11A) and production orders (section 72).

51. (b) Provisional measures, including seizure and detention of cash (sections 49, 51 and 53), forfeiture of terrorist property/cash (section 35C), and search and seizure warrants (section 76).

52. (c) Section 36 of the MLPCA provides for voiding actions and setting aside transactions or transfers. However these only apply after a restraining order is made and thus would not apply to property transferred prior to restraint.

53. (d) The Tonga Police Act provides that authorised officers may use surveillance devices (section 111); obtain warrants (section 112); use electronic screening devices (section 113); search persons, vehicles, vessels and aircraft (sections 122, 123).

54. *Criterion 4.3* – Under section 37 of the MLPCA third parties have up to a year after confiscation to bring proceedings if they had no notice at the time of confiscation. However, this does not apply to restrained property and is only applicable when an application for a confiscation order is made. In relation to an application for a forfeiture order for terrorist property, section 35B of the MLPCA allows third parties to appear and produce evidence relating to their interest in the property at the hearing of the application. Under the CTTOCA, third parties may apply for relief if they claim an

interest in property that is subject to an order of the AG to take custody and control. The Tonga Police Act also contains provisions for the protection of bona fide third parties at section 160.

55. *Criterion 4.4* – Tonga has statutory provisions requiring the management and disposal of restrained and confiscated property, however they contain little detail on how assets should be managed. The MLPCA establishes three different accounts to hold funds relating to seized and confiscated property: the Seized Assets Fund, Law Enforcement Fund Account and the Confiscated and Forfeited Assets Fund. For property restrained, section 58(2) of the MLPCA does allow the AG to take custody and control and to manage such property, however there are no directions on how the AG should manage property. Section 54 MLPCA requires police to preserve property seized, however there are no provisions as to how best to preserve the property. The Tonga Police Act (section 154-156) requires that any object lawfully seized by TP is to be given to the officer in charge of the TP station where the officer is stationed as soon as reasonably practicable. The TP officer is responsible for the safeguarding of the object. Section 158 provides for how forfeited objects may be dealt with and states that proceeds are to be paid in the following order: (a) payment of expenses of sale; (b) payment of expenses of the seizure and storage of the object; (c) to the TP Special Purposes Fund.

56. Section 48 of the MLPCA establishes the Confiscated and Forfeited Assets Fund (the Fund). All moneys derived from confiscation and forfeiture orders must be credited to the Fund.

Weighting and Conclusion

57. Tonga has provisions for tracing, identification, restraint and confiscation of proceeds of crime with some deficiencies. There are limited procedures for managing restrained and confiscated assets. Third parties can only intervene at confiscation stage and not at the restraint stage.

Recommendation 4 is rated largely compliant.

Recommendation 5 - Terrorist financing offence

58. In the 2010 MER Tonga was rated non-compliant with former SR.II. There was no provision in the Transnational Crimes Act 2005 on the provision or collection of funds (property) for use by a terrorist organization or by an individual terrorist, the Act implied the property had to be linked to a specific terrorist act, although there was an offence of providing services to a specified entity, no entity had been specified by the Attorney General. The Transnational Crime Act has been repealed and the CTTOCA 2013 passed. The CTTOCA addresses some of these deficiencies.

59. *Criterion 5.1* – Section 10 of the CTTOCA criminalises TF on the basis of, and consistent with, Article 2 of the International Convention for the Suppression of the Financing of Terrorism. The offence refers to the wilful provision or collection of funds by any means whether directly or indirectly with the intention or knowledge that the funds whether whole or in part; (a) are to carry out a terrorist act, (b) by a terrorist to facilitate that person’s activities related to terrorist acts or membership in a terrorist group, and (c) by a terrorist group.

60. ‘Terrorist act’ as defined under section 3 of the CTTOCA captures the full scope of all treaties listed in the annex to the Act. The offence covers some ancillary offences. The CTTOCA does not define the term ‘funds’, nor is it defined in the Interpretation Act 2016. It is therefore not clear whether the term ‘funds’ includes all of the material elements in the FATF definition. While CTTOCA has a definition of ‘property’ that includes those elements, the relevant section of the CTTOCA uses the term ‘funds’ and not ‘property’.

61. *Criterion 5.2* – Section 5 of the CTTOCA provides that it is an offence to directly or indirectly, wilfully provide or collect funds or attempt to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part:

- (a) to carry out a terrorist act;
- (b) by a terrorist to facilitate that persons activities related to terrorist acts or membership in a terrorist group; or
- (c) by a terrorist group.

62. The term ‘terrorist group’ is defined in section 2 to include a ‘specified entities’ which in turn is defined at section 2 to include both a person or entity that is a United Nations listed entity [under UNSCR 1267] or a domestic listed entity [under UNSCR 1373]. Section 5(b) covers an individual (who may not be designated) but only where their actions relate to terrorist acts, which is directly contrary to the requirement that there need not be a link to a terrorist act.

63. *Criterion 5.2 bis* – There are no provisions in Tonga that criminalise the financing of travel of individuals who travel outside Tonga for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

64. *Criterion 5.3* – As stated above, the CTTOCA does not define the term ‘funds’, nor is it defined in the Interpretation Act 2016. It is therefore not clear whether the term ‘funds’ includes all of the material elements in the FATF definition and therefore the scope of assets involved in TF is left uncertain by the wording of the offence. In addition, the act is silent on whether it matters that the assets are derived from legitimate or illegitimate sources. Although authorities advise that, in practice, the offence is broad enough to cover both, it is not clear what practice is referred to as there have been no investigations or cases under this provision to date.

65. *Criterion 5.4* – Section 10(2)(a) states that the TF offence is committed even if the terrorist act does not occur or is not attempted and (b) even if the funds were not actually used to commit or attempt the terrorist act.

66. *Criterion 5.5* – Section 10(4) of the CTTOCA provides that ‘an intentional element of the terrorist financing offences may be inferred from objective factual circumstances.’ However, there is no reference in the legislation to the ‘knowledge’ element as required by this criterion.

67. *Criterion 5.6* – The TF offence is punishable upon conviction in the case of a natural person by imprisonment not exceeding 25 years or a fine not exceeding TOP 500 000 (US \$224 215) or both. Within the context of Tonga for natural persons, these are dissuasive penalties.

68. *Criterion 5.7* – There is no explicit provision relating to parallel criminal, civil or administrative proceedings. Authorities indicate that there is no law prohibiting parallel criminal, civil or administrative proceedings against legal persons however, criminal prosecutions would commence first.

69. In the case of a legal person, the TF offence is punishable upon conviction by a fine not exceeding TOP 1 000 000 (US \$448 430). For legal persons operating in Tonga (e.g. foreign banks and foreign NPOs) the level of fine is not a proportionate and dissuasive penalty.

70. *Criterion 5.8* – Ancillary offences are found under section 10(3) and cover the requirements of this criterion.

71. *Criterion 5.9* – TF is a predicate offence to ML under the MLPCA (definition of ‘serious offence’ is threshold based).

72. *Criterion 5.10* – Section 10(2) states that the offence is committed regardless of the state or territory in which the terrorist act is intended to or does not occur.

Weighting and Conclusion

73. Tonga criminalises the financing of terrorism, however there are moderate shortcomings in the legislation, including the need for a link to a terrorist act for an individual undesignated terrorist; the absence of a definition of ‘funds’ which creates uncertainty as to the scope of the activity included in the offence; and no provision covering the financing of travel (5.2bis). **Recommendation 5 is rated partially compliant.**

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

74. Tonga’s 2010 MER rates Tonga as non-compliant with former SRIII. Criminalisation of TF was deficient. There were substantial deficiencies in the provisions for confiscation, freezing and seizing of proceeds of crime under the MLPCA Act. Tonga did not have laws and procedures in place to freeze without delay terrorist funds or other assets of person designated by the UN Security Council Resolution 1267 Committee. The MLPCA has since been reviewed and the CTTOCA 2013 has been passed, addressing some of these deficiencies.

75. *Criterion 6.1* – For designations under UNSCRs 1267/1989 and 1988:

76. (a) Tonga has not explicitly identified a competent authority or court responsible for proposing designations to the UN committees. In practice, it would be the AG.

77. (b) Tonga does not have a mechanism to identify targets for designation based on the designation criteria set out in the relevant UNSCRs. The Terrorism Financing Investigation Process document denotes TP as the lead agency for investigating TF relating to UNSCR 1267, but it is unclear how the information can be communicated to the UNSC.

78. (c) There are no procedures for proposing designations to the UN and therefore no specified standard of proof of ‘reasonable grounds’ or ‘reasonable basis’ when deciding to make a designation proposal.

79. (d) and (e) There is nothing requiring Tongan authorities to comply with the UN Sanctions Regime procedures and standard forms adopted by the relevant UN committee or to provide as much relevant information as possible when proposing a designation.

80. *Criterion 6.2* — For designations under UNSCR 1373:

81. (a) The AG is the competent authority for designating an entity to be a specified entity according to UNSCR 1373 (section 5(1) of the CTTOCA). The CTTOCA does not deal with foreign requests for designations and however Tongan authorities advise that in practice it is open to them to use information received from international counterparts.

82. (b) The CTTOCA specifies the grounds on which the AG shall declare an entity a specified entity. Section 5 sets out the criteria for designation on reasonable grounds to believe a range of terrorist activities or behaviours exist.

83. (c) Section 5 of the CTTOCA outlines the circumstances in which the AG shall declare an entity to be a specified entity. It includes reasonable grounds to believe that the entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act, or that entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned above; or an entity that is wholly owned or effectively controlled by such entity. Tonga was unable to advise whether it could promptly determine the above if this information was received by foreign request.

84. (d) According to Section 5 (1), the AG may declare an entity to be a specified entity, and it is stated in Section 5 (2) that the designation by the AG shall be made on reasonable grounds (as listed in (a) to (c)). Such a designation is not conditional upon criminal proceedings. It is not clear if this is also applicable to foreign requests under UNSCR 1373. Tonga was not able to confirm that the AG can use information from foreign counterparts in forming reasonable grounds to believe under section 5, and put forward the request of another country to make the declaration.

85. (e) There are no restrictive information sharing provisions that would hinder Tonga's ability to provide information to another country. Section 35 of the CTTOCA enables the AG to disclose to the appropriate authority of a foreign country any information in the AG's possession relating to the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts and other information if the disclosure is not prohibited by law and will not prejudice national security or public safety

86. *Criterion 6.3:*

87. (a) Section 8 of the CTTOCA allows the court to receive evidence when considering a designation, including receiving anything in evidence that would not otherwise be admissible as evidence that the court considers is reliable and relevant. There is no provision in the CTTOCA which empowers competent authorities to collect or solicit information to identify persons and entities with reasonable grounds.

88. (b) There is no legal authority, procedure or mechanism enabling the authorities to operate *ex parte* against a person or entity who has been identified and whose designation is being considered. Section 8 (b) (ii) of the CTTOCA does confirm that when appealing designation the Court may hear from the AG in the absence of the specified entity if it thinks disclosure of information would prejudice national security or endanger safety of persons. This provision is not present in the procedure for making a designation. Authorities confirm that in practice the court would operate *ex parte*. Tonga has not confirmed whether there is any provision in the CTTOCA providing that designations under s 5 are not required to be made on notice to the person affected.

89. *Criterion 6.4* Implementation of TFS occurs without delay in Tonga, via section 4 of the CTTOCA which provides that for the purposes of the Act, the entities listed from time to time by the UN Security Council as terrorist entities are 'specified entities'. The AG is tasked with publishing notice in the Gazette of the list of terrorist entities and is required to continue to give notice as the list changes. Section 5 (4) of the CTTOCA states that any property, assets or funds of the specified entity identified in Tonga shall be frozen '*without delay*' and '*without prior notice to the specified entity*'. Therefore, entities are designated in Tonga immediately upon designation by the UN. However, there

are no sanctions attached to this section, there is no guidance for FIs or DNFBPS on implementing TFS without delay, and the time frame of 'without delay' is not specified.

90. In addition, sections 12 and 13 of the CTTOCA act as a *de facto* freeze mechanism in Tonga. Section 12 prohibits a person from making available property or financial or other related services to or for the benefit of a specified entity, unless the provision is of a kind authorised by a resolution of the UNSCR.

91. Section 13 prohibits a person from dealing directly or indirectly in terrorist property, collecting, acquiring or possessing terrorist property, entering into, facilitating directly or indirectly any transaction in respect of terrorist property or converting, concealing or disguising terrorist property, unless acting in accordance with directions of the Attorney General. The applicable sanction in sections 12 and 13 of the CTTOCA for providing property or services to a specified entity or dealing with terrorist property is imprisonment not exceeding 15 years.

92. *Criterion 6.5:*

93. (a) Any property, assets or funds of the specified entity identified in Tonga shall be frozen without delay and without prior notice to the specified entity under Section 5 (4) of the CTTOCA. However there is no guidance or further requirements as to what constitutes a freeze and there are no sanctions attached to this section.

94. Section 12 (1) of the CTTOCA prohibits a person from knowingly making available property or financial or other related services to or for the benefit of a specified entity.

95. Further Section 13 (1) of the CTTOCA prohibits persons from dealing directly or indirectly in terrorist property, collecting, acquiring or possessing terrorist property, entering into, facilitating directly or indirectly any transaction in respect of terrorist property or converting, concealing or disguising terrorist property. The applicable sanction for sections 12 and 13 is imprisonment not exceeding 15 years. These prohibitions act as a *de facto* freeze mechanism in Tonga.

96. Property is defined in Section 2 to include assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and legal documents or instruments in any form including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit. There is no provision stating that freezing can be extended to economic resources or the value accruing from or generated by such funds or assets. However, there are circumstances in which a person may avoid liability for breaching the prohibition on dealing – these are contained in s13(3). This section allows a person to avoid criminal liability under s13(1) if they (a) inform the AG in writing as soon as they become aware that the property is terrorist property; and (b) act in accordance with any directions of the AG for the property. Technically, if a person were to deal with the property, and then inform the AG they may be relieved of liability which undermines the ability to prosecute breaches of section 13.

97. (b) In the CTTOCA, terrorist property is defined as: (a) property that has been, is being, or is likely to be used to commit a terrorist act; (b) property that has been, is being, or is likely to be used by a terrorist or a terrorist group; or (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity. There is no sign that it covers c6.5(b)(ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by specified entity nor does it cover c6.5(b)(iv) funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons and entities.

98. (c) Section 12 (1) of the CTTOCA stipulates that a person shall not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a specified entity. This does not cover economic resources.

99. (d) Section 4 (2) in Part 2 of the CTTOCA requires the AG to publish in the Gazette the list of terrorist entities designated, but there is no other mechanism to communicate the designations to FIs and DNFBPs immediately after taking such actions nor are there provisions for setting clear guidance to FIs and DNFBPs. Tonga did not provide any information on how it conducts outreach to reporting entities on targeted financial sanctions.

100. (e) There is no requirement for financial institutions and DNFBPs to report on assets frozen or actions taken in relation to the relevant UNSCRs, including attempted transactions.

101. (f) The freeze mechanism under the CTTOCA operates as a prohibition on dealing with terrorist assets (Section 13 of the CTTOCA). Section 13 (3) states that a person does not commit the offence of dealing with terrorist property if they inform the AG in writing as soon as the person becomes aware that the property is terrorist property and acts in accordance with any directions of the AG for the property. This mechanism would protect both individuals and reporting entities who hold onto or possess terrorist property as long as they follow the requirements of the section. However, given the ambiguity of the section, this may be construed in favour of both bona fide third parties and those deliberately seeking to avoid the law.

102. *Criterion 6.6:*

103. (a) Tonga does not have procedures to submit de-listing requests to the relevant UN Committee.

104. (b) – (c) Sections 6 to 9 of the CTTOCA set out the regime for de-listing of specified entities. The Attorney General shall revoke a designation previously made when there are reasonable grounds to do so (Section 6(1)), or the specified entity can submit application to the Supreme Court of Tonga to revoke a declaration (Section 7). The relevant procedures are listed in Section 8. Any revocations of designations have to be published in the Gazette via the AG's notice (sections 6(2) and 7(3)). However, no details are set in the CTTOCA about the procedures, timing or any limitation and there are no other available procedures to consider.

105. (d) – (e) Tonga does not have procedures in place to facilitate review by the 1988 Committee, nor does it have a procedure for informing designated persons of the availability of the United Nations Office of the Ombudsperson.

106. (f) Tonga does not appear to have publicly known procedures for unfreezing of funds or assets for false positives.

107. (g) Section 6 (2) and Section 7 (3) of the CTTOCA require the AG to publish in the Gazette the de-listing decision, but there is no other provisions for setting up mechanism to communicate the designations to FIs and DNFBPs immediately after taking such actions nor are there provisions for setting clear guidance to them. There is not any provision regarding unfreezing of funds.

108. *Criterion 6.7* - Section 38 of the CTTOCA provides a legal basis to request and grant access to 'seized or detained goods without warrant' to satisfy essential human need, but it is available in the form of cash only. Section 38 does not list out the conditions of 'satisfy essential human needs' which meet the conditions determined by UNSCR 1452. Section 12(3) of the CTTOCA provides that a person can make available property or financial or other related services to or for the benefit of a specified

entity, if the provision is of a kind authorised by a resolution of the UNSCR. Section 13(3)(b) allows persons to deal directly or indirectly in terrorist property, collect, acquire or possess terrorist property, enter into, facilitate directly or indirectly any transaction in respect of terrorist property or convert, conceal or disguise terrorist property if it is in accordance with directions of the Attorney General for the property.

Weighting and Conclusion

109. Tonga has a simplified mechanism in place to implement R.6. In particular legislation allows for the immediate transposition of UN designations into domestic designations. A freeze mechanism exists in the form of a prohibition on dealing with terrorist assets noting the section also potentially applies to absolve liability. However, there is no provision stating that freezing can be extended to economic resources or the value accruing from or generated by such funds or assets. Tonga has not implemented related procedures to deal with the UN Security Council, there are no mechanisms for communicating with and conducting outreach to reporting entities, and no procedures for dealing with false positives. **Recommendation 6 is rated partially compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

110. Targeted financial sanctions relating to the financing of proliferation is a new Recommendation added in 2012.

111. *Criterion 7.1* - Tonga does not implement targeted financial sanctions without delay to comply with the UNSCRs that relate to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing.

112. *Criterion 7.2* - Tonga has not established the necessary legal authority or identified competent authorities to assume responsibility for the implementation and enforcement of targeted financial sanction in accordance with this criterion. Moreover Tonga does not require natural and legal persons to freeze the funds and other assets of designated persons or entities.

113. *Criterion 7.3* - There are no legislative provisions imposing relevant obligations under this criterion on FIs and DNFBPs and therefore no measures for monitoring or ensuring compliance by reporting entities.

114. *Criterion 7.4* - There is no publicly known procedure in place to submit delisting requests of those who do not or no longer meet the criteria of designation, including a procedure to unfreeze funds or assets in the case of false positives or a procedure to authorise access to funds or assets in accordance with the relevant procedures in the UNSCRs.

115. *Criterion 7.5* - In the absence of freezing obligations, there are no relevant measures in place pursuant to this criterion to permit the addition of interest or other earnings due, or to make a payment due under a contract entered into prior to designation.

Weighting and Conclusion

116. Tonga does not have measures in place to implement targeted financial sanctions related to proliferation in order to comply with the relevant UNSCRs. **Recommendation 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

117. Tonga was rated non-compliant in the previous SR VIII. Deficiencies included lack of review of the adequacy of the NPO-related laws and regulation, no outreach taken for the NPO sector, and the lack of a competent authority for NPO supervision.

118. In Tonga, NPOs may be registered under the Charitable Trusts Act and the Incorporated Societies Act (both revised in 2016) on a voluntarily basis.

119. *Criterion 8.1:*

120. (a) NPO registration is not mandatory and the NRA lists the number of charitable trusts and incorporated societies that are known to authorities. Tonga is unaware of the number of unregistered NPOs. Tonga has not identified the subset of organisations which fall within the FATF definition of NPO and which are likely to be at risk of TF abuse. Although there is no systematic assessment of those high risk NPOs, the Tongan authorities noted that NPOs were at low risk for TF abuse, and the team agreed with these findings.

121. (b) While the NRA identified that TF risks are low overall in Tonga, authorities have not yet identified the nature of TF threats posed to the sub-set of NPOs which may be at risk nor how terrorist actors abuse those NPOs.

122. (c) & (d) Authorities have not yet reviewed or reassessed the adequacy of measures, including laws and regulations that relate to the subset of the NPO sector that may be abused for TF in order to be able to take proportionate and effective actions to address the risks identified.

Sustained outreach concerning terrorist financing issues

123. *Criterion 8.2:*

124. (a) There are basic legislative requirements for the establishment of charitable trusts and incorporated societies. However, there are no policies of the government to promote accountability and integrity in NPOs, beyond the requirement for annual filing of financial statements by NPOs registered with MTED. This requirement is not enforced and the majority of NPOs do not file returns with the competent authorities.

125. (b) The MTED is currently conducting outreach programs, which include annual roadshows and community outreach programs. These programs largely relate to registration requirements and to reaching out to NPOs who are not registered. At present the outreach programmes do not include elements of AML/CFT risk.

126. (c) Authorities have not yet worked with NPOs to develop and refine best practices, including ways to address TF risk and vulnerabilities.

127. (d) While authorities express a desire for NPOs to use regulated channels to conduct transactions, there was no evidence that targeted outreach or guidance had been given to the NPO sector on this issue. However, all NPOs wishing to conduct financial transactions must first open an account in a FI, all of which are subject to CDD requirements.

Targeted risk-based supervision or monitoring of NPOs

128. *Criterion 8.3* - There are requirements for initial identification upon registration with MTED (however registration is not mandatory), a constitution, and annual filing of financial statements. For incorporated societies, charitable trust and co-operative societies registered with MTED, cases are managed by paper files with no case management system in place to track filing of financial statements. Tonga has not taken steps to promote effective supervision or monitoring and there is no competent authority in charge of supervision or monitoring of NPOs.

129. *Criterion 8.4:*

130. (a) There is no risk-based supervision or compliance of NPOs; and there is no competent authority for supervision and compliance oversight of the NPO sector in Tonga.

131. (b) Under both the Charitable Trusts Act and the Incorporated Societies Act, there is no sanction for the non-registration of trusts or societies with competent authorities. However, once registration has been filed if there is any alteration to trusts held by the Board, or alterations to rules or to the address of the registered office, the Board must notify the Registrar (MTED), or every officer of the Board will be subject to a fine not exceeding \$500 or not exceeding \$20 for every day during which the default continues or to both (clause 19 (3) of the Charitable Trusts Act). The same administrative penalty applies to non-compliance with the requirement to file annual financial statements (clause 30 (3) of the Charitable Trusts Act).

132. There are more sanction provisions listed in the Incorporated Societies Act. If a society carries on/proposes to carry on any operation beyond the scope of its object after being given notice by the Registrar not to carry on that operation, every officer of the society and member of the committee/governing body shall be liable to a fine not exceeding \$20 for every day the operation continues (clause 19 (2) of the Incorporated Societies Act). A society shall be liable to a fine not exceeding \$100 and each member liable to a fine not exceeding \$20 for engaging in operations involving pecuniary gain (clause 20 (2), (3)). For not filing an annual financial statement every officer of the society shall be subject to a fine not exceeding 10 seniti (USD0.04) for each day during which the default continues (clause 23 (3)). However, those administrative sanctions (low penalties) are not dissuasive.

Effective information gathering and investigation

133. *Criterion 8.5:*

134. (a) MTED is the responsible entity that holds information on registration of NPOs. MTED is able to exchange information with LEAs when required. The MTED is a party to the Law Enforcement MOU and participates in the Tonga Law Enforcement Agencies Committee (TLEAC) which is aimed at facilitating information sharing and co-operation and collaboration.

135. (b) TP would be responsible for investigating any instances on suspected exploitation of terrorist activity. As outlined in R.4 and R.31, the Police have adequate powers and training to conduct investigations of this nature.

136. (c) Whilst LEAs are able to access information, in practice MTED does not hold all of the requisite information due to an absence of supervision and sanctioning over the filing of required information.

137. (d) There are no mechanisms in place for information to be shared with competent authorities regarding the potential exploitation of NPOs. However, the Law Enforcement MOU enables MTED and LEAs to exchange information and were potential exploitation of NPOs to come to the attention of authorities, in practice the matter would be referred to the TP for investigation.

Effective capacity to respond to international requests for information about an NPO of concern

138. *Criterion 8.6* - Depending on the sources of the requests and nature of information/assistance requests, Tonga's ability to respond to international requests for information is undertaken via formal channels (Mutual Legal Assistance) if there is criminal matter involved; and informal channels (between FIU and LEA counterparts). MTED is one of the member agencies of the LEA MOU and is able to respond to international requests through this mechanism. TRA can also respond to international requests for information regarding NPO upon request via FIU-to-FIU channel. It is not clear whether the MTED can directly respond to international requests.

Weighting and Conclusion

139. Tonga has not yet identified the sub-set of NPOs that may be at risk of abuse for TF. Nor has Tonga undertaken targeted outreach and controls on that subsector of NPOs. While MTED manages the registration of NPOs, they do not supervise NPOs for compliance with the legislation nor do they oversee the filing of annual financial statements/other changes in information. Sanctions can be applied in some instances. Some limited outreach has been undertaken to NPOs but it has not to date encompassed AML/CFT risk. **Recommendation 8 is rated partially compliant.**

Recommendation 9 – Financial institution secrecy laws

140. Tonga was rated partially compliant with the former R.4. The 2010 MER concluded that secrecy provisions did not operate to prevent collection of information by competent authorities but, there were insufficient provisions under which the information could be shared between competent authorities, either domestically or internationally. Furthermore, there was an absence of clear legislation and/or controls on information exchange between FIs to meet the requirements of former Recs 7, 9 and SR VII.

141. *Criterion 9.1* - Section 23 of the MLPCA requires financial institutions to comply with the Act notwithstanding any other secrecy or other restrictions on information disclosure set out in any other laws in Tonga.

142. Section 11A of the MLPCA gives TRA powers to collect any information TRA considers relevant to serious offences, ML and TF. TRA is also able to refer any report and information pertaining to that report to the appropriate LEA in Tonga if there are reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation and prosecution of a serious offence, ML or TF. Section 23 of the MLPCA states that the provisions of the Act shall have effect notwithstanding any obligation as to secrecy or other restriction on disclosure of information imposed by law or otherwise.

143. Section 31 of the CCTOCA requires a cash dealer to inform TRA about every dealing for which there are reasonable grounds to suspect it is related to the commission of a terrorist act. A person can disclose the information for the enforcement of the CCTOCA and for the detection, investigation or prosecution of an offence under the Act, and to provide assistance under the MACMA.

144. Section 4A of the NRBT Act 2016, allows NRBT to disclose information to LEAs, TRA, supervisory or regulatory authorities (domestic and foreign) concerning matters related to its objectives and functions.

145. Section 22 of the FIA 2016 provides that NRBT may disclose information relating to any licensed FI to a supervisory authority in any other country for the exercise of functions similar to those conferred on the NRBT by the FIA 2016.

Weighting and Conclusion

146. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer due diligence

147. In its 2010 MER, Tonga was rated non-compliant with former R.5. Deficiencies included the absence of requirements to identify beneficial owners, undertake ongoing or enhanced due diligence, simplified CDD measures allowed in situations of higher risk scenarios and no requirement to have existing customers subject to CDD.

MLPCA and MLPC Regulations (enforceability)

148. The MLPCA and MLPC Regulations made under section 80 of the MLPCA contain measures in relation to CDD. However, the Regulations apply only to ‘financial institutions’ as defined in the Act namely banks, MVTS, money lenders and life insurers.¹⁵ Other reporting entities including all DNFBPs are not bound by the Regulations. Moreover, the MLPC Regulations are not enforceable. Neither the Regulations nor the MLPCA under which they are issued provide for any penalties for breach of the MLPC Regulations (see below and in R.35). Therefore, CDD requirements in the Regulations are not enforceable. Consequently, the only enforceable CDD requirements for financial institutions are contained in sections 12 and 13 of the MLPC Act, which are general in nature and contain none of the detail outlined in the Regulations. For instance, section 12 provides only that a financial institution or cash dealer shall identify the ‘true identity’ of the customer. The term ‘true identity’ is not defined.

149. A penalty of imprisonment up to 2 years or fine not exceeding TOP 20 000 (US \$8 969) or both, or in the case of a body corporate a fine of up to TOP 100 000 (US \$44 843) applies for failure to comply with CDD requirements in the MLPCA.

150. Section 16A of the MLPCA provides supervisory or regulatory authorities with the power to enforce compliance ranging from warnings to licence suspensions/withdrawals, but that section makes it clear that the sanctions apply only to breaches of the Act (not the Regulations).

Detailed CDD requirements

151. *Criterion 10.1* - Section 13(2) of the MLPCA requires customer accounts with FIs to be kept in the ‘true name of the account holder’. Section 18(1) provides for an offence to use a false name or an anonymous account to open and operate accounts in FIs.

¹⁵ The MLPCA definition of ‘financial institution’ includes a business that accepts a ‘deposit for life insurance and investment related insurance’. The definition of a ‘cash dealer’ includes insurers, however cash dealers are not covered by the MLPC Regulations.

When CDD is required

152. *Criteria 10.2* - Section 12 of the MLPCA requires financial institutions or cash dealers to take reasonable measures to satisfy themselves as to the true identity of an applicant who wishes to be a customer and other measures in relation to occasional transaction. MLPC Regulation 5 requires CDD to be applied on a risk basis – enhanced CDD for higher risk customers and simplified CDD for lower risk customers. ‘Customer’ is defined in MLPC Regulation 6(1) to include a person who seeks to be in a business relationship, engaged in one or more occasional transactions when the total value of the transaction equals or exceeds \$10 000, carrying out wire transfers and is engaged in any business or transaction in any instance where there is suspicion that the person is involved in ML or TF with the FI. MLPC Regulation 6(4) requires that customer identification and verification is to occur (a) at any time that the person applies for a business relationship, (b) seeks to engage in a threshold occasional transaction, (c) seeks to carry out a wire transfer, (d) engages in a suspicious activity and (e) where doubts have arisen as to the veracity or adequacy of previously obtained identification data on the person.

153. However, the CDD requirements contained in the MLPC Regulations are not enforceable.

Required CDD measures for all customers

154. *Criteria 10.3* - Section 12 (1) of the MLPCA requires a FIs or cash dealers to take reasonable measures to satisfy themselves as to the true identity of an applicant who wishes to be a customer ‘by requiring the applicant to produce an official record reasonably capable of establishing the true identity of the applicant, when the applicant is a body corporate it shall be required to produce a certificate of incorporation together with the latest annual return to the Registrar of Companies’. The term ‘true identity’ is not defined in the MLPCA.

155. MLPC Regulations 6(5) and 6(6) require financial institutions to use reliable, independent source documents, data, and information when identifying customers, however that requirement is unenforceable.

156. *Criterion 10.4* - Section 12(2) of the MLPCA requires an FI or cash dealer to take reasonable measures to establish whether a person seeking to enter into a continuing business relationship of other transaction is acting on behalf of another person. Section 12(3) of the MLPCA requires that in circumstances that appear to involve an applicant requesting to enter in a transaction on behalf of another person, a FI must take reasonable measures to establish their true identity. It is not evident, however, what constitutes ‘reasonable measures.’ There is no requirement to establish whether the applicant is authorised to act on behalf of the customer.

157. *Criterion 10.5* - Section 12 (1) of the MLPCA requires a FIs or cash dealers to take reasonable measures to satisfy themselves as to the true identity of an applicant who wishes to be a customer when the applicant is a body corporate by requiring it to ‘produce a certificate of incorporation together with the latest annual return to the Registrar of Companies’. MLPC Regulation 7(2) requires FIs to verify the identity of the beneficial owner using relevant information or data obtained from reliable sources so the FI is satisfied that it knows the identity of the beneficial owner.

158. The Regulations are not enforceable.

159. *Criterion 10.6* - MLPC Regulations 9(1) and 9(2) require FIs to create a profile for each customer of sufficient detail to enable it to implement the CDD requirements and be based upon

sufficient knowledge of the customer, including the customer's proposed business with the FI, and where necessary the source of customer funds.

160. The Regulations are not enforceable.

161. *Criterion 10.7* - MLPC Regulations 12 and 13 outline the requirements for ongoing due diligence, including the need to maintain customer information on an ongoing basis and the provision that documents obtained are kept up-to-date through reviews. However, there is no emphasis on undertaking updates and reviews for higher risk customers. Similarly, while the scrutinising of transactions is linked to customers and customer profiles, there is no requirement to rely on the business risk profile of the customer.

162. However, these Regulations are not enforceable.

Specific CDD measures required for legal persons and legal arrangements

163. *Criterion 10.8* - The MLPCA requires a customer who is a body corporate to provide to the FI or cash dealer its certificate of incorporation and latest annual return. However, there is no further requirement within the MLPCA to understand the nature of the customer's business and its ownership and control structure. As outlined in c.10.6, the MLPC Regulations require FIs to understand the proposed business of the customer. MLPC Regulation 7(5) requires that FIs take 'reasonable measures' to understand the ownership and control structure of the customer, which is a lesser obligation than 'requiring' FIs to do so.

164. However, as above, the Regulation is not enforceable.

165. *Criterion 10.9* - Section 12(1) of the MLPCA requires the production of a legal person's certificate of incorporation and the latest annual return to be provided to the Registrar of Companies on opening an account with a FI. The MLPC Regulations relating to customers that are legal persons or legal arrangements, (Regulations 6(6) and 7(6)) and the requirements relating to collecting beneficial ownership and control information are not enforceable.

166. *Criterion 10.10* - Section 12(1) of the MLPCA requires a customer who is a body corporate to provide to the FI or cash dealer its certificate of incorporation and latest annual return. Section 12(2) requires a FI/cash dealer to take reasonable measures to establish whether a customer is acting on behalf of another person. Section 12(3) further requires that if the customer is acting on behalf of another person, the FI/cash dealer 'shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise'.

167. MLPC Regulations 7(2), (5) and (6) require FIs to identify and verify each natural person who owns directly or indirectly 25 per cent or more of the vote or value of an equity interest and who exercises management of the legal person. However, where no natural person is identified, there is no requirement to identify the relevant natural person who holds the position of senior managing official. MLPC Regulation 7(8) confirms this by specifying that identification of other natural persons is not required.

168. These regulations are not enforceable.

169. *Criterion 10.11* - MLPC Regulations 7(2) and (7) outline that identification is required for settlors, trustees and beneficiaries whose vested interest is 10 per cent or more, however there is no requirement to also verify these parties. Further, identification is not required for those beneficiaries

with less than 10 per cent of a vested interest, while the FATF Recommendations do not provide for any threshold. There is also no provision to allow for the identification and verification of the protector of a trust (or similar arrangement) or any other natural person exercising ultimate effective control of the trust (or similar arrangement).

170. These Regulations, however, are not enforceable.

CDD for beneficiaries of life insurance policies

171. *Criterion 10.12* - MLPC Regulation 7(3) requires that the beneficiary of a life or other investment-linked insurance policy is to be identified and verified. The Part A Schedule refers to delayed identification and verification and in the case of life insurance beneficiaries, it must occur before or at the time of payout. However, there is no requirement to take the name of a beneficiary once it is designated or identified. There is also no requirement to obtain sufficient information to ensure the identity of a beneficiary can be established at the time of payout.

172. These Regulations are not, however, enforceable.

173. *Criterion 10.13* - There are no requirements to include a beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable.

Timing of verification

174. *Criterion 10.14* - MLPC Regulations 6(4) provides that FIs must identify, and verify the identity, of a customer when establishing a business relationship or transactions for occasional customers. Regulation 8 provides for delayed verification in the event verification occurs as soon afterwards as reasonably practical, the delay is essential to not interrupting the normal course of business, and the ML and TF risks are effectively managed.

175. These Regulations are not however enforceable.

176. *Criterion 10.15* - MLPC Regulation 8(2) requires a FI, when delaying verification, to effectively manage the ML/TF risk associated with the delay and includes a set of measures, such as a limitation of the number, types or amount of transactions that can be performed.

177. These Regulations are not, however, enforceable.

Existing customers

178. *Criterion 10.16* - MLPC Regulation 5 requires CDD to be applied on a risk basis and may include enhanced CDD for higher risk customers, and while Regulation 12 requires FIs to gather and maintain customer information on an ongoing basis and to keep CDD information up to date through undertaking reviews of existing records,

179. This Regulation is not enforceable.

Risk-based approach

180. *Criterion 10.17* - MLPC Regulation 15 requires enhanced CDD to be undertaken for customers that are likely to pose a higher risk of ML/TF, including foreign PEPs. However, enhanced CDD is not required for a broader range of risk factors, including those relating to products, channels and

jurisdictions. Part B of the Regulations specify situations where a customer might be considered higher risk, including PEPs, high net worth individuals, engaged in business susceptible to ML or TF, a legal person whose structure is more complex than usual.

181. However, none of the measures referred to are enforceable.

182. *Criterion 10.18* - MLPC Regulation 16 requires that simplified CDD measures must be approved by TRA and may be granted in the event of lower ML/TF risk, information about the customer and beneficial owner is publicly available and adequate checks and controls exist elsewhere in the national systems. There is no requirement that specifies the adequacy of the analysis of the risk or that this risk analysis must be undertaken by the country or FI. There is also no requirement that the simplified measures must be commensurate with the lower risk factors and no prohibition of their acceptance in the event of a suspicion of ML/TF or other high risk scenarios.

183. These regulatory measures are not enforceable.

Failure to satisfactorily complete CDD

184. *Criterion 10.19* - MLPC Regulation 11(1) prohibits the acceptance of customers when their identity or that of beneficial owners cannot be assured. MLPC Regulation 14 requires an FI to terminate a customer relationship when unable to comply with CDD requirements. In both scenarios, FI must determine if a STR is to be filed. However like the other measures in the MLPC Regulations these provisions are unenforceable.

185. *Criterion 10.20* - There is no provision that permits FIs to suspend the CDD process if they consider that the CDD process will tip-off the customer.

Weighting and Conclusion

186. All of the detailed CDD requirements of the MLPC Regulations are unenforceable. **Recommendation 10 is rated non-compliant.**

Recommendation 11 – Record-keeping

187. Tonga was rated non-compliant with former R.10 in its 2010 MER. Record keeping applied only to those transactions that exceeded a certain monetary threshold over a four-week period. Other technical deficiencies included the absence of a requirement to retain records of account or business relationship terminated; no requirement to maintain records sufficiently to permit reconstruction of transactions; record keeping requirements did not extend to maintain necessary records on business correspondence for at least five years and records were not required to be made available to competent authorities on a timely basis.

188. *Criterion 11.1* - Tonga has a number of Acts that impose obligations in relation to record keeping:

- MLPCA: sections 13(1) and (4) require FIs to keep and maintain records of all transactions conducted for at least five years from the date the transaction was completed or upon which action was last taken.
- Financial Institutions Act 2016: section 80(1) requires licensed FIs to retain cheques, bank drafts and related records (or copies thereof) for up to seven years from the date, in the case

of documents payable on demand, or from the due date thereof in the case of all other documents. There are however, no penalties in the Act for breach of this provision and the obligations apply only to financial institutions defined under the Act (it excludes by definition, DNFBPs and other reporting entities).

- Money Lenders Act 2018: section 23(1) requires moneylenders to keep and maintain records up to seven years from the date of the loan. This Act applies only to moneylenders as defined thereunder namely: ‘any person who carries or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business (section 2). Section 23(2)(b) provides that anyone who breaches this commits an offence and shall be liable upon conviction to a fine not exceeding TOP 10 000 (US \$4 484).

189. MLPC Regulation 19 (1) requires FIs to retain records of every transaction conducted for at least seven years following completion of the transaction regardless of whether the account or business relationship is ongoing or has been terminated. However, those Regulations are not enforceable.

190. *Criterion 11.2* - Sections 13(1), (3) and (4) of the MLPCA require FIs to retain CDD-related information including the name, address, occupation (or, where appropriate, business or principal activity); the nature and date of the transaction; the type and identifying number of any account with the financial institution or cash dealer involved in the transaction etc. for five years.

191. MLPC Regulation 19(3) (a) to (d) requires FIs to keep records related to CDD information, including customer and beneficiary name, address or other identifying information normally recorded by the intermediary; nature and date of the transaction; type and amount of currency involved; and the type and identifying number of any account involved in the transaction. Regulation 20 requires FIs to keep account files and business correspondence for at least seven years.

192. However, those Regulations are not enforceable.

193. *Criterion 11.3* - Sections 13(1), (3) and (4) of the MLPCA require FIs to retain for at least five years records of all transactions carried out, including the name, address, occupation (or, where appropriate, business or principal activity) of the person conducting the transaction/s or on whose behalf the transaction/s is being conducted; the nature and date of the transaction; the amount involved; the type and identifying number of any account with the financial institution or cash dealer involved in the transaction; where the transaction involved a negotiable instrument other than cash the name of the drawer of the instrument, the institution on which it was drawn, the payee, amount and date of the instrument, the number of the instrument and details of any endorsement appearing on the instrument; and the name and address of the FI and the officer/employee/agent who prepared the record.

194. Sections 13(1), (3) and (4) of the MLPCA allow for reconstruction of individual transactions. However while Regulation 19(2) requires transaction records of FIs to be sufficient to permit reconstruction of individual transactions it is not enforceable.

195. *Criterion 11.4* - Regulation 20(2) requires FIs to ensure all customer and transaction records and information are made available on a timely basis to TRA and other domestic competent authorities upon appropriate authority. However, as above, this Regulation is not enforceable.

Weighting and Conclusion

196. The MLPCA contains basic record-keeping requirements. However, the more detailed record keeping requirements set out in the MLPC Regulations are unenforceable. **Recommendation 11 is rated partially compliant.**

Recommendation 12 – Politically exposed persons

197. In 2010 MER, Tonga was rated partially compliant with former R.6. The factors underpinning the rating included that the requirements were set out in other enforceable means which were only enforceable for a small minority of FIs/DNFBPs, albeit including the larger FIs, and there were deficiencies noted within FIs AML/CFT policies and manuals.

198. *Criterion 12.1* - In relation to foreign PEPs there are no enforceable means in Tonga relating to the four sub-criteria for c.12.1. The following provisions are in the non-enforceable MLPC Regulations:

199. (a) There is no explicit requirement for FIs to put in place risk management systems to determine whether a customer or BO is a PEP, however, Regulations 6, 7 and 15 do require FIs to conduct CDD on a risk basis, which includes enhanced CDD for higher risk customers including PEPs;

200. (b) Regulation 15 (3), FIs are required to ensure that high risk clients are not accepted as customers unless a senior member of management has given approval. There is no requirement for approval for continuing with existing PEP relationships;

201. (c) Regulation 15(2) (a) and (b), FIs are required to conduct reasonable measures to establish the source of wealth and source of funds of PEPs;

202. (d) There are no requirements for FIs to conduct enhanced ongoing monitoring on PEP relationships.

203. *Criterion 12.2* - There are no requirements in Tonga with respect to domestic PEPs or persons entrusted with a prominent function by an international organisation.

204. *Criterion 12.3* - The definition of PEPs (MLPC Regulation 2) covers family members and close associates of foreign PEPs, but not the family and close associates of domestic PEPs and persons entrusted with a prominent function by an international organisation. However, the Regulations are not enforceable.

205. *Criterion 12.4* - There are no requirements for FIs to take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy are PEPs.

Weighting and Conclusion

206. Tonga lacks enforceable measures in relation to PEPs. **Recommendation 12 is rated non-compliant.**

Recommendation 13 – Correspondent banking

207. In its 2010 MER Tonga was rated partially compliant with former R.7 due to the absence of enforceability of correspondent banking requirements and non-compliance by the majority of FIs.

208. *Criterion 13.1* - MLPC Regulation 18(2) contains measures in relation to cross-border correspondent banking, however those Regulations are not enforceable.¹⁶

209. *Criterion 13.2* - MLPC Regulation 18(6) contains measures in relation to this criterion, however those Regulations are not enforceable.

210. *Criterion 13.3* - MLPC Regulation 18(2)(e) prohibits a bank from entering into or continuing a correspondent banking relationship with a shell bank however those Regulations are not enforceable.

Weighting and Conclusion

211. Tonga lacks enforceable measures in relation to correspondent banking. **Recommendation 13 is rated non-compliant.**

Recommendation 14 – Money or value transfer services

212. Tonga was rated partially compliant with SR VI in its 2010 MER. There was a licensing requirement for foreign exchange dealers but the lists of their agents were not available to the supervisor, NRBT. NRBT was responsible for the conduct of offsite and on-site supervision of licensed MVTS, including AML/CFT requirements, however, in practice, there was a large informal, unregulated MVTS and a lack of proportionate sanctions. Resource constraints also limited effective monitoring and outreach. There was an absence of information about the size of the unregulated market, which created a risk/potential for ML/TF.

213. *Criterion 14.1* - Foreign exchange dealers are the only businesses in Tonga providing MVTS. Legal persons that provide MVTS are required to be licenced by NRBT (Foreign Exchange Control Act (FECA) 2018, parts III and IV). Natural persons cannot apply for a licence (section 14(2)). Section 15(1)(a) provides that every person who would become the shareholder or management of the company has to fulfil the minimum requirement of a fit-and-proper person. In addition, it is necessary for MVTS operators to be licensed by the Ministry of Trade and Economic Development in order to operate as a business.

214. *Criterion 14.2* - Tongan authorities have conducted several operations to identify unlicensed financial activities including illegal MVTS and have issued warnings to the persons and entities involved. In 2015, the FIU with assistance from UNODC conducted a 'Mystery Shopper' exercise and identified two unlicensed money exchange dealers, which the NRBT followed up by issuing a warning letter to cease operation and apply to the NRBT for a license (see case example 6.1). Since 2016, the Financial System Non-Banks Division of the NRBT has issued warnings to five persons/entities identified carrying out foreign exchange business without a license.

215. *Criterion 14.3* - Under the MLPCA any person who carries out a foreign exchange business is considered a FI, and subject to AML/CFT compliance and supervision once licenced. The NRBT is required by law to supervise these financial institutions under the MLPCA (see c.26.4).

¹⁶ As an aside, the Regulation-making power in section 80 of the MLPCA provides that the AG may make regulations 'for the effective carrying out of the provisions of the Act.' However, there are no provisions in the Act relating to correspondent banking. It is therefore a concern that even if the Regulations were enforceable the Regulations relating to correspondent banking are *ultra vires* the Act and therefore, if challenged, would be unenforceable even if the Regulations, generally, were enforceable.

216. *Criterion 14.4* - The Foreign Exchange Dealers Licensing Conditions require foreign exchange dealers to inform NRBT of new agents (both local and overseas) appointed during the licensing period; and to ensure that overseas agents are licensed with appropriate licensing authority. The NRBT retains a list of agents of all dealers.

217. *Criterion 14.5* - There are no obligations under relevant laws and regulations for MVTS to include their agents in their AML/CFT programme and to monitor them for compliance with these programmes.

Weighting and Conclusion

218. In Tonga legal requirements are in place to ensure that MVTS providers are licensed and monitored for AML/CFT compliance. However, there are minor shortcomings as foreign exchange dealers are not explicitly required to include agents in their AML/CFT programs and monitor them for compliance with such programs. **Recommendation 14 is rated largely compliant.**

Recommendation 15 – New technologies¹⁷

219. In its 2010 MER Tonga was rated partially compliant for R.8 (new technologies and non face-to-face business). Requirements were not set out in the MLPCA but rather only in other enforceable means which were only enforceable for a minority of FIs and DNFBPs. Not all FIs clearly outlined in their AML/CFT manuals the policies and procedures concerning technological products and non face-to-face customers.

220. *Criterion 15.1* - While MLPC Regulation 25 and TRA AML/CFT Guideline 2015 require FIs to have policies in place and take such measures as are needed to prevent the misuse of technological developments in ML or TF schemes those Regulations are not enforceable. Tongan authorities have not identified and assessed risks associated with new products and technologies.

221. *Criterion 15.2* - There are no requirements in place for risk assessments to be undertaken prior to launch of such products or mitigation measures to manage risks.

Weighting and Conclusion

222. There are no enforceable measures relating to new technologies. **Recommendation 15 is rated non-compliant.**

Recommendation 16 – Wire transfers

223. In its 2010 MER Tonga was rated partially compliant for former SR VII. The deficiencies noted in the report included limitations of the MLPCA that did not allow for inclusion of originator information in wire transfers, processing of non-routine transactions, maintenance of originator information or risk based procedures for incomplete originator information. It was also considered that relevant sanctions were not proportional.

¹⁷ The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This evaluation does not assess Tonga's compliance with revised R.15 because the amendments to the assessment Methodology were published by the FATF immediately subsequent to the Tonga ME on-site visit. Tonga will be assessed for technical compliance with revised R.15 in the context of its mutual evaluation follow-up process.

224. *Criteria 16.1* - While MLPC Regulation 17 addresses some of the requirements of this criterion, these Regulations are not enforceable.
225. *Criterion 16.2* - MLPC Regulation 17 partly addresses this criterion but the Regulations are not enforceable.
226. *Criterion 16.3* - There are no enforceable measures in relation to this criterion.
227. *Criterion 16.4* - There are no enforceable measures in relation to this criterion.
228. *Criterion 16.5* - MLPC Regulation 17(4) requires that for domestic wire transfers, the ordering FI must include the full originator information or only the originators account number or in its absence a unique identifier. MLPC Regulation 17(5) allows that the account number (or unique identifier) can be just provided (as described in sub-regulation 4(b)) in circumstances where this information can be made available to the beneficiary, FI and the TRA within three business days of receiving a request. However, the Regulations are not enforceable.
229. *Criterion 16.6* - MLPC Regulation 17(5) provides for the requirement by an ordering institution to provide the required information within three business days to the beneficiary, financial institution or TRA. However there is no requirement that this information will permit the traceability to the originator or beneficiary and, in any event, the regulations are not enforceable measures.
230. Under s.11(A) of the MLPCA, the TRA can request information or reports from financial institutions and cash dealers in relation to STRs. Under s72 of the MLPCA, TP may apply to a Judge for a production order where there is an investigation for a serious offence and the TP have reason to believe any person has a document relevant to identifying, locating or quantifying property of the person or tainted property. This information cannot include bankers' books (section 72(2)) and documents provided cannot be admissible in criminal proceedings against the person providing the documents (section 73). However there is no provision for law enforcement authorities to be able to compel immediate production of originator or beneficiary information in relation to wire transfers.
231. *Criterion 16.7* - Section 13 of the MLPCA has record keeping requirements that include customer and beneficiary information, however it is not evident that the full originator and beneficiary information for wire transfers is required to be maintained. MLPC Regulation 19 also includes record keeping requirements, but the regulation is not enforceable.
232. *Criterion 16.8* - There are no enforceable measures in relation to this criterion.
233. *Criterion 16.9* - MLPC Regulation 17(8) requires each intermediary to maintain all required originator information with the wire transfer. The Regulations are not enforceable.
234. *Criterion 16.10* - There are no enforceable measures in relation to this criterion. There is no requirement for intermediary financial institutions to keep a record for at least five years of all the information received from the ordering financial institution or another intermediary financial institution when technical limitations prevent the required information accompanying a wire transfer.
235. *Criterion 16.11* - There is no requirement for FIs to take reasonable measures to identify cross-border wire transfers that lack required originator or beneficiary information.
236. *Criterion 16.12* - There is no requirement for intermediary FIs to have risk-based policies and procedures for determining how to deal with wire transfers lacking the required originator or beneficiary information and the appropriate follow up action.

237. *Criterion 16.13* - MLPC Regulation 17(10) requires a beneficiary FI to identify and handle wire transfers that are not accompanied by complete originator information on the basis of perceived risk of ML and TF. These requirements are not enforceable. There is no similar requirement for beneficiary information. This requirement does not extend to identifying originator and beneficiary information of all wire transfers.

238. *Criterion 16.14* - There is no requirement for a beneficiary financial institution to verify the identity of a beneficiary and maintain that information in accordance with record keeping requirements of R.11.

239. *Criterion 16.15* - There is no requirement to have risk-based policies and procedures for determining how to deal with wire transfers lacking the required originator or beneficiary information or the appropriate follow up action.

240. *Criterion 16.16* - The definition of FI under the MLPCA includes persons who carry on a business of money transmission services. Money or value transfer service (MVTs) operators, as FIs under the MLPCA, do not meet relevant requirements of R.16, as outlined above.

241. *Criterion 16.17* - MVTs providers have obligations to file STRs, however there is no explicit requirement to take into account information from both sides of a wire transfer in order to determine if an STR is to be filed or to file an STR in any affected country and make relevant transaction information available to the TRA.

242. *Criterion 16.18* - The CTTOCA provides some requirements to freeze assets of designated persons and entities however per R.6 there are moderate shortcomings in the requirement to freeze.

Weighting and Conclusion

243. There are major shortcomings in meeting R.16 due to lack of enforceable means in relation to all of the criteria. **Recommendation 16 is rated non-compliant.**

Recommendation 17 – Reliance on third parties

244. Tonga was rated non-compliant with former R.9 in its 2010 MER. The MLPCA and Regulations did not contain the necessary elements required for reliance on third parties.

245. *Criterion 17.1* - The MLPCA contains no statutory measures relating to third party reliance. And while MLPC Regulation 10 provides that if a FI relies on intermediaries such as trust or company service providers, they must apply for authorisation from the TRA, those Regulations are not enforceable.

246. *Criterion 17.2* - There are no enforceable measures in relation to this criterion.

247. *Criterion 17.3* - There are no requirements with respect to reliance on a third parties part of the same financial group.

Weighting and Conclusion

248. Tonga's Regulations regarding third party reliance are not enforceable. **Recommendation 17 is rated non-compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

249. In its 2010 MER Tonga was rated partially compliant with former R.15. The deficiencies identified in the report included a lack of requirement to screen employees and internal audit and compliance functions only applied to core FIs.

250. *Criterion 18.1* - While MLPC Regulation 3 requires FIs to adopt and implement policies and practices to deter and prevent ML and TF, and Regulation 24 requires (a) the adoption and implementation of management arrangements to implement the Regulations and designation of a compliance officer at management level, (b) employee screening, (c) ongoing employee training and (d) the adequate resourcing of an independent audit function to test compliance with policies, procedures and controls, those Regulations are not enforceable. There is no requirement for such programmes to have regard to ML/TF risk and the size of the business.

251. *Criterion 18.2* - MLPC Regulation 26 requires FIs to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with Tongan requirements and FATF Recommendations. However, there is no requirement to implement specific group wide programmes, and the Regulations are not enforceable.

252. Further, there are no measures to ensure CDD and ML/TF risk management information is shared, in addition to the exchange of information between group-level to and from branches and subsidiaries in regard to customer, account and transaction information. There are no safeguards specifically for such scenarios in regard to preventing tipping off.

253. *Criterion 18.3* - MLPC Regulation 26 requires FIs to ensure foreign subsidiaries and branches apply ML/TF measures at least consistent with Tongan standards. In the event that a host country does not permit the implementation of such AML/CFT measures, financial institutions are required to inform TRA. There is no requirement for FIs to apply additional measures to manage ML/TF risks if these circumstances arise. The Regulations are not enforceable.

Weighting and Conclusion

254. There are no enforceable requirements in relation to this Recommendation.
Recommendation 18 is rated non-compliant.

Recommendation 19 – Higher-risk countries

255. Tonga was rated non-compliant with former R.21 in its 2010 MER. Factors underlying the rating included that, there were no requirements for all reporting parties to give special attention and conduct appropriate counter-measures to business relationships and transactions with persons (including legal persons and other FIs from or in countries which do not or insufficiently apply the FATF Recommendations. There was a lack of any requirement to apply countermeasures against jurisdictions which insufficiently meet the FATF Recommendations. In addition there was a lack of effective implementation of the limited requirements in the non-bank sector.

256. *Criterion 19.1* - There is no provision requiring FIs to apply EDD, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries for when called upon to do so by the FATF.

257. *Criterion 19.2* - There is no requirement for FIs to apply countermeasures when called upon to do so by the FATF or independently of any call by the FATF to do so.

258. *Criterion 19.3* - Tonga does not have measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries.

Weighting and Conclusion

259. Tonga lacks measures in relation to this Recommendation. **Recommendation 19 is rated non-compliant.**

Recommendation 20 – Reporting of suspicious transaction

260. Tonga was rated partially compliant with the former R.13 in 2010 due to narrow reporting requirements; not all required predicate offences were ML offences; and absence of ‘attempted transaction’ as a reporting requirement.

261. *Criterion 20.1* - Section 14 of the MLPCA requires FIs to file STRs with TRA for transactions or attempted transactions whenever those reporting entities have reasonable grounds to suspect that information related to those transactions may be relevant to the investigation or prosecution of a person for a serious offence or for TF. Reports must be filed no later than three working days after forming the suspicion and wherever possible before the transaction is carried out.

262. According to this section, the STR reporting obligation must be based on reasonable grounds that the information in the reporting entity’s possession may be relevant to the investigation or prosecution of a person for a serious offence. This requires a reporting entity to take an additional step, beyond forming a suspicion, to forming a judgment about evidentiary relevance of its information before forwarding an STR. In turn, this means that the reporting obligation does not apply to all funds suspected to be proceeds of crime or TF. The step requiring judgement of evidentiary relevance is one that should properly be made by TRA once the STR is received and not by the reporting entity.¹⁸

263. Moreover, as noted in R.3, the ML offence lacks the full range of predicate crimes (arms trafficking, environmental offences and insider trading and market manipulation).

264. Section 21 of the MLPC Regulations requires STRs to be reported only by FIs when FIs suspect or have reasonable grounds to suspect that funds are related to ML, TF, a serious offence or proceeds of a criminal offence including tax matters. However, the MLPC Regulations are unenforceable.

265. *Criterion 20.2* - Reporting obligations under section 14 of the MLPCA apply to (as above) suspicious transactions based on reasonable grounds to suspect they may be relevant to the investigation or prosecution of a person for a serious offence. This requires a reporting entity to take an additional step, beyond forming a suspicion, to forming a judgment about evidentiary relevance of its information before forwarding an STR, including attempted transactions, regardless of the amount of the transaction.

¹⁸ In fact it is the same wording that appears in section 11A(j) of the Act requiring the TRA to form this judgment before disseminating its analysis reports to LEAs.

Weighting and Conclusion

266. The full range of STR reporting is narrowed by two significant deficiencies: (1) the requirement that reporting entities form an evidentiary value judgement after forming a suspicion but before disseminating STRs to TRA; and (2) the full range of predicate offences is not included in the ML offence. **Recommendation 20 is rated non-compliant.**

Recommendation 21 – Tipping-off and confidentiality

267. In the 2010 MER, Tonga was rated partially compliant with the former R.14 due to a defence for tipping off provided under the MLPCA if the person ‘did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation...’

268. *Criterion 21.1* – Section 24 of the MLPCA states that ‘no action, suit or other proceedings shall lie against any financial institution or cash dealer, its officers, employees and other representatives acting in the ordinary course of the person’s employment or representation, acting in good faith pursuant to section 14 of the Act [STR reporting obligation].’ This section applies to both criminal and civil action. The MLPCA defines ‘proceedings’ as ‘any procedure conducted by or under the supervision of a Judge, Magistrate or judicial officer however described, in relation to any alleged or proven offence or property derived from such offence and including an inquiry, investigation and preliminary or final determination of facts’. However, this protection is not extended to directors of financial institutions.

269. *Criterion 21.2* – Section 24A of the MLPCA prohibits any person (whether a financial institution, its officer, employee or representative) from disclosing to any other person that a report is being prepared or has been sent to TRA or additional information as requested by Transaction Reporting Authority. The person may share information with the Court, National Reserve Bank of Tonga and other persons authorised by law. Section 24A provides penalties if disclosures are made in contravention thereof of a fine up TOP 250 000 (US \$112 108) and/or up to 15 years imprisonment. In the case of a body corporate the penalty is up to TOP 500 000 (US \$224 215). However, this provision is not extended to directors of financial institutions.

Weighting and Conclusion

270. Directors of financial institutions are not included in the statutory protection for tipping off or in the prohibition for tipping-off. **Recommendation 21 is rated largely compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

271. Tonga was rated non-compliant with former R.12 in its 2010 MER. The key factors underlying the rating were that the CDD obligations did not apply to DNFBPs and that there was no AML/CFT system or regime for DNFBPs in Tonga prior to the 2010 ME.

272. Under Section 2(1) of the MLPCA DNFBPs are included in the definition of ‘cash dealer’ with the definition covering all DNFBPs. Therefore, requirements of the MLPCA are enforceable on DNFBPs.

273. The MLPC Regulations apply only to financial institutions as defined in the MLPCA – namely banks, MVTs, money lenders and life insurers¹⁹ and not DNFBPs (see R.10 for a discussion on the

¹⁹ The definition of a ‘cash dealer’ includes insurers, however the definition of ‘financial institution’ also includes a business that accepts a ‘deposit for life insurance’.

enforceability of the Regulations). The only obligations that are enforceable (via sanctions) in relation to CDD for DNFBPs are contained in the MLPCA. Section 12(1) of the MLPCA requires DNFBPs to take reasonable measures to satisfy themselves as to the true identity of a customer. A penalty of imprisonment up to 2 years or fine not exceeding TOP 20 000 (US \$8 969) or both, or in the case of a body corporate a fine of up to TOP 100 000 (US \$44 843) applies for failure to comply with this requirement. But all of the details of the CDD measures to determine 'true identity' are contained in the unenforceable Regulations.

274. Section 16A of the MLPCA provides supervisory or regulatory authorities with the power to enforce compliance ranging from warnings to licence suspensions/withdrawals but that section makes it clear that the sanctions apply only to breaches of the Act (not the Regulations).

275. *Criterion 22.1* - The limited CDD requirements in the MLPCA as discussed in R.10 are applicable to DNFBPs. There is no requirement in the MLPCA covering when DNFBPs are required to comply with CDD requirements as outlined in this criterion.

- (a) While casinos are defined as 'cash dealers' under section 2(1) of the MLPCA casinos are prohibited in Tonga.
- (b) Real estate agents and brokers are defined as 'cash dealers' under section 2(1) of the MLPCA, however there are limited measures for CDD in the MLPCA.
- (c) Dealers in precious metals and stones are defined as 'cash dealers' in section 2(1) of the MLPCA, however there are limited measures for CDD in the MLPCA.
- (d) Lawyers, notaries, other independent legal professionals and accountants are captured under section 2 (1) of the MLPCA, however there are limited measures for CDD in the MLPCA.
- (e) TSCPs are captured under section 2(1) of the MLPCA, however there are limited measures for CDD in the MLPCA.

276. *Criterion 22.2* - As per R.11, sections 13(1) and (4) of the MLPCA require DNFBPs to retain CDD-related information including the name, address, occupation (or, where appropriate, business or principal activity); the nature and date of the transaction; the type and identifying number of any account with the financial institution or cash dealer involved in the transaction etc. for five years. Gaps in the MLPCA identified in R.11 cascade into this criterion,

277. *Criterion 22.3* - As discussed in R.12, the MLPCA does not include requirements covering PEPs. Therefore there are no enforceable requirements for DNFBPs covering this criterion,

278. *Criterion 22.4* - As discussed in R.15, the MLPCA does not include requirements covering new technologies. Therefore there are no enforceable requirements for DNFBPs covering this criterion.

279. *Criterion 22.5* - As discussed in R.17, the MLPCA does not include requirements covering reliance on third parties. Therefore there are no enforceable requirements for DNFBPs covering this criterion.

Weighting and Conclusion

280. DNFBPs are required to comply with requirements under the MLPCA. However, as discussed in R.10, R.11, R.12, R.15 and R.17, there are significant shortcomings in the relevant requirements in the MLPCA. There are limited enforceable measures in relation to CDD requirements for DNFBPs.

Recommendation 22 is rated non-compliant

Recommendation 23 – DNFBPs: Other measures

281. In the 2010 MER, Tonga was rated non-compliant for former R.16. The factors underlying the rating were that DNFBPs were not covered under any appropriate AML/CFT legislation and also that there was no AML/CFT system or regime for DNFBPs.

282. *Criterion 23.1* – DNFBPs are subject to the same STR reporting requirements as FIs under section 14 of the MLPCA however the same deficiencies apply (see R.20) namely: the full range of STR reporting is narrowed by two significant deficiencies: (1) the requirement that reporting entities form an evidentiary value judgement after forming a suspicion but before disseminating STRs to TRA; and (2) the full range of predicate offences is not included in the ML offence. In addition, there are no specific STR requirements for lawyers, DPMS and TSCPs as outlined in this criterion.

283. *Criterion 23.2* – There are no enforceable requirements for DNFBPs to comply with the internal controls requirements as set out in R.18.

284. *Criterion 23.3* – There are no requirements for DNFBPs to comply with the higher-risk country requirements as set out in R.19.

285. *Criterion 23.4* – DNFBPs are subject to the same requirements as FIs with respect to complying with tipping-off and confidentiality requirements but subject to the same deficiencies noted in R.21.

Weighting and Conclusion

286. Tonga provides for general requirements in relation to reporting of STRs by DNFBPs but there are major shortcomings in relation to those obligations. There are no obligations relating to R.18 and R.19, and moderate shortcomings in relation to R.21. **Recommendation 23 is rated non-compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

287. Tonga was rated partially compliant for the former R33 in their 2010 MER. The 2010 MER noted, among others, that measures were not in place to ensure that there is sufficient, adequate or timely information held on the beneficial ownership and control of legal persons; information submitted to the Companies Registrar pertains to legal ownership and not beneficial ownership and was not verified.

288. Legal persons in Tonga consist of the following entities with independent legal personality:

- a) Local/private companies (Companies Act 2016 (revised) and Companies Regulations 2016 (revised)).
- b) Overseas companies (Companies Act 2016 (revised) and Companies Regulations 2016 (revised)).
- c) Incorporated societies (Incorporated Societies Act 2016 (revised)).
- d) Co-operative societies (Co-operative Societies Act 2016 (revised)).

289. Local companies are privately-owned companies. Overseas companies are foreign-formed companies but registered in Tonga to undertake business. There are no public companies in Tonga and there is no stock exchange. Limited liability partnerships are not permitted to be formed in Tonga.

290. *Criterion 24.1* - Tonga has statutory and regulatory mechanisms as noted above that identify and describe the different types of legal persons as follows:

- | | |
|----------------------------|--|
| a) Local companies: | Companies Act 2016 (revised) and Companies Regulations 2016 (revised). |
| b) Overseas companies: | Companies Act 2016 (revised) and Companies Regulations 2016 (revised). |
| c) Incorporated societies: | Incorporated Societies Act 2016 (revised). |
| d) Co-operative societies: | Co-operative Societies Act 2016 (revised). |

291. The laws are available on Tonga government websites and establish processes for the creation of the legal persons noted in c.24.1 and for the recording of basic information. But there are no mechanisms for the recording of beneficial ownership information in relation to those legal persons.

292. *Criterion 24.2* - The ML/TF risks associated with all types of legal persons described above were not assessed in the NRA. The 2019 NRA generally identifies companies as having institutional vulnerabilities with high risk levels that may assist or facilitate ML/TF but this is a general comment only and not related to the different types of legal persons.

Basic Information

293. *Criterion 24.3* - The following registrars are established under the relevant legislation as follows:

- | | |
|----------------------------|--|
| a) Local companies: | Registrar of Companies, Companies Act s 366. |
| b) Overseas companies: | Registrar of Companies, Companies Act s 366. |
| c) Incorporated societies: | Registrar of Incorporated Societies, Incorporated Societies Act s 7. |
| d) Co-operative societies: | Registrar of Co-operative Societies, Co-operative Societies Act s 4. |

Private and Overseas Companies

294. Information on the basic features and the registration process of local companies and overseas companies is publicly available in the business registry at www.businessregistries.gov.to by searching a company name. The on-line search function provides public access the following information:

- General details;
- Address of registered office;
- Directors;
- Basic shareholders;
- Authorised agents;
- General filings (including annual returns, rectifications, removal notices, change of status)

295. Unlike local companies however, basic information on shareholders of overseas companies is not required to be filed with the registrar and is therefore not publicly available.

Incorporated Societies

296. Every society must keep a register of its members and shall, from time to time when required by the registrar, submit a list of the names, addresses, and occupations of its members (section 22). Documents lodged with the registrar are available for inspection by the public for a prescribed fee (section 34).

Co-operative Societies

297. Every registered co-operative society must have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address. Every registered society must also keep a copy of the Act, Rules under the Act and its by-laws and a list of its members open for inspection, free of charge, at all reasonable times at the registered address of the society (sections 12 and 13).

298. *Criterion 24.4* – Under section 224 of the Companies Act, a local company shall keep the certificate of incorporation or registration of the company, the constitution of the company, the share register, the full names and residential addresses of the directors and the registered office and address for service of the company available for inspection by the public. Section 198 requires companies to keep further documents at its registered office including an interest-register, the share register and full names and addresses of current directors. Local companies file annual returns with the registrar, which include information relating to the number of shares issued, if there is more than one class of shares and the number of shares in each class (Third Schedule Companies Act). This is available for public access online. Overseas companies have similar filing requirements but are not required to submit a list of shareholders to the registrar and instead of having a registered office, they shall inform the registrar of the principal place of business in Tonga and appoint a person who is authorised to accept service in Tonga of documents on behalf of the overseas company (section 345 Companies Act).

299. There are similar requirements regarding the registers required to be kept by co-operative societies and incorporated societies at a designated address as notified to the respective registrar.

300. *Criterion 24.5:*

Local and Overseas Companies

301. Both local and overseas companies are required to file an annual return to the registrar each year during a month that is allocated by the registrar (section 223 and 349 of the Companies Act). If the company fails to file an annual return within six months after the allocated month, the registrar by written notice shall require the company to comply within 6 months, failing which the company shall be removed from the register (sections 223(10) and 349(7)).

302. Information relating to the registered office address, service address, place where the share register is kept, past and present shareholding information and particulars of directors of local companies are updated on an annual basis (Third Schedule Companies Act). Local companies are required to report change in director to the registrar within 20 working days of the change (section 158). If company intends to change its registered office or address for service, the company shall inform the registrar in advance notice and the change shall take effect not less than 5 working days after the notice is registered (sections 196 and 202).

303. An overseas company shall file the annual return in the prescribed form confirming that the information on the overseas register in respect of an overseas company, which contains particulars of

directors and place of business in Tonga, is correct (section 349(1)). A change in the director of an overseas company is required to be reported to the registrar within 20 working days after the day of change.

304. The Ministry of Trade and Economic Development verifies information on records kept by companies. Annual returns are subject to consistency checks and supporting documents may be requested by the registrar to verify the information submitted. Due to limited resources, the staff only do inspections when they receive complaints.

Incorporated and Co-operative Societies

305. There are no requirements in the Incorporated Societies Act and the Co-operative Societies Act that the information relating to c.24.3 and c.24.4 be kept accurate and up-to-date on a timely basis.

Beneficial Ownership Information

306. *Criterion 24.6* - Each of the three sub-criteria are assessed (bearing in mind that they are in the alternative):

307. (a) Neither the Companies Registrar nor local and overseas companies themselves are required to obtain and hold beneficial ownership on companies. In addition, neither of the other Registrars (incorporated societies and co-operative societies), nor the legal persons they oversee, are required to obtain and hold up-to-date beneficial ownership information.

308. (b) Local and overseas companies, as well as co-operative societies and incorporated societies, are not required to take reasonable measures to obtain and hold up-to-date beneficial ownership information.

309. (c) While the MLPC Regulations (regulation 7) requires financial institutions to take reasonable measures to determine if a customer is acting on behalf of one or more beneficial owners and steps to verify the identity of the beneficial owner those regulations (as noted elsewhere in the TC Annex – see R.10), they are not enforceable. Other mechanisms under this sub-criterion do not apply and there is no stock exchange in Tonga.

310. *Criterion 24.7* – Financial institutions are not required to establish a customer profile for each customer containing sufficient detail to enable it to implement the CDD requirements (MLPC Regulations (regulation 9) are not enforceable), and there is no explicit obligation for financial institutions to ensure the beneficial ownership information is accurate and up-to-date.

311. *Criterion 24.8* – There are no requirements for having a natural person or a DNFBP in Tonga authorised by the company, or society to provide basic information and available beneficial information, or give further assistance to competent authorities. There are no other comparable measures identified by Tonga.

312. *Criterion 24.9* – There are no obligations on legal persons to maintain information and records referred to in this Recommendation for at least five years from the dissolution of a corporation/partnership or ending of relationship with financial institutions and DNFBPs.

Other Requirements

313. *Criterion 24.10* – Basic information of companies and other legal persons is available to LEAs through public search. With respect to beneficial ownership information, LEAs have powers to secure that information if available. The MLPCA has powers for LEAs to compel the production of documents required to be kept by financial institutions. Section 72 allows TP officers to apply *ex parte* to a Judge in chambers for a production order against the person suspected of having possession or control of a document that may identify or locate property of a person. A Judge may order that the person produce to the TP officer any documents referred to. However, this does not apply to bankers' books. The scope of information is limited in terms of what companies and other legal persons hold.

314. *Criterion 24.11* – Companies are permitted to issue any types of shares under the Companies Act. Bearer shares are not prohibited. While Tonga states that bearer shares are not in practice issued, nevertheless they are permitted to be issued, and there are no measures in the Companies Act or elsewhere to mitigate the risk they pose.

315. *Criterion 24.12* – There is no prohibition under law for appointment of nominee directors or issuance of nominee shares. The definition of 'director' includes 'a person in accordance with whose directions or instructions [a director] may be required or is accustomed to act' (deeming provision in section 125 Companies Act). There are no provisions in the Companies Act requiring disclosure to the company or to the registrar of the identity of the nominator of directors.

316. *Criterion 24.13* – There are a range of penalties under the Companies Act and Regulations for failing to comply with the relevant provisions. Delay in making of filings would result in additional fees of \$25 to \$200 (Regulation 6). If a company fails to file an annual return it may be removed from the companies register (section 223 Companies Act). If a company fails to keep records such as share register and list of directors available for inspection, it is liable to a fine not exceeding \$500 (section 224). A director of a company who is convicted of an offence under the Companies Act is liable a fine from \$200 to \$500 (section 377). In more serious spectrum, if a person makes, or authorises the making of, a statement in it that is false or misleading in a material particular in a document required by the Companies Act, the person is liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$2 000 or to both (sections 381 and 377(4)). However, as the scope of beneficial ownership information is limited there are no sanctions available in relation thereto.

317. *Criterion 24.14* - Basic information on companies and societies is available publicly. Information on directors and legal ownership is included in the basic information of companies. The ability of competent authorities to access beneficial ownership information is largely based on the powers of TRA under MLPC, which enables TRA to disclose and exchange information with a foreign or government institution (section 11(v) and (w)). LEAs are also able to use their investigative powers to obtain information from companies by public search or compulsive measures such as search warrants and production orders on the companies on behalf of foreign LEAs using formal MLA channels, but the range of information collected is limited to direct ownership information since wider beneficial ownership information is not required to be collected or maintained by the company itself. The scope of beneficial ownership information is limited where legal persons do not have a relationship with a financial institution.

318. *Criterion 24.15* – There is no formal mechanism in place to monitor the quality of assistance Tonga receives from other countries in response to requests for basic and beneficial ownership information or requests made for assistance in locating beneficial owners residing abroad. As requests

are mostly done in informal ways the exchange is done whenever information requested is ready to be distributed and relayed to the requested party.

Weighting and Conclusion

319. Tonga has publicly available information on the creation of legal persons and the recording of basic ownership information. However, the lack of requirements for legal persons and registrars to hold beneficial ownership information, absence of ML and TF risk mitigating measures for bearer shares, nominee shareholders and directors, together with the absence of record-keeping requirements for dissolved companies, are major shortcomings given the vulnerability rating of companies in the NRA is high. **Recommendation 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

320. Tonga was rated non-compliant with R.34 in 2010. Tonga had failed to satisfy all of the requirements of R.34 and provided very little information on the system of trust law in the country.

321. In Tonga trusts are governed by common law. With the exception of the Charitable Trusts Act, Tonga does not have any additional laws which supplement the common law (for instance, a general Trustee Act). Tongan authorities do not have information on the number of operating domestic or foreign trusts in Tonga.

322. *Criterion 25.1:*

323. (a) There are no express requirements in law or regulation (including case law) to require trustees to obtain and hold adequate, accurate and current information on the identity of the settlor, trustee(s), protector, and beneficiaries or class of beneficiaries, and any other natural persons exercising ultimate effective control over a trust.

324. (b) Trustees of trusts are not required to hold basic information on regulated agents of, and service providers to, trusts, including investment advisors or managers, accountants, and tax advisors.

325. (c) Professional trustees are not required to maintain trust-related information for at least five years after their involvement with the trust ceases.

326. *Criterion 25.2* – There is no requirement that the information held pursuant to R.25 by trustees is kept accurate and up-to-date as possible.

327. *Criterion 25.3* – There are no obligations on trustees in Tonga to disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold in the Recommendations.

328. *Criterion 25.4* – Trustees are not prevented by law or enforceable means from providing competent authorities with information they hold relating on the trust, or from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership and assets of the trust. However, the scope of information held is limited.

329. *Criterion 25.5* – For non-professional trustees, it is doubtful whether the LEAs would have timely access to the information especially when the trustee could not be identified. For professional trustees operating as FIs or DNFBPs, to the extent that the information is available and collected, the LEAs have powers under the MLPC to obtain information on basic and beneficial ownership through

TRA for information, and are empowered to apply for search warrants or production orders to compel production of record.

330. *Criterion 25.6* – The MLPC and MACMA enables competent authorities to assist foreign counterparts in obtaining information held through TRA and MLA respectively. However, trust information is limited and it is not clear whether Tonga can, or does, provide rapid co-operation with international counterparts.

331. *Criterion 25.7* – There are no laws providing for criminal, civil or administrative nature of sanctions on trustees for failing to perform the duties relevant to meeting their R.25 obligations.

332. *Criterion 25.8* – It does not appear that there are proportionate and dissuasive sanctions (civil, criminal or administrative) for failing to grant authorities timely access to information referred to in c.25.1 (information held by trustees).

Weighting and Conclusion

333. Trusts are governed solely by common law in Tonga, with the number of operating domestic or foreign trusts in Tonga unknown. There is no requirement for information on domestic or foreign legal arrangements to be kept accurate and up-to-date and no law providing a range of sanctions for trustees that fail to perform their duties. The core components of this Recommendation relating to beneficial ownership information are not met. Tonga has not risk-rated trusts for ML and/or TF for the purpose of weighting the rating for this Recommendation. **Recommendation 25 is rated non-compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

334. In its 2010 MER Tonga was rated partially compliant with former R.23 due to a lack of supervisory activity to identify unlicensed businesses, including informal remittance providers, and inadequate regulation and licensing of credit unions, money lenders, insurance companies and money remitters.

335. *Criterion 26.1* – Part 2 of MLPCA at section 11 designates TRA to regulate and supervise FIs compliance with AML/CFT requirements.

336. *Criterion 26.2* – Section 3 of the FI Act prohibits the provision of certain services in the absence of a license including banking, MVTS and foreign exchange services. Insurance companies are not required to be licenced. There is no securities sector in Tonga.

337. There is no prohibition on the existence and operation of shell banks.

338. *Criterion 26.3* – Section 26 of the FI Act lists criteria that prohibit a person from being a director or managing a FI. The conditions mainly relate to fit and proper considerations such as not being bankrupt, not being sentenced in a court for offences of dishonesty, where previous licenses have been revoked, where they have been disqualified or suspended from a profession on the ground of misconduct, insufficient financial competence and expertise etc. However, there are no similar criteria to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest of, or managing a FI.

339. Prudential Statement No. 8 in relation to fit and proper requirements adds more criteria to those listed in section 26 of the FI Act. Paragraph 14 of the Prudential Statement states that many of

the fit and proper criteria in paragraph 12 extend to significant shareholders, however it does not detail which criteria do apply. Non-compliance with Prudential Statements are enforceable by corrective actions provided for under section 33 of the FI Act.

340. *Criterion 26.4* – TRA implements a risk-based approach to AML/CFT supervision of FIs (core principle FIs and other FIs) which involves two elements of the risk-based approach to AML/CFT supervision: (a) identification and assessment of ML/TF risks; and (b) AML/CFT supervisory engagement to monitor and enforce compliance. TRA together with other LEAs conducted a sectoral risk assessment which included the ML/TF risks associated with the type of business activity/s and the overall quality of AML/CFT controls. Factors considered during the AML/CFT assessment include the nature, scale and context, types of customers, distribution channels, jurisdictions, products and services and other relevant factors. No evidence has been provided that suggests consolidated group supervision is appropriate in Tonga and if so, is undertaken.

341. Despite the existence of a risk-based approach framework, due to resourcing restraints Tongan authorities do not actively undertake regulatory activity on the majority of the industries that they regulate.

342. *Criterion 26.5* – TRA's risk based supervision of FIs involves dividing regulated entities into high, medium or lower risk. Higher risk entities are visited every 18 months. Medium risk entities are to be monitored offsite and to be considered for on-site based on offsite findings. Lower risk entities are required to submit an audit report/compliance program every two years to monitor compliance. While a scale of intensity does exist, it is not clear how a financial institution's ML/TF risk profile is determined (as opposed to the industry risk) or how the ML/TF risks of the country affects the frequency or intensity of supervision.

343. *Criterion 26.6* – TRA relies on a supervision workbook which is periodically updated, at least every six months or when a circumstance occurs that may impact on risk ratings or supervisory approaches to ensure that supervisory engagement remains up to date with evolving risks. This workbook draws upon the findings of Tonga's first ML/TF national risk assessment. It is not clear whether this function sufficiently captures the ML/TF risk profile if it relies on the higher level ML/TF national risk assessment.

Weighting and Conclusion

344. There are deficiencies in meeting R.26, including no prohibition of shell banks, shortcomings relating to preventing criminals and their associates having influence of a financial institution, and moderate shortcomings in TRA's risk-based approach to supervision and monitoring. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

345. Tonga was rated partially compliant with former Recs 17 and 29 in the 2010 MER due to the limitation of the scope of powers contained in the MLPCA to monitor all FIs and the limited availability of sanctions in instances of failures to comply with AML/CFT requirements.

346. *Criterion 27.1* – Section 11A of the MLPCA empowers TRA to supervise and regulate FIs including the power to enter premises, take copies of documents, instruct those entities to do certain things and enforce compliance with the Act and issue guidelines on key regulatory obligations.

347. *Criterion 27.2* – Section 11A(e) of the MLPCA empowers TRA to enter premises of FIs and undertake inspection activities.

348. *Criterion 27.3* – Section 11(e) of the MLPCA empowers TRA to take copies of records following the entering of the premises of any FI. Section 11(l) gives TRA the power to instruct a FI to take appropriate steps in relation to any information or report received by TRA to enforce compliance with the Act. Therefore, compelling production of information is dependent on one of these two conditions. There is no general power that compels document production that exists without such conditions attached, thus limiting proactive monitoring of reporting entities.

349. *Criterion 27.4* – Section 16A of the MLPCA provides regulatory authorities with a range of sanctions to impose for failures to comply with AML/CFT requirements, including banning individuals from employment and replacing or restricting the powers of those that control a business. It also allows the suspension, restriction and withdrawal of a financial institution licence. Section 16A does not allow for the imposition of financial sanctions and there are no criminal sanctions within section 16A. Outside section 16A, there are limited criminal sanctions attached to AML/CFT requirements in section 18 (if no penalties are specified elsewhere). The requirements listed in the MLPC Regulations are not enforceable (see ‘MLPCA and MLPC Regulations (enforceability)’ section under Recommendation 10).

Weighting and Conclusion

350. There are some deficiencies in meeting R.27, including limitations on the power to compel production of documents without entering premises. **Recommendation 27 is rated partially compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

351. In the 2010 MER, Tonga was rated non-compliant with former R.24. The factors underlying the rating were that there was an absence of AML/CFT requirements for DNFBPs and DNFBPs were not subject to effective systems for monitoring and supervision for AML/CFT.

352. *Criterion 28.1* – There are no casinos operating or licenced in Tonga. While casinos are captured as ‘cash dealers’ in the MLPCA and are technically subject to supervision by TRA, the Criminal Offences Act (section 82) prohibits the operation of gaming houses in Tonga.

353. *Criterion 28.2* – TRA is the designated competent authority responsible for monitoring and ensuring compliance of DNFBPs with the MLPCA. Other than casinos, the DNFBPs defined as cash dealers in the MLPCA include real estate agents, dealers in precious metals or stones, accountants, law practitioners and trust and company service providers.

354. *Criterion 28.3* – Section 11A of the MLPCA empowers TRA to administer and enforce certain statutes on DNFBPs including monitoring compliance with AML/CFT requirements. Section 16A administrative measures and sanctions apply to DNFBPs.

355. *Criterion 28.4:*

356. (a) Section 11A (c), (e), (l), (p) and (r) of the MLPCA empowers TRA to administer and enforce certain statutes that concern financial misconduct and to conduct enforcement oversight but as at the date of the on-site visit a draft sectoral supervision framework was not yet implemented Notwithstanding that:

357. (b) Lawyers admitted to practice in Tonga have to obtain the approval of the Supreme Court upon advice from the Tongan Law Society. The Law Society carries out due diligence checks (i.e. criminal checks, qualification checks etc.) on new lawyers prior to advising the Supreme Court to make a decision whether to approve or decline an application. Lawyers practicing in Tonga are governed under the Law Practitioners Act 2016.

358. Real estate agents and accountants are required to register and obtain a license from MTED or Ministry of Revenue and Customs before operating a business. Individuals providing real estate and accounting/audit services require some experience or qualification in the sector prior to carrying out the business. There is no SRB for real estate agents.

359. There is an accountant association in Tonga but it is currently inactive.

360. Dealers in precious metals and stones deal with gold from scrap metals, black pearls etc. Registration and licensing is done with MTED. There is no SRB for dealers in precious metals and precious stones in Tonga.

361. Insurance companies are required to register with MTED before operating as a business.

362. There are no requirements that compel the competent authorities or SRBs in Tonga to take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest or holding a management function in a DNFBP.

363. (c) All DNFBPs are subject to section 16A of the MLPCA. Failure to comply with the various AML/CFT requirements prescribed under the Act attract sanctions. Minor deficiencies apply to the available sanctions (see R.35).

364. *Criterion 28.5* – There has been no implementation of the TRA’s sectoral supervision framework as at the time of the on-site visit, and therefore no supervision framework yet in place for DNFBPs to ensure compliance with AML/CFT requirements.

Weighting and Conclusion

365. While all DNFBPs are required to comply with the MPLCA, deficiencies exist in meeting this Recommendation including the absence of supervision of DNFBPs compliance with the AML/CFT requirements. **Recommendation 28 is rated partially compliant.**

Recommendation 29 - Financial intelligence unit

366. Tonga was rated partially compliant with former R.26 in its 2010 MER due to a range of deficiencies including an underlying limitation on the ability of TRA to analyse STRs, lack of timely access to information from other domestic law enforcement agencies and supervisory authorities, and lack of powers to share information with foreign counterparts.

367. *Criterion 29.1* – the National Reserve Bank of Tonga is the Transaction Reporting Authority (TRA) appointed in that role in July 2001 by the AG with Cabinet approval under section 11(1) of the MLPCA. The statutory functions and powers of the TRA (approximately 25) are listed in section 11A of the Act. Among those powers, the TRA is empowered to receive and analyse STRs and other information including receiving and analysing information and reports relating to serious offences, ML and TF offences. TRA is also empowered to refer analysis reports.

368. The TRA is not a separate or discrete division/unit within the NRBT – it is the NRBT itself. Two NRBT staff officers are assigned a limited number of TRA functions. The NRBT board has delegated some of the TRA functions in section 11A of MLPCA to those two dedicated staff members (Senior Manager, FIU; and Statistical Assistant FIU). But these limited powers do not include core FIU functions such as the authority to analyse STRs. Those functions may be undertaken by any staff member of the NRBT. The primary authority to disseminate STRs is vested in the Assistant Governor-Policy in the first instance and only to the Senior Manager, FIU, when the Assistant Governor is unavailable. Hence, while the NRBT has been appointed as the TRA (FIU) there are no fully dedicated staff members assigned the full statutory functions of an FIU within the NRBT.

369. *Criterion 29.2* – TRA (i.e. the NRBT) is the central agency for the receipt of disclosures filed by reporting entities under the MLPCA including:

370. (a) Information and reports, including STRs, from FIs and DNFBPs (sections 11A(a)(i) and 14(1));

371. (b) Other information from LEAs, government agencies/institutions, any agencies of another country and voluntary submissions (section 11A(a)(i)-(iii)). Other reports included by implication are border cash reports and cash transaction reports. However, it is not clear in the legislation whether TRA can receive wire transfer information from financial institutions and DNFBPs.

372. *Criterion 29.3* – In addition to the information noted above, under the MLPCA, TRA:

373. (a) Can obtain and use additional information for its analysis functions from: FIs and DNFBPs (section 11A(c) and (d)); commercially available databases, databases maintained by government, and from government agencies (section 11A(f)); and, from foreign government agencies, foreign LEAs and supervisory authorities, and from foreign auditing authorities (section 11A (i)); and

374. (b) Is empowered to access any information considered relevant to the investigation of a serious offence, ML or TF offence, whether publicly available or maintained on the databases of government agencies or institutions (section 11A(f)). TRA also has access to World Check and open source information. However, TRA cannot access tax information held by the Ministry of Revenue and Customs. Section 57 of the Revenue Services Administration Act 2016 provides that it is an offence for a taxation officer to disclose information in their possession except in the limited cases outlined in section 57(2)(a)-(d). While the secrecy-overriding provision in MLPCA at section 23 is broad, the specific provisions in the Revenue Services Administration Act, and the detailed exceptions in it, mean that tax secrecy cannot be overridden by the MLPCA.²⁰

375. *Criterion 29.4* – Under the MLPCA:

376. (a) TRA is empowered to conduct operational analysis by assessing the reports and information received, and to use, request and obtain information from financial institutions, DNFBPs and other persons. It may also collect information necessary to execute its analytical process. In the course of its business TRA regularly conducts this type of analysis;

377. (b) TRA is required to conduct research into ML/TF trends and developments, and improved ways of detecting, preventing and deterring ML/TF activities. TRA analyses the reports it receives

²⁰ Both the MLPCA and the Revenue Services Administration Act were enacted/amended and came into force in the same year (2016).

from reporting entities on a monthly and quarterly basis to identify any suspicious trends in the behaviour of customer transactions, and issues quarterly reports available on the NRBT website.

378. *Criterion 29.5* – TRA can spontaneously, or upon request, disseminate the results of its assessment to relevant authorities (section 11A(u) of the MLPCA). TRA STR procedure document identifies the types of STRs and analysis reports and which LEAs they are to be disseminated to. TRA may also disclose any report or information deriving from such report with foreign authorities, and may enter into agreements with foreign authorities for the sharing of information (section 11A(v)).

379. TRA intelligence is disseminated via email with encrypted attachments and secure-hand delivery. While disseminations of financial intelligence contain a caveat that protects and restricts further sharing to third parties without first obtaining the permission of TRA these are secure and protected channels but not ‘dedicated’ as required by the sub-criterion.

380. *Criterion 29.6* – TRA:

381. (a) Does not have written procedures governing security and confidentiality of information including procedures for handling, protection and access to information. There is some limited information regarding the storage, dissemination and filing of STRs in the written procedures for processing STRs but these are not enforceable.

382. (b) Is part of the NRBT and section 19 of the NRBT Act prescribes secrecy to be observed by all employees of the NRBT, which includes TRA staff. Section 4 of the NRBT Regulations require all officers and employees of NRBT to sign a declaration of allegiance and secrecy. Contravening these provisions, and the declaration, is an offence. However, it is not clear how these provisions are applicable in the circumstances of TRA staff (unique within the structure of the NRBT) since section 17 of the NRBT Act provides that a staff member’s ‘duties and functions’ may override the broader bank’s secrecy restrictions and there are some provisions in the MLPCA that allow this for the proper functioning of TRA in disseminating financial intelligence within Tonga and to foreign agencies. This would mean that TRA should have its own secrecy provisions unique to the duties and functions of TRA’s staff within the structure of the NRBT.

383. (c) Has physical systems and processes in place for the security of information within TRA. TRA’s computer directory has restricted access, with only the Governor, the Deputy Governor and two TRA staff members having access to files. However, there is an ongoing concern on the security of physical TRA mail which is copied and stored on the wider NRBT file management system. The physical location of TRA within the NRBT also has restricted access and physical files are secured within TRA office.

384. *Criterion 29.7* – The NRBT, as TRA, has three staff members that perform limited and delegated FIU functions under section 11A of the MLPCA. The NRBT Governor is head of the TRA by virtue of his/her appointment as Governor.

385. (a) AG, with the approval of the Cabinet appointed the NRBT to be known as TRA on 5 July 2001. The NRBT Board of Directors has delegated some FIU functions to a senior manager. That manager needs the NRBT Governor’s authority to authorise FIU disseminations to law enforcement. However, the delegation of authority is not enforceable.

386. (b) Any TRA-related agreements, contracts or MOUs relating to financial intelligence require the signature of the NRBT Governor. Section 11B(2) of the MLPCA requires the approval of the AG for the TRA to enter into an agreement with a foreign counterpart regarding the exchange of information.

387. (c) TRA is the NRBT, and as such is not operationally independent of the NRBT.

388. (d) The senior manager of TRA needs to seek budget approval from the NRBT Governor for the work plan of TRA.

389. *Criterion 29.8* - Tonga has submitted an application for membership in the Egmont Group and is fully engaged in the application process. The application has not at this point been proceeded with.

Weighting and Conclusion

390. The TRA is established under the MLPCA with FIU powers and functions. The TRA is the central agency for the receipt of disclosures filed by reporting entities, has access to a wide range of information (except Ministry of Revenue and Customs tax information), and is conducting and disseminating operational and strategic analysis. The TRA is the National Reserve Bank of Tonga and not a hosted and separate unit within the NRBT. Two dedicated FIU staff members within the NRBT (by delegation from the Governor) perform limited FIU functions outlined in the MLPCA. Other NRBT staff members have been delegated, or are able to perform, FIU functions – including key FIU functions such as analysis of STRs and dissemination of financial intelligence to LEAs. Moreover, there are significant deficiencies in the operational framework of the TRA relating to security of information and the ability of TRA to access information held within the Ministry of Revenue and Customs (tax secrecy). Finally, the FIU functions of TRA do not have budgetary autonomy. **Recommendation 29 is rated partially compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

391. Tonga was rated partially compliant with former R.27 in its 2010 ME, due to the lack of investigations undertaken, the low level of ML/TF knowledge among general Police and lack of associated awareness training, and a lack of resources for the Transnational Crime Unit to undertake its own investigations.

392. *Criterion 30.1* - TP, Customs, and the Attorney-General are the main authorities responsible for investigating for ML, TF and predicate offences. The MLPCA defines an ‘authorised officer’ as a police officer or a customs officer (section 2). The CTTOCA defines an ‘authorised officer’ as the TP Commissioner or a person authorised by the Commissioner to perform functions under the Act (section 2(1)). Section 3 of the MACMA defines an authorised officer as a person or class of persons designated by the AG as an authorised officer. The MACMA gives the AG powers of confiscation and restraint of property subject to an order made under the MLPCA.

393. While the MLPCA gives TRA functions and powers in relation to serious offences, ML/TF and violations of the MLPCA, TRA is not an investigating agency for the purpose of this Recommendation. Under section 11A(j) TRA can ‘refer any report to the appropriate LEA’ for investigation.

394. *Criterion 30.2* – TP has the necessary authorisation under the Tonga Police Act to pursue investigations of any related ML/TF offences during a parallel investigation.

395. Two units of TP – the Serious Organised Transnational Crime Unit (SOTCU) and the Drug Enforcement Taskforce (DET) operate with a focus to detect and investigate ML/TF offences. In the course of any ML investigation TP would usually request information from other LEAs under the 2014 MOU with the Ministry of Revenue and Customs, Ministry of Commerce, Tourism and Labour (now MTED), Ministry of Foreign Affairs and Trade, the National Reserve Bank of Tonga and the AGO. Under

the same MOU any of the signatory agencies can request the formation of a joint taskforce to share information and collaborate in the investigation and prosecution of serious crime.

396. *Criterion 30.3* – The TP and Customs may trace and initiate freezing and seizing of property under Part 3 of the MLPCA. The AG may apply to the Supreme Court for confiscation and pecuniary penalty orders. Section 11A(m) of the MLPCA gives TRA the authority to expeditiously freeze transactions suspected of involving a serious offence, ML offence or TF offence. Section 21 allows TRA to apply to court for documents to identify/trace property. Under section 28 of the MLPCA the AG may apply to court for a confiscation order where a person is convicted of a serious offence.

397. *Criterion 30.4* – The Auditor General has powers under the Public Audit Act to review the use of public finances and the use of finances in contracts involving the Government. The Revenue Services Administration Act provides powers to the Minister responsible for revenue and customs and taxation officers to enter and search premises where the Minister has reasonable grounds to suspect a breach of any revenue law. Immigration Officers appointed under the Immigration Act have the power enter and search any vessel, aircraft or vehicle and interrogate persons who desires to enter Tonga or person they believe to be a prohibited immigrant.

398. *Criterion 30.5* – a public authority called the Anti-Corruption Commissioner is established by the Anti-Corruption Commissioner Act 2016, although no-one has yet been appointed to that office. The Commissioner is authorised to investigate corrupt conduct of public officials and former public officials, and to investigate ML/TF and to seize property under a warrant. No powers are provided to identify, trace and initiate freezing of assets.

Weighting and Conclusion

399. **Recommendation 30 is rated largely compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

400. In the 2010 MER, Tonga was rated largely compliant with R.28. The main deficiency was that the provisions under the MLPCA 2000 had not yet been tested. The new R.31 contains more detailed requirements for investigative powers to enable thorough and comprehensive investigations of suspected ML/TF offending.

401. *Criterion 31.1* - TP and Customs are authorised to investigate ML, TF and associated predicate crimes.

402. *(a) Production of Records.* Section 72 MLPCA provides that where there is an investigation for a serious offence and the TP have reason to believe any person has a document relevant to identifying, locating or quantifying property of the person or tainted property, the TP officer can apply *ex parte* to a Judge for a production order. Documents ordered to be produced under this subsection cannot include bankers' books (section 72(2)) and any documents provided cannot be admissible in any criminal proceedings against the person providing the documents (section 73).

403. Section 63 of the CTTOCA 2013 allows a TP officer to enter premises if he has reasonable grounds to believe explosives are being manufactured or stored, and to take copies of records/documents found on the premises. Section 80 of the CTTOCA allows an authorised officer to stop and board a craft in Tonga if he has reasonable grounds to believe it is being used in people

smuggling and can require the production of any documents relating to the craft or travel/identity documents of any person on the craft.

404. *(b) Search of persons and premises.* Section 20 of the MLPCA allows a TP officer authorised by TRA, to apply for a warrant to enter and search any premises belonging to, or in the possession or control of, a FI, cash dealer or officer/employee, and to remove anything specified in the warrant. However, this applies only to a ML investigation involving officers or employees, or if they believe the reporting entity has failed to keep records or report a STR).

405. TP and Customs can conduct searches of persons and premises in relation to recoverable cash (section 19B of the MLPCA). TP can conduct searches of persons, land or premises in relation to tainted property (sections 49-54 of the MLPCA) with the consent of the person or the occupier of the land/premises, or under warrant. A TP officer also has the power to search a craft which is reasonably suspected to be used for a people smuggling offence and is in Tonga (s.80 CTTOCA).

406. A TP officer is empowered to search a person without warrant if he is satisfied on reasonable grounds that the person has in their possession certain objects, including an object that may have been used, is being used, or is intended to be used in the commission of a serious offence (s.122-123 Tonga Police Act).

407. A TP officer, under the Police Act can enter and search a place, vessel and/or aircraft and seize evidence without warrant (s.123) or with a warrant (s.124) if satisfied on reasonable grounds that a serious offence has been committed, is being committed or is about to be committed.

408. Under section 12 of the Illicit Drugs Control Act a TP officer can search a vehicle, craft or person for evidence relating to any offence under the Act. Under section 23, a Magistrate may issue a warrant to a TP or customs officer to search any place, or person in the place, for an illicit drug or thing and to seize it.

409. Under sections 16-22 of the Illicit Drugs Control Act, customs officers are given powers to search craft, baggage, persons, or a place within a customs area without warrant. A customs officer may apply for a warrant to search any place if the officer has reason to suspect there is evidence relating to the commission of an offence under the Act in any place.

410. *(c) Taking witness statements.* TP has general powers to take witness statements under Judges Rules No: 1 – When a police officer is trying to discover whether, or by whom, an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks useful information may be obtained. This is so whether or not the person has been taken into custody. It is not clear whether Customs has the same powers.

411. *(d) Seizing and obtaining evidence.* Police and Customs can conduct search of persons and premises in relation to ML and TF. Section 19C of the MLPCA empowers Police and Customs to seize and detain cash if there are reasonable grounds for suspecting that it is recoverable cash, it is intended for use in unlawful conduct or is undeclared cash intended for use in unlawful conduct. Sections 122-124 of the Tonga Police Act relate to search powers which allow for the seizing of evidence with and without warrants.

412. Under section 37 of the CTTOCA an authorised officer may seize goods which came to attention during a search under the Customs and Excise Management Act or the MLPCA, are being exported/imported into Tonga and if there is cause to suspect they are terrorist property. Section 80 of the CTTOCA allows an authorised officer to seize evidence of a crime under the Act.

413. It is unclear if Customs has similar powers to TP.

414. *Criterion 31.2:*

415. (a) Undercover operations: Neither TP nor Customs have authority to conduct undercover operations.

416. (b) Intercepting communications: Neither TP nor Customs has general power to intercept communications. The Computer Crimes Act section 14 which allows TP to collect or record electronic communications on application to a Magistrate. Customs does not have this power.

417. (c) Accessing computer systems: A magistrate can issue a warrant to a police officer to access computer systems and data, and to order a person in control of such a system or data to produce the data required (sections 9 and 11 of the Computer Crimes Act).

418. A Magistrate may order the collection or recording of content data and traffic data transmitted by means of a computer system where there are reasonable grounds to suspect the content of the communications are required for the purposes of a criminal investigation (sections 14 and 15, Computer Crimes Act).

419. (d) Controlled delivery: Under section 32 of the CTTOCA an authorised officer can allow controlled delivery of property if there are reasonable grounds to believe that a person has committed, is committing, or is about to commit, an offence under the Illicit Drugs Control Act. A Police officer can conduct covert monitoring (section 9), use tracking devices (section 10) and conduct a controlled delivery (section 11) if the police officer suspects, on reasonable grounds, that a person has committed, is committing, or is about to commit an offence against the Illicit Drugs Control Act. Customs does not have similar powers and the powers mentioned relate only to predicate drug offences.

420. *Criterion 31.3:*

421. (a) The mechanism for identification of natural and legal persons and assets is through TRA. TRA requests and obtains information on natural and legal persons to/from financial institutions and DNFBPs (section 11A(c) of the MLPCA). TRA has the power to enter, inspect any records, ask any questions of any employee of the financial institution and DNFBPs (section 11A(e) of the MLPCA).

422. (b) Competent authorities do not have any processes to identify assets without prior notification to the owner.

423. *Criterion 31.4* - TRA and LEAs signed an MOU in 2014 for the sharing of information relevant to investigation into serious crime punishable by imprisonment of not less than 12 months including ML, predicate offences and TF. The agencies covered by this MOU are the TP, the Ministry of Revenue and Customs, MTED, the Ministry of Foreign Affairs and Trade, the NRBT and the Attorney-General's Office.

Weighting and Conclusion

424. Competent authorities have some limitations in the range of investigative techniques available to them. TP cannot conduct undercover operations and has no general power for intercepting communications. Customs cannot conduct controlled deliveries, conduct undercover operations or to intercept communications. It is unclear whether Customs has the power to take

witness statements. Competent authorities do not have any mechanism to identify assets without prior notification to the owner. **Recommendation 31 is rated partially compliant.**

Recommendation 32 – Cash Couriers

425. In the 2010 MER Tonga was rated non-compliant with FATF SR.IX due to a lack of mechanisms to notify travellers of the cash reporting requirement, no reporting mechanism in place, no system of tracking cross border currency movement, power to stop or restrain currency and bearer negotiable instruments not clearly articulated in law, sanctions not effective, proportionate and dissuasive and not clearly specified in law, no formal information sharing capability with internal and foreign LEAs counterparts and insufficient training undertaken by authorities.

426. *Criterion 32.1* – Tonga uses a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments at all international airports and seaports as per sections 21 and 22 of the Customs and Excise Management Act 2007 (CEMA), Regulation 65 of the CEM Regulations 2008 and MLPCA section 19. A passenger is defined as ‘any person other than a crew member who has been on any aircraft of ship involved in an international voyage’ (section 2 of the CEMA).

427. While technically this applies to ships, including cruise ships, in practice Tonga has not implemented declarations at sea ports. Cruise ship passengers and other passengers from ships are treated as ‘in transit’ only, despite the clear wording of the legal requirements.

428. Further, section 19 of the MLPCA also requires that any person sending out of or receiving currency in to Tonga an amount more than the prescribed amount (see below – US \$4 484) by any means including postal services, courier services, trans-shipment must declare to Customs in the prescribed form.

429. *Criterion 32.2* – Passengers are required under section 65 of the CEM Regulation to complete the Declaration on Customs Form C18A and C18B, or if arriving/departing on own transport, Customs Form C19. Section 19 of the MLPCA requires any person entering or leaving Tonga with more than the prescribed sum TOP 10 000 (US \$4 484) or sending out of or receiving into Tonga currency amounting to more than the prescribed sum to make a declaration to Customs in the form prescribed in the Foreign Exchange Control Regulations. Failing to declare the cash is an offence with a fine not exceeding TOP 50 000 (US \$22 422) applicable upon conviction.

430. *Criterion 32.3* – Tonga does not operate a disclosure system.

431. *Criterion 32.4* – Where reasonable grounds exist, a Customs officer may question any person about any matter in performance of his duties and may request the production of any documents (CEMA, section 74). Section 19A of the MLPCA allows an authorised officer to question a person arriving or departing from Tonga about the source, ownership, acquisition, use or intended destination of any cash (not BNI) in the person’s possession. Failing or refusing to answer a question posed by an authorised officer (without reasonable excuse) is an offence with a fine not exceeding TOP 20 000 (US \$8 969) applicable upon conviction.

432. *Criterion 32.5* – A range of fines from US \$448 to US \$22 421 apply under the CEMA (section 82, 83) and MLPCA (section 19(3)) and imprisonment for knowingly making false statements in a declaration not exceeding 10 years, or both imprisonment and a fine (CEMA, sections 93(A) and 97). These sanctions are proportionate and dissuasive.

433. *Criterion 32.6* – While section 125 of CEMA provides that information in the possession of Customs is strictly confidential, section 125(3)(d) of CEMA provides that, notwithstanding that confidentiality, disclosure may be made to the NRBT (the TRA) where the disclosure is necessary for the performance of NRBT's official duties. Customs does in fact make such information available to the TRA.

434. *Criterion 32.7* – The Ministry of Revenue and Customs, and the Ministry of Foreign Affairs and Trade, entered into a MOU on 24 June 2015 delegating to Customs the immigration functions at the border (effective in that year, 2015). The MOU provides that Customs operates the passport control functions and electronic passenger processing system. In addition, an MOU between LEAs dated 15 August 2014 facilitates information sharing, co-operation and collaboration in the investigation and prosecution of serious crime. The partner agencies to that MOU are: TP, Customs, Commerce and Labour (now known as MTED), Foreign Affairs and Trade, NRBT and AGO.

435. *Criterion 32.8* – A Customs officer may seize cash for up to 72 hours if he has reasonable grounds for suspecting that it is intended for use in 'unlawful conduct' or is 'undeclared cash intended for use in unlawful conduct' (MLPCA section 19C and 19D). The Supreme Court may make an order extending the time for a period no greater than three months, and then if a further application is made, subject to certain conditions being met, for a period no greater than two years from the date of the first order. Customs Chief Executive Officer can order that undeclared or falsely declared goods (cash) be liable for forfeiture (CEMA, section 108(d)). Such goods (which include currency – section 2 CEMA) may be seized by a Customs officer, police or an Armed Forces officer (CEMA, section 109).

436. It is not clear from the legislation that stop/seizure at the border can be effected where there is a false disclosure.

437. *Criterion 32.9* – Customs can disclose any document or information to international customs agencies with which Tonga has an agreement to the extent permitted under that agreement by virtue of CEMA section 125(3)(e). Section 79 of CEMA provides that where a Customs officer considers a document is relevant for the administration of customs laws, a copy or extract of the document shall be taken and retained by Customs. The legislation is not clear that the retained information is for disclosures above the threshold, for false declarations or where there is a suspicion of ML/TF.

438. *Criterion 32.10* – section 125 of the CEMA states that customs officers shall not communicate or allow to be communicated, any information obtained under the Customs laws, to any person not legally entitled to such information (as noted above). There are exceptions to this rule, allowing officers to exchange information with foreign counterparts, and others within government where disclosure is necessary and in accordance with an arrangement with foreign counterparts. However it is not clear that freedom of capital movement or trade payments is not adversely affected.

439. *Criterion 32.11* - The Chief Executive Officer of Customs can order that undeclared or falsely declared goods (cash) be liable for forfeiture (CEMA, section 108(d)). Currency may be seized by a Customs officer, Police or an Armed Forces Officer (CEMA, s.109).

440. An authorised officer may seize cash and BNI if that officer has reasonable grounds for suspecting that it is intended for use in unlawful conduct or is undeclared cash intended for use in unlawful conduct (MLPCA section 19C), the cash may be detained for 72 hours (MLPCA section 19D) and the Court may order forfeiture of the cash if satisfied that it is intended by any person for use in unlawful conduct (MLPCA section 19G). Where the movement of currency/BNI relates to ML/TF, the confiscation measures under MLPCA apply.

Weighting and Conclusion

441. Tonga has implemented a declaration system for cash and BNI, but not at sea ports. There is a lack of clarity in the legislation regarding whether stop/seizure can be effected at the border whether there is a false disclosure. The legislation is also unclear as to whether information retained applies to disclosures above the threshold, false declarations and a suspicion of ML and/or TF. In addition it is not clear that freedom of capital movement or trade payments is not adversely affected by safeguards to ensure proper use of information collected through the declaration system. **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

442. The Methodology for assessing compliance with this Recommendation has changed significantly since Tonga's last report in 2010, in which Tonga was rated largely compliant with former R.32. The deficiencies noted were a lack of statistics regarding informal international co-operation and some uncertainty as to completeness/accuracy of statistics for formal international co-operation.

443. *Criterion 33.1* – TRA is required under s11A(n) of the MLPCA to 'compile statistics and records, and may disseminate information within the Kingdom or elsewhere and make recommendations arising out of any information received'. However that section does not detail the nature of those statistics for the purpose of the four sub-categories:

444. (a) STRs received and disseminated: TRA retains statistics of STRs received and disseminated, which can be broken down by institution. As noted by the authorities, the MRC through its Intelligence Unit also maintains a register of all STRs received from the NRBT and a register of investigations by Customs.

445. (b) ML and TF prosecutions and convictions. Police and the AG'S Office maintain statistics on ML investigations, prosecutions and convictions (there have been no TF investigations, prosecutions or convictions in Tonga).

446. (c) Property frozen, seized and confiscated. In relation to cash seizures under the MLPCA, the AGO retains records and details of all cash seized and confiscated. However, in relation to property confiscated by TP (for example, instruments of crime following conviction) such records have not been kept. Customs was also not able to provide statistics of property that has been seized or confiscated under the Customs and Excise Management Act.

447. (d) MLA and other international requests for co-operation. Foreign Affairs maintains a register for MLA or other international requests for co-operation made and received. The TRA keeps a register of its international requests for co-operation both made and received. It is not clear how LEAs and supervisory authorities maintain statistics on requests made and received.

Weighting and Conclusion

448. While Tonga does maintain statistics in relation to the four categories of the Recommendations the statistics are not always comprehensive. **Recommendation 33 is rated largely compliant.**

Recommendation 34 – Guidance and feedback

449. In its 2010 MER, Tonga was rated non-compliant with these requirements. Guidelines had not been issued to FIs or DNFBPs. Feedback was not provided on STRs filed or the use of STRs and related financial intelligence.

450. *Criterion 34.1* – TRA issued the ‘AML/CFT Guidelines for Financial Institutions and Cash Dealers’ in 2015 to assist FIs and DNFBPs in applying national AML/CFT measures. However the provisions in those guidelines have not been updated to take account of the MLPCA (enacted in 2016) and MLPC Regulations issued in 2016. The Guidelines are based on the MLPCA of 2000 and Amendment Act of 2010, and the MLPC Regulations of 2010. The Guideline has not been updated to reflect the findings of the 2019 NRA.

451. TRA provides feedback to FIs/DNFBPs on their detection and reporting suspicious transactions in order to support them to better apply AML/CFT measures. The TRA’s quarterly and annual reports include feedback on reporting trends.

Weighting and Conclusion

452. Tonga has provided minimal guidance to reporting entities, with little specific guidance provided to DNFBPs, but these measures are out of date. Tonga provides some feedback to reporting entities. **Recommendation 34 is rated partially compliant.**

Recommendation 35 – Sanctions

453. In its 2010 MER, Tonga was rated partially compliant with these requirements. Sanctions were limited in scope and proportionality and there were no civil or administrative sanctions applicable to all FIs. There were gaps with sanctions for directors and employees of FIs.

454. *Criterion 35.1* –

Targeted financial sanctions (R.6)

455. While there are gaps with the scope of coverage of obligations to implement R.6, criminal sanctions are available for any natural or legal persons who breach TFS freezing obligations and prohibitions. LEAs can open a criminal investigation into a suspected sanctions breach by referral from a competent authority or they can start an investigation independently. A person guilty of dealing with terrorist property (i.e. breaching a UNSCR1267 or UNSCR1373 asset freeze) is liable to a maximum of 15 years imprisonment (sections 12 and 13 CTTOCA); and under the Criminal Offences Act section 30 ‘where any person is convicted of any offence punishable by imprisonment such person may be sentenced to pay a fine in lieu thereof.’

NPOs (R.8)

456. There are limited sanctions under the Charitable Trusts Act and the Incorporated Societies Act for failure to maintain registration and file updates. Failure to update registration details is an offence liable on summary conviction to a fine not exceeding TOP 500 (US \$224) or TOP 20 (US \$9) for every day during which the default continues or both. Very small administrative sanctions apply for failure to file annual financial statements (sections 19(3) and 30(3) of the Charitable Trusts Act). The Incorporated Societies Act provides very small sanctions for change of name (section 11(2)),

registered office (section 18(4)), restriction on operations of society (section 19 (2)), restriction on pecuniary gain (section 20(2), (3)) and annual financial statement requirement (section 23 (3)). All the administrative sanctions are of small amount and are not considered dissuasive.

Preventive Measures and Reporting (R.9-23)

457. The MLPCA Act ('MLPCA') provides supervisory and regulatory authorities with criminal, civil and administrative sanctions for failure to implement AML/CFT measures:

- Section 16A of the MLPCA empowers any competent supervisory or regulatory authority to apply administrative measures including written warnings and orders, removing or restricting officers and management and taking over or de-licensing FIs. The MLPCA does not extend to administrative fines.
- Section 18(1) of the MLPCA sets out offences and sanction including fines to enforce compliance with preventive measures (e.g. MLPCA section 18(1) for accounts in fictitious names). Section 18(2)(a) sets out a catch-all offence provision for FIs and DNFBPs for any obligations for which no penalty is specified, which includes a sanction of up to 2 years imprisonment and/or a fine of up to \$20 000 (US \$8 600) for an individual or \$100 000 (US \$43 000) for a body corporate.

458. As noted in R.10, the MLPCA Regulations contain no sanctions for non-compliance with preventive measures and are therefore not enforceable.

459. Under section 13 of FECA, any person carrying on a foreign exchange service without a license commits an offence and is liable to a fine not exceeding TOP 10 000 (US \$4 484) and/or imprisonment for up to three years. In addition, under Part V of the Act, any person contravening any provision in the FECA or in any other legal documents issued in exercise of the powers under the Act, commits an offence punishable upon conviction. For individuals, the penalty will be a fine not exceeding TOP 10 000 (US \$4 484), or TOP 1 000 (US \$448) per day during which the offence continues; or imprisonment for a term not exceeding 3 years of both. For legal persons, the penalty will be a fine not exceeding \$200 000 (US \$89 686), or \$2 000 (US \$897) per day during which the offence continues (section 29).

460. *Criterion 35.2 –*

Targeted financial sanctions (R.6)

461. The CTTOCA (2013) sanctions listed above apply to all natural and legal persons, but it is not clear that if a financial institution or DNFBP breaches the Act that its directors and/or senior management can be subjected to the same penalties.

NPOs (R.8)

462. It is not clear that the limited sanctions apply separately to the directors and/or senior management of an NPO.

Preventive measures and reporting (R.9-23)

463. For FIs and DNFBPs, section 16A of the MLPCA provides that a range of administrative measures are available against supervisory authorities. Those measures do not apply to directors and senior management of those entities. Section 22 provides the Supreme Court with authority to make orders against officers or employees of the institutions as the court deems necessary in order to

enforce compliance. Section 22 applies to ‘officers’ and ‘employees’ (which would include senior management), but not to directors.

Weighting and Conclusion

464. A range of sanctions are available including criminal and administrative sanctions but the detailed CDD measures in the MLPC Regulations are unenforceable due to lack of sanction for non-compliance. There are gaps in the scope of inclusion for director and/or senior management. Gaps also exist in the scope of coverage with NPOs. **Recommendation 35 is rated partially compliant.**

Recommendation 36 – International instruments

465. Tonga was rated partially compliant for the former R.35 and non-compliant for the former SR.I in the 2010 MER with the MER noting that while Tonga has largely implemented the Vienna Convention some technical deficiencies remain and Tonga has not acceded to the Palermo Convention. It was also noted that shortcomings exist in implementation of Terrorist Financing Convention and UNSCRs relating to terrorist financing.

466. *Criterion 36.1* – Tonga acceded to the Vienna Convention on 29 April 1996, the Palermo Convention on 3 October 2014 and the Terrorist Financing Convention on 9 December 2002. Tonga was not a party to the United Nations Convention against Corruption (the Merida Convention) at the time of the on-site visit.²¹

467. *Criterion 36.2* – Tonga implements most but not all of the articles of the Vienna Convention, and implements the Palermo Convention and the Terrorist Financing Convention through the CTTOCA and the MLPCA. R.3 notes some deficiencies with respect to the ML offence and that Tonga does not have full coverage of predicate offences to ML. As stated in R.39, it is not clear whether extradition based on multilateral conventions is feasible for implementing the relevant articles of the Vienna Convention and Palermo Convention.

468. Tonga has not yet ratified the Merida Convention. Although Tonga has enacted the Anti-Corruption Commissioner Act in 2007, it has not yet come into operation as the Anti-Corruption Commissioner Office has not been established to exercise the functions conferred by or under the Act.

Weighting and Conclusion

469. Tonga has acceded to the Vienna Convention, Palermo Convention and Terrorist Financing Convention, but is not a party to the Merida Convention and there are some gaps in implementation of these conventions. **Recommendation 36 is rated partially compliant.**

Recommendation 37 - Mutual legal assistance

470. In the 2010 MER, Tonga was rated partially compliant with former R.36; largely compliant with former R.37 in respect of the requirement of dual criminality; and partially compliant with former SR.V in respect of TF. It was unclear whether ML offences were covered in the MACMA 2000. The restraining and confiscation orders under the MACMA were enforced in accordance with the MLPC

²¹ Tonga later acceded to the Merida Convention in February 2020.

Act 2000. Confiscation of proceeds in relation to ML offences were excluded by the MLPCA 2000 definition of 'serious offence.' Other deficiencies for ML were noted. Assistance in TF cases was limited.

471. *Criterion 37.1* – The MACMA (enacted in 2000 and revised in 2016) is the legal framework to provide MLA in relation to ML and TF offences. Section 4 allows Tonga to make and receive requests for MLA in respect of investigations or proceedings relating to a 'serious offence' which is defined at section 3 as an offence punishable with imprisonment of not less than 12 months. However, the definition restricts MLA on the basis of dual criminality. MLA can only be provided for a serious offence in relation to acts or omissions, which had they occurred in Tonga would have constituted an offence for which the maximum penalty is imprisonment of not less than 12 months or more severe penalty including offences of a purely fiscal nature. While the ML and TF offences meet this definition of serious offence (see R.3), gaps in the range of ML predicate offences impedes Tonga's ability to provide co-operation in relation to a number of ML-related offences. Tonga cannot therefore provide the 'widest range' of assistance as required by this criterion.

472. *Criterion 37.2* – The AG is the central authority for MLA under section 4 of the MACMA. MLA requests are directed through diplomatic channels via the Ministry of Foreign Affairs before referring to the AG as central authority. This is not a requirement of the MACMA but has been operating as established practice. For urgent requests a foreign jurisdiction may contact the AG for preparatory work pending receipt of the MLA request. MLA requests are generally given high priority. Tonga does not have a case management system. Given the limited number of incoming and outgoing requests, cases are managed and monitored by the AGO in paper files.

473. *Criterion 37.3* – The MACMA does not require a foreign State to enter into a treaty for MLA. Under section 4(2) of the MACMA, Tonga may refuse a request for MLA if the request would be likely to prejudice the sovereignty, security of Tonga or would otherwise be against the public interest. Tonga may also impose terms and conditions on the request, or postpone the request on the ground that the granting of request immediately would be likely to prejudice the conduct of an investigation of proceeding in Tonga. These are not considered unreasonable or unduly restrictive conditions.

474. However, while Tonga has not refused any MLA request nor imposed additional terms and conditions to an MLA request Tonga cannot provide MLA in relation to fiscal matters without an agreement. Under section 57(2) of the Revenue Services Administration Act all documents in the possession of the tax authorities are strictly confidential. Tonga can only disclose confidential tax information under an agreement pursuant to section 57(2)(d). And Tonga can add conditions to the use of that information ('...disclosure... to the government of another country with which Tonga has an agreement, to the extent permitted under that agreement').

475. *Criterion 37.4* – The MACMA does not preclude assistance in cases involving fiscal matters however as noted above (1) a serious offence under MACMA is based on dual criminality; and (2) tax information in the possession of the tax authorities is strictly confidential and Tonga needs an agreement to disclose that information, under which Tonga can impose conditions.

476. *Criterion 37.5* – All MLA and associated documents are subject to strict confidentiality requirements including sanction for non-compliance under section 16 of MACMA.

477. *Criterion 37.6* – Dual criminality is required for rendering MLA assistance by virtue the definition of 'serious offence' and by section 4(2) of the MACMA which provides that the AG may in respect of a request made to Tonga '...relating to a serious offence.' While Tongan authorities advised that if a request seeks for non-coercive assistance for informal purposes, in practice assistance may be

rendered via the law enforcement channel. However, this is not clear in the MACMA and the provisions of that statute do not appear to draw a distinction between coercive and non-coercive measures.

478. *Criterion 37.7* – MACMA adopts a conduct test to determine dual criminality. Section 4 of the MACMA allows Tonga to make and receive request for MLA in respect of investigation or proceedings relating to a ‘serious offence’. For requests made to Tonga, the definition of ‘serious offence’ means an offence against a provision of the law of foreign state in relation to acts or omissions which, had they occurred in Tonga, would have constituted an offence for which the maximum penalty is imprisonment for a period of not less than 12 months.

479. *Criterion 37.8* – Section 8 of MACMA states that where the AG grants a foreign MLA request, an authorised officer may apply to the Supreme Court for a search warrant or an evidence-gathering order. There is no legal impediment which prohibits or limits the powers of the domestic competent authorities from exercising all powers available to them in response to a request.

Weighting and Conclusion

480. Tonga has a legal framework for MLA however the definition of serious offence restricts the range of predicate crime and non-coercive assistance. **Recommendation 37 is rated partially compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

481. Tonga was rated partially compliant for R.38 in the 2010 MER. The MER noted that it was unclear whether ML offences are covered by the MACMA 2000. The restraining and confiscation orders under the MACMA were enforced in accordance with the MLPC Act 2000. The deficiencies of the MLPC Act identified in R.4 (former R.3), namely confiscation of properties in relation to ML offences was excluded by definition of ‘serious offence’, was also relevant to R.38. There was no provision for confiscation of property of corresponding value.

482. *Criterion 38.1* – Section 14 of the MACMA (2016 revised) provides for the legal basis in assisting foreign states in locating ‘property believed to be the proceeds of a serious crime’. In this event, the Attorney General may authorise the making of any application under the MLPCA sections 72, 76 and 78. This enables Tongan authorities to utilise production orders or search warrants. They may also compel a financial institution to disclose information obtained by the institution about transactions conducted through an account.

483. Section 12(1) of the MACMA provides that restraining orders against property may be issued for a foreign state when:

- (a) criminal proceedings have begun in respect of a serious offence;
- (b) the person against whom the order is sought has been convicted; or
- (c) there are reasonable grounds to believe that the property is located in Tonga.

484. Section 13 of the MACMA provides that Tonga may assist foreign states to enforce foreign confiscation or restraining orders against property in Tonga incorporating the application of the MLPCA. The requirements to register a foreign restraint or confiscation order are premised on that the order shall be in force in a foreign state and not be subject to appeal. There is also a requirement to prove that the person who is the subject of the order was given notice or the person has absconded

or died. There are no specific requirements as to types of property and therefore it is open to the order to apply to all forms of property required by c.38.1.

485. The term 'property' is defined as 'real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property' (section 3 of the MACMA). This definition does not however cover instrumentalities used in, or instrumentalities intended for use in, money laundering, predicate offences or terrorist financing. Nor does it cover property of corresponding value as required by this criterion.

486. *Criterion 38.2* – As stated in c.38.1, the legislative intention in section 12(1) is unclear as to whether all three elements are required for granting the restraining order, or just one out of three elements is needed as it is currently presented. Under this section as plainly construed, at the least, criminal proceedings must have commenced. Under section 13 requests for restraining and confiscation orders must be based on conviction. There is no non-conviction based restraining or confiscation available in Tonga.

487. *Criterion 38.3* – There is no clear legal provision allowing for co-ordinated seizure and confiscation actions with foreign countries. Other than the provisions stated in c.38.4 below, Tonga does not have in place formal mechanisms for managing and disposing of property frozen, seized or confiscated.

488. *Criterion 38.4* - Section 15 of the MACMA provides the legal basis for entering into reciprocal sharing of property realised with a foreign state. The Minister of Finance may authorise payment out of the central fund under section 48A(3)(d) of the MLPCA to share confiscated property with foreign states. However the sharing arrangements are limited in scope by the definition of 'property' in the MACMA as stated above.

Weighting and Conclusion

489. Instrumentalities used in or intended for use in ML/TF or predicate offence, and property of corresponding value, are not covered in the definition of 'property'. There are no provisions for co-ordinated actions and reciprocal sharing agreements are by definition restricted in scope due to the deficiencies noted. **Recommendation 38 is rated partially compliant.**

Recommendation 39 – Extradition

490. Tonga was rated non-compliant with R.39 and partially compliant with former SR.V in 2010. The MER noted that ML was not an extraditable offence. While TF was covered under the Extradition Act it had not been tested.

491. *Criterion 39.1:*

492. (a) Section 3 of the Extradition Act provides the legal basis for Tonga to execute extradition requests related to 'relevant offences' with 'designated countries'. Relevant offences include ML and TF and other offences that carry a sentence of at least 2 years imprisonment (section 5). Designated countries are outlined in the Extradition (Designated Countries) Order. Fifty jurisdictions are included in this list, including most Pacific Island countries and countries with a close economic relationship with Tonga, including those where most overseas Tongans live. If a country is a state party to the Vienna Convention or Palermo Convention but not included in the list of designated countries, it

appears that Tonga would not be able to extradite a fugitive offender in Tonga solely on the basis of the convention.

493. (b) It does not appear that Tonga has a case management system for extradition requests with clear processes for the timely execution of requests. AGO advised that extradition requests are accorded with high priority in the processing and internal records for processing steps are available to counsels.

494. (c) The Extradition Act does not appear to place unreasonable and unduly restrictive conditions on extradition. Tonga has received very few extradition requests and the cases were managed by paper files in the absence of a case management system.

495. *Criterion 39.2* – There is no legal impediment to extradite Tongan nationals provided that the foreign state is one of the countries listed in the Extradition (Designated Countries) Order – section 3.

496. *Criterion 39.3* – Dual criminality is required for extradition under section 5 of the Extradition Act. But it is not clear in the Extradition Act that dual criminality is satisfied regardless of whether both Tonga and a requesting state place the offence within the same category of offence or denominate the offence by the same terminology. The case of *R v Pedras* AC 8 of 2016 stands for this proposition.

497. *Criterion 39.4* – Tonga does not have simplified extradition mechanisms in place.

Weighting and Conclusion

498. Tonga has a sound legal framework to execute extradition requests in relation to ML/TF without undue delay and does not place unreasonable or unduly restrictive conditions. Tonga does not have a simplified extradition mechanism. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international co-operation

499. Tonga was rated partially compliant with the former Recommendation 40 in its 2010 MER. TRA was unable to share information with foreign FIUs and the assessment team was unable to determine that mechanisms for international co-operation were fully effective, given the lack of statistical data.

General Principles

500. *Criterion 40.1* – Provisions exist in the NRBT Act and MLPCA that permit competent authorities to co-operate internationally. Generally, international co-operation can be made both spontaneously and upon request. LEAs engage in international co-operation through affiliation with regional and international bodies, such as the Pacific Transnational Crime Network (PTCN), the Pacific Transnational Crime Coordination Centre (PTCCC), Oceania Customs Organisation (OCO), World Customs Organization (WCO) and INTERPOL or bilaterally through MOUs entered with other foreign counterparts. However, there is no requirement for international co-operation to be provided rapidly.

501. *Criterion 40.2:*

502. (a) TRA, NRBT, Police, Customs, Immigration, Tax authorities and the Attorney-General within Tonga have a lawful basis for providing international co-operation across legislative instruments:

- TRA: Can disclose any report or information derived from such report to a foreign or government institution, agency, or any international organization under section 11A (v) and 11B of the MLPCA. Also, the TRA can share information with foreign counterparts or competent authorities under section 31 (2) of the CTTOCA in relation to terrorist acts or financing. TRA is a member of the Association of Pacific Islands Financial Intelligence Units and has signed an MOU with two other FIUs.
- NRBT: Section 4A(n) of the NRBT Act 2016 allows NRBT to disclose information with foreign counterparts or agencies.
- TP: Police can share information with foreign counterparts or agencies through membership with authorised regional and international bodies, including the PTCCC and INTERPOL. Tonga is a member of the Pacific Islands Chiefs of Police. However, there are no express provisions in the Tonga Police Act that allow for information sharing with foreign counterparts.
- Customs: The Customs and Excise Management Act, section 125(3)(e), provides that Customs can share information with foreign Customs authorities if there is an agreement to that effect. Customs is a member of the Oceania Customs Organisation and the World Customs Organization which allows for exchange of information with foreign counterparts.
- Immigration: Tonga Immigration is a member of the Pacific Immigration Development Community (PIDC). PIDC provides a forum for heads of Pacific Immigration agencies to discuss and share information of mutual interest and to foster regional and multilateral co-operation (including mutual legal assistance) aimed at strengthening member's territorial borders and integrity.
- Tax: Tonga's tax authority cannot share or exchange information or co-operate internationally. Tonga's tax administration is a member of the Pacific Islands Tax Administrators Association (PITAA). There is little exchange of specific confidential tax information relating to entities operating in the region, however, there is exchange of information in relation to trends, patterns of non-compliance and best practices.
- AG: The Mutual Assistance in Criminal Matters Act 2016 provides the Attorney-General with authority to make and act on mutual legal assistance requests.

503. (b) Competent authorities indicate that they use the most efficient means to co-operate, however, there are no provisions or mechanisms in place to enable this.

504. (c) Tonga is not a member of the Egmont Group of FIUs. TP is a member of INTERPOL and communicates with other members through INTERPOL channels. Customs is a member of OCO which co-ordinates and shares information regionally and internationally between members including through WCO. Tonga is a member of the Association of Financial Supervisors of Pacific Countries. Immigration is a member of the PIDC. PIDC provides a forum for Pacific immigration agencies to exchange and disclose information.

505. (d) Tonga did not provide information on processes for prioritising and executing requests. Given the small number of requests received by Tonga, authorities advise that every request is able to be prioritised.

506. (e) Agencies have their own internal processes for safeguarding information received or shared however the details were not provided to the assessment team.

507. *Criterion 40.3* – Section 11A(w) of the MLPCA provides TRA with a legal basis to liaise with, and enter into, any agreement or arrangement with any foreign government institution or agency or international organisation to exchange information. TRA has signed MOUs with two foreign counterparts. TRA has been in negotiation for over 12 months with five foreign FIUs to sign bilateral MOUs, with only two of the MOUs signed.

508. TP is a member of INTERPOL and shares information through the PTCN and PTCCC. However, there is no clear legal basis in the Tonga Police Act or elsewhere that empowers police to enter into bilateral or multilateral agreements or arrangements.

509. There is no indication from Tongan authorities that agreements that Customs may enter into with foreign counterparts pursuant to the Customs and Excise Act (noted above) must be signed in a timely way and with the widest range of counterparts.

510. *Criterion 40.4* – While Tongan authorities advise that they are able to provide feedback and request feedback from authorities there is no requirement or practice in place for authorities to provide feedback in a timely manner on the use and usefulness of information exchanged.

511. *Criterion 40.5:*

512. (a) Tonga did not provide any information in relation to this criterion.

513. (b) Section 22 of the Financial Institutions Act 2016 provides that NRBT may disclose information relating to any licensed FI to a foreign supervisory authority for the exercise of functions similar to those conferred on the NRBT. Tax authorities cannot disclose any tax information to foreign counterparts.

514. (c) It is not clear in Tongan law whether information can be exchanged with foreign counterparts where there is an investigation, inquiry or proceeding underway.

515. (d) Tonga did not provide any information in relation to this criterion.

516. *Criteria 40.6* – The MLPCA at section 11B provides generally that when the TRA enters into an information sharing agreement with foreign counterparts, the MOU shall contain a restriction on the use of the report or information to purposes relevant to investigation or prosecution of a serious offence, ML offence, or TF offence or any offence that is substantially similar to these offence. Legislation does not provide for controls and safeguards on information that is provided to competent authorities. It is not clear that there are established controls on the safeguarding of information.

517. *Criteria 40.7* – As above, section 11B of the MLPCA provides that when the TRA enters into information sharing agreements, there shall be a stipulation that the report or information be treated confidentially and not further disclosed without the express consent of the TRA. The CEMA also contains confidentiality provisions requiring customs officers to not communicate any information obtained under customs laws to any person not legally entitled to such information.

518. *Criterion 40.8* – Authorities advise that they may conduct inquiries on behalf of foreign counterparts and exchange such information, although this was not contained in any law or document.

Exchange of Information Between FIUs

519. *Criterion 40.9* – TRA may exchange information with foreign counterparts under the MLPCA, the CTTOCA and through signed MOUs.

520. *Criterion 40.10* – While not expressed in law, the TRA may provide feedback to foreign counterparts or request feedback based on the information provided. Section 11A provides a wide ranging requirement for the TRA to provide feedback on information provided.

521. *Criterion 40.11* – Under Section 11A of the MLPCA TRA has the power to exchange all information required to be accessible or obtainable directly or indirectly by TRA in particular under R.29.

522. TRA does not have the power to exchange any other information that TRA has the power to obtain or access, directly or indirectly at the domestic level. Section 11B(3) provides that TRA's information exchange is limited to information that the TRA has reasonable grounds to suspect would be relevant to the investigation.

Exchange of Information Between Financial Supervisors

523. *Criterion 40.12* –

- TRA as AML/CFT supervisor has a legal basis to provide co-operation under sections 11A and 11B of the MLPCA.
- NRBT, as financial institution licensor and prudential supervisor can, pursuant to section 22 of the Financial Institutions Act, disclose information relating to any licenced financial institution in confidence to a supervisory authority in another country for the same purposes as the NRBT has in Tonga.

524. *Criterion 40.13* – Section 11A of the MLPCA and section 22 of the Financial Institutions Act comply with the requirements of this Recommendation.

525. *Criterion 40.14* – Information requested in c.40.14(a) can be found on NRBT's website. There are no provisions in law to allow for financial supervisors sharing information required by c.40.14(b-c) however there is no restriction in law on sharing such information and it can be made available to requesting counterparts at the discretion of NRBT or via the MLPCA.

526. *Criterion 40.15* – while no provisions restrict such co-operation, authorities advise this would be undertaken at the discretion of NRBT and TRA.

527. *Criterion 40.16* – see c.40.6 and c.40.7.

Exchange of Information Between Law Enforcement Authorities

528. *Criterion 40.17* – TP through INTERPOL and its connection in Pacific Transnational Crimes Network (PTCN), is able to exchange domestically available information for intelligence and investigation with overseas counterparts in relation to ML, associate predicate crimes and TF. Customs is able to request and provide information through OCO. TP and Customs can exchange information directly with foreign counterparts other than via the Interpol, PTCN and OCO respectively.

529. However, the ability of LEAs to share and exchange information is not contained in law and it is unclear if the existing law includes identification and tracing of proceeds and instrumentalities of crime.

530. *Criterion 40.18* – Police and Customs have MOUs and can share information among themselves available to foreign counterparts. Clause 6(8) of the MOU between LEAs in Tonga

stipulates that partner agencies can share information obtained with foreign counterparts unless prohibited by law, but it is not clear what is excepted by that clause.

531. *Criterion 40.19* –TP is part of a regional investigation taskforce namely TSOCPT with foreign police agencies pursuant to a joint taskforce arrangement, which enables TP to conduct joint operations for transnational and serious crimes with the foreign counterparts. That said, there is no domestic law endorsing joint investigations with foreign agencies. Operations with transnational elements appear to be conducted on an ad hoc basis in the absence of formal mechanism for joint operation to be carried out bilaterally or multilaterally with foreign counterparts.

Exchange of Information Between Non-Counterparts

532. *Criterion 40.20* – Section 11B of the MLPCA provides that TRA may disclose information to a foreign government agency or institution, or an international organization that has powers and duties similar to those of the TRA. Contextually this means that the foreign or international agency shall have similar function with that of a FIU, but not any non-counterparts. It is not apparent that other competent authorities have the power to share information with non-counterpart foreign agencies.

Weighting and Conclusion

533. **Recommendation 40 is rated partially compliant.**

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"> ▪ Information in support of the NRA assessments was limited ▪ Lack of key consultations across the private sector and regional stakeholders ▪ There appears to be no requirement to update the NRA to take account of emerging risk or changes ▪ There is no mechanism to provide information on the results of the NRA to all relevant competent authorities, SRBs, FIs and DNFBPs. ▪ There has been no outreach on the conclusions reached in the NRA since its endorsement ▪ There is no requirement for a risk-based approach to supervision or the application of enhanced or simplified measures ▪ Tonga does not require reporting entities to take steps to identify and assess their own risks, nor to have policies and procedures in place to enable risk mitigation and monitoring
2. National co-operation and co-ordination	LC	<ul style="list-style-type: none"> ▪ There is no requirement for regular review of the national AML/CFT policy ▪ It is not clear if Tongan authorities co-operate and co-ordinate in respect of the compatibility of AML/CFT requirements with data protection and privacy rules
3. Money laundering offence	PC	<ul style="list-style-type: none"> ▪ Not all predicate offences are criminalised in Tonga ▪ The ML offence does not apply to the acquisition, possession or use of property knowing that property is the proceeds of crime ▪ The full range of ancillary offences are not included ▪ The monetary penalty for ML is not proportionate and dissuasive for banks and FIs ▪ Unclear whether parallel proceedings can take place with respect to legal persons
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> ▪ There are limited procedures for managing restrained and confiscated assets ▪ Third parties can only intervene at confiscation stage and not at the restraint stage ▪ No provision for forfeiture of property that is the proceeds of TF or property derived or generated from a terrorist that is not a specified entity

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> ▪ TF needs a link to a terrorist act for an individual undesignated terrorist ▪ There is no definition of ‘funds’ which creates uncertainty as to the scope of the activity included in the offence ▪ There is no provision covering the financing of travel ▪ No legislative reference to the ‘knowledge’ element ▪ There is no explicit provision relating to parallel criminal, civil or administrative proceedings with respect to legal persons ▪ For legal persons operating in Tonga the level of fine is not a dissuasive penalty
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> ▪ Tonga does not explicitly identify a competent authority or court responsible for proposing designations to the UN committees ▪ There is no mechanism for identifying targets for designation based on the UNSCR designation criteria ▪ There are no procedures for proposing designations to the UN and no specified standard of proof when deciding to make a designation proposal ▪ There is nothing requiring Tongan authorities to comply with the UN Sanctions Regime procedures and standard forms adopted by the relevant UN committee or to provide as much relevant information as possible when proposing a designation ▪ Tongan legislation does not deal with foreign requests for designations under UNSCR 1373 ▪ There is no legal authority, procedure or mechanism enabling the authorities to operate <i>ex parte</i> against a person or entity who has been identified and whose designation is being considered ▪ There is no guidance for FIs or DNFBPs on implementing TFS without delay, and the time frame of ‘without delay’ is not specified ▪ There is no requirement for FIs and DNFBPs to report on assets frozen or actions taken in relation to the relevant UNSCRs, including attempted transactions ▪ There is no provision stating that freezing can be extended to economic resources or the value accruing from or generated by such funds or assets ▪ Tonga has not implemented related procedures to deal with the UN Security Council ▪ There are no mechanisms for communicating with and conducting outreach to reporting entities ▪ There are no procedures for delisting and unfreezing ▪ There are no procedures for dealing with false positives
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> ▪ Tonga does not have measures in place to implement targeted financial sanctions related to proliferation in order to comply with the relevant UNSCRs

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
8. Non-profit organisations	PC	<ul style="list-style-type: none"> ▪ Tonga has not yet identified the sub-set of NPOs that fall within the FATF definition of NPO and may be at risk of abuse for TF and has not undertaken targeted outreach and controls on that subsector of NPO ▪ Tonga has not taken steps to promote effective supervision or monitoring and there is no competent authority in charge of supervision or monitoring of NPOs ▪ MTED manages the registration of NPOs, but does not supervise for compliance with the legislation nor does MTED oversee the filing of annual financial statements/ other changes in information ▪ Sanctions can be applied in some instances, but are not considered to be proportionate or dissuasive. ▪ Some limited outreach has been undertaken to NPOs but it has not to date encompassed AML/CFT risk ▪ There is a lack of monitoring of the NPO sector for TF risk issues, and thus a number of shortcomings in relation to this Recommendation
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> ▪ The Recommendation is fully met.
10. Customer due diligence	NC	<ul style="list-style-type: none"> ▪ Due to the MLPC Regulations being unenforceable, the key measures relating to CDD in Tonga are unenforceable
11. Record keeping	PC	<ul style="list-style-type: none"> ▪ Due to the MLPC Regulations being unenforceable, the key measures relating to record keeping in Tonga are unenforceable
12. Politically exposed persons	NC	<ul style="list-style-type: none"> ▪ Tonga lacks enforceable measures in relation to PEPs ▪ There are no requirements for FIs to take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary of a life insurance policy are PEPs
13. Correspondent banking	NC	<ul style="list-style-type: none"> ▪ Due to the MLPC Regulations being unenforceable, the key measures relating to correspondent banking are unenforceable
14. Money or value transfer services	LC	<ul style="list-style-type: none"> ▪ Foreign Exchange Dealers are not explicitly required to include agents in their AML/CFT programs and monitor them for compliance with such programs
15. New technologies	NC	<ul style="list-style-type: none"> ▪ Due to the MLPC Regulations being unenforceable, the key measures relating to new technologies are unenforceable
16. Wire transfers	NC	<ul style="list-style-type: none"> ▪ There are significant deficiencies in meeting R.16 due to lack of enforceable means in relation to all of the criteria
17. Reliance on third parties	NC	<ul style="list-style-type: none"> ▪ Tonga's Regulations regarding third party reliance are not enforceable
18. Internal controls and foreign branches and subsidiaries	NC	<ul style="list-style-type: none"> ▪ There are no enforceable measures in relation to this Recommendation.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
19. Higher-risk countries	NC	<ul style="list-style-type: none"> Tonga lacks enforceable measures in relation to this Recommendation
20. Reporting of suspicious transaction	NC	<ul style="list-style-type: none"> The full range of STR reporting is narrowed by two significant deficiencies: (1) the requirement that reporting entities form an evidentiary value judgement after forming a suspicion but before disseminating STRs to TRA; and (2) the full range of predicate offences is not included in the ML offence.
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> Directors of FIS are not included in the statutory protection for tipping off or in the prohibition for tipping off.
22. DNFBPs: Customer due diligence	NC	<ul style="list-style-type: none"> There are limited enforceable measures in relation to CDD requirements for DNFBPs
23. DNFBPs: Other measures	NC	<ul style="list-style-type: none"> Tonga provides for general requirements in relation to reporting of STRs by DNFBPs. but there are significant deficiencies in relation to those obligations and there is a lack of enforceable obligations relating to R.18 and R.19 and moderate shortcomings in relation to R.21
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> Lack of requirements for legal persons and their registrars to obtain or hold beneficial ownership information ML/TF risks associated with all types of legal persons have not been assessed Basic information on shareholders of overseas companies is not required to be filed with the registrar and is therefore not publicly available Absence of ML and TF risk mitigating measures for bearer shares, nominee shareholders and directors Absence of record-keeping requirements for dissolved companies
25. Transparency and beneficial ownership of legal arrangements	NC	<ul style="list-style-type: none"> There is no requirement for information in relation to R.25 to be obtained or held by trustees There is no requirement for information on domestic or foreign legal arrangements is to be kept accurate and up-to-date There are no obligations on trustees in Tonga to disclose their status to FIs and DNFBPs There is no law suggesting the range of sanctions for trustees for failing to perform their duties The core component of this Recommendation relating to beneficial ownership information are not met
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> No prohibition of shell banks Shortcomings relating to preventing criminals and their associates having influence of a financial institution Shortcomings in TRA's risk-based approach to supervision and monitoring

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
27. Powers of supervisors	PC	<ul style="list-style-type: none"> ▪ Limitations to the power to compel production of documents without entering premises ▪ Limitations to the range of sanctions to impose for failures to comply with AML/CFT requirements
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> ▪ No supervision of DNFBPs compliance with AML/CFT requirements.
29. Financial intelligence units	PC	<ul style="list-style-type: none"> ▪ There are significant deficiencies in the operational framework of TRA relating to security of information ▪ The TRA cannot access tax information held within the Ministry of Revenue and Customs (tax secrecy) ▪ The FIU functions of TRA do not have budgetary autonomy
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> ▪ The Anti-Corruption Commissioner does not have powers to identify, trace and initiate freezing and seizing of assets, and no-one had been appointed to the office of the Anti-Corruption Commissioner at the time of the on-site.
31. Powers of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> ▪ It is unclear whether Customs has powers to take witness statements. ▪ Neither TP nor Customs have authority to conduct undercover operations nor general power to intercept communications. ▪ Customs does not have powers to allow controlled deliveries. ▪ Competent authorities do not have any processes to identify assets without prior notification to the owner.
32. Cash couriers	PC	<ul style="list-style-type: none"> ▪ Tonga has not implemented declarations/disclosures at sea ports. ▪ It is not clear from the legislation that stop/seizure at the border can be effected where there is a false disclosure. ▪ The legislation is not clear that the retained information is for disclosures above the threshold, for false declarations and where there is a suspicion of ML and/or TF. ▪ It is not clear that freedom of capital movement or trade payments is not adversely affected by safeguards to ensure proper use of information collected through the declaration system.
33. Statistics	LC	<ul style="list-style-type: none"> ▪ Tonga does maintain statistics in relation to the four categories of the Recommendations, but the statistics are not always comprehensive
34. Guidance and feedback	PC	<ul style="list-style-type: none"> ▪ Tonga has provided minimal guidance to reporting entities, with little specific guidance provided to DNFBPs, but these measures are out of date
35. Sanctions	PC	<ul style="list-style-type: none"> ▪ A range of sanctions are available including criminal and administrative are available but there are gaps in the scope of inclusion for director and or senior management and gaps relating to scope of coverage with NPOs

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
36. International instruments	PC	<ul style="list-style-type: none"> ▪ Tonga has acceded to the Vienna Convention, Palermo Convention and Terrorist Financing Convention, but there are some gaps in implementation of these conventions ▪ Tonga is not a party to the Merida Convention
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> ▪ Tonga does not have a case management system for MLA. ▪ Tonga has a legal framework for MLA however the definition of ‘serious offence’ restricts the range of ML related and non-coercive assistance ▪ Tonga requires an agreement to disclose tax information, under which Tonga can impose conditions to the use of that information. ▪ Dual criminality is required for rendering MLA assistance. Provisions in the MACMA statute do not draw a distinction between coercive and non-coercive measures.
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> ▪ Instrumentalities used in or intended for use in ML/TF or predicate offence, and property of corresponding value, are not covered in the definition of ‘property’ ▪ There is no non-conviction based restraining or confiscation available in Tonga. ▪ There are no clear provisions for co-ordinated actions ▪ Reciprocal sharing agreements are by definition restricted in scope due to the deficiencies noted
39. Extradition	LC	<ul style="list-style-type: none"> ▪ Tonga can execute extradition requests related to ‘relevant offences’ with ‘designated countries’ only. ▪ Tonga does not have a case management system for extradition requests with clear processes for the timely execution of requests ▪ Tonga does not have a simplified extradition mechanism
40. Other forms of international co-operation	PC	<ul style="list-style-type: none"> ▪ No requirement for the international co-operation to be provided rapidly ▪ No clear legal basis in the Police Act that empowers police to enter into bilateral or multilateral agreements or arrangements ▪ No requirements or practice in place for authorities to provide feedback in a timely manner ▪ It is not clear in Tongan law whether information can be exchanged with foreign counterparts where there is an investigation, inquiry or proceeding underway ▪ Legislation does not provide for controls and safeguards on information that is provided to competent authorities. It is not clear that there are established controls on the safeguarding of information ▪ TRA’s information exchange is limited to information that the TRA has reasonable grounds to suspect would be relevant to the investigation. ▪ There is no formal domestic law endorsing joint investigations with foreign agencies or mentioning that

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		joint operation can be carried out bilaterally or multilaterally with foreign counterparts <ul style="list-style-type: none"> ▪ It is not apparent that competent authorities other than TRA have the power to share information with non-counterpart foreign agencies

GLOSSARY OF TERMS

Abbreviation	Meaning
ADB	Asian Development Bank
AFSPC	Association for Financial Supervisors of Pacific Countries
AGO	Attorney-General's Office
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
ARIN-AP	Asset Recovery Interagency Network - Asia-Pacific
BCR	Border Currency Report
BNI	Bearer Negotiable Instrument
BO	Beneficial Ownership
CCSFC	Cabinet Committee on Serious Financial Crimes
CDD	Customer Due Diligence
CEMA	Customs and Excise Management Act 2007
CFATF	Caribbean Financial Action Task Force
CPF	Countering Proliferation Financing
CTR	Cash Transaction Report
CTTOCA	Counter Terrorism and Transnational Organised Crime Act 2013
DET	Drug Enforcement Taskforce
DNFBP	Designated Non-Financial Businesses and Professions
DPMS	Dealers of Precious Metals and Stones
DPP	Director of Public Prosecutions
DPRK	Democratic People's Republic of North Korea
EDD	Enhanced Due Diligence
FATF	Financial Actions Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
IFTR	International Funds Transfer Report
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IO	Immediate Outcome
IRD	Inland Revenue Department
LEAs	Law Enforcement Authorities

Abbreviation	Meaning
MACMA	Mutual Assistance in Criminal Matters Act 2016 Revised
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
MLPCA	Money Laundering and Proceeds of Crime Act 2016 Revised
MLPC Regulations	Money Laundering and Proceeds of Crime Regulations 2016
MoU	Memorandum of Understanding
MRC	Ministry of Revenue and Customs
MSME	Micro, Small and Medium Enterprises
MTED	Ministry of Trade and Economic Development
MVTS	Money or Value Transfer Services
NPOs	Non-Profit Organisations
NRA	National Risk Assessment
NRBT	National Reserve Bank of Tonga
OCO	Oceania Customs Organisation
PEP	Politically Exposed Person
PF	Proliferation Financing
PICP	Pacific Islands Chiefs of Police
PIDC	Pacific Immigration Development Community
PIF	Pacific Islands Forum
PILON	Pacific Islands Law Officers Network
PPO	Pecuniary Penalty Order
PTCN	Pacific Transnational Crime Network
PTCCC	Pacific Transnational Crime Coordination Centre
RE	Reporting Entity
RSAA	Revenue Services Administration Act 2016
SOTCU	Serious Organised Transnational Crime Unit
STR	Suspicious Transaction Report
TCSP	Trust or Company Service Provider
TFS	Targeted Financial Sanctions
TLEAC	Tonga Law Enforcement Agencies Committee
TOP	Tonga Pa'anga

Abbreviation	Meaning
TP	Tonga Police
TRA	Transaction Reporting Agency
TSOCPT	Transnational Serious Organised Crime Pacific Taskforce
UN	United Nations
UNSCR	UN Security Council Resolution
VASP	Virtual Assets Service Provider
WCO	World Customs Organization
WGSFC	Working Group on Serious Financial Crimes

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Anti-money laundering and counter-terrorist financing measures

3rd Round APG Mutual Evaluation Report - Tonga

In this report: a summary of the anti-money laundering (AML)/counter-terrorist financing (CTF) measures in place in Tonga as at November 2019. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Tonga's AML/CFT system, and provides recommendations on how the system could be strengthened.