



1st Follow-Up Report

Mutual Evaluation of Fiji

October 2017





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

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

For more information about the APG, please visit the website: www.apgml.org

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Asia/Pacific Group
on Money Laundering

FIJI 1ST FOLLOW-UP REPORT 2017

1. In accordance with the APG Third Round Mutual Evaluation Procedures, attached are updates to Fiji's *Technical Compliance Annex* and *Compliance with FATF Recommendations* table, adopted by the APG plenary in July 2017.

2. Fiji submitted its first follow-up report on 1 February 2017 and requested re-ratings of the following 16 Recommendations:

- R.1 – Assessing risk and applying a risk-based approach
- R.5 – Terrorist financing offence
- R.6 – Targeted financial sanctions related to terrorism & terrorist financing
- R.7 – Targeted financial sanctions related to proliferation
- R.10 – Customer due diligence
- R.11 – Record keeping
- R.15 – New technologies
- R.16 – Wire transfers
- R.17 – Reliance on third parties
- R.18 – Internal controls and foreign branches and subsidiaries
- R.22 – DNFBPs: Customer due diligence
- R.23 – DNFBPs: Other measures
- R.24 – Transparency and beneficial ownership of legal persons
- R.25 – Transparency and beneficial ownership of legal arrangements
- R.28 – Regulation and supervision of DNFBPs
- R.35 – Sanctions

3. As required under the APG Third Round Mutual Evaluation Procedures, an APG review team was formed, consisting of the following three former assessors and secretariat member, to undertake the analysis:

- Ms. Ahmutha Chadayan, Bank Negara Malaysia
- Ms. Sue Wong, Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Mr. Craig Hamilton, New Zealand Police
- Ms. Melissa Sevil, APG Secretariat

4. The review team found that Fiji had made considerable progress on technical compliance with (i) amendments to the Financial Transactions Reporting (Amendment) Act 2017 and FTR Regulations 2017 to rectify deficiencies in the enforceability of preventive measures, and (ii) enactment of the Public Order (Amendment) Act 2017 to address deficiencies in the definition of the TF offence. The review team concluded that progress to compliant (C) had been made on two of the 16 Recommendations subject to re-rating, and progress to largely compliant (LC) on six Recommendations. Eight of the 16 Recommendations requested for re-rating remain at non-compliant (NC)/partially compliant (PC).

Table of Re-ratings

Recommendation	MER rating	Progress made to largely compliant (LC)/compliant (C) Yes/No
R.1 – Assessing risk and applying a risk-based approach	PC	Yes - LC
R.5 – Terrorist financing offence	PC	Yes - C
R.6 – Targeted financial sanctions related to terrorism & terrorist financing	NC	No - PC
R.7 – Targeted financial sanctions related to proliferation	NC	No - PC
R.10 – Customer due diligence	PC	Yes - LC
R.11 – Record keeping	PC	Yes - C
R.15 – New technologies	PC	No
R.16 – Wire transfers	PC	Yes - LC
R.17 – Reliance on third parties	PC	Yes - LC
R.18 – Internal controls and foreign branches and subsidiaries	PC	Yes - LC
R.22 – DNFBPs: Customer due diligence	NC	No - PC
R.23 – DNFBPs: Other measures	PC	No
R.24 – Transparency and beneficial ownership of legal persons	PC	No
R.25 – Transparency and beneficial ownership of legal arrangements	PC	No
R.28 – Regulation and supervision of DNFBPs	PC	No
R.35 – Sanctions	PC	Yes - LC

5. Fiji has expressed some disagreement on those Recommendations that were not re-rated to LC or C.

6. Fiji is continuing to take actions to address the remaining deficiencies and further re-ratings are anticipated in the future.

APG Secretariat
October 2017

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TECHNICAL COMPLIANCE ANNEX (UPDATED JULY 2017)***Recommendation 1 – Assessing risks and applying a risk-based approach***

1. Recommendation 1 is a new FATF recommendation added in the 2012 revision. Accordingly, the 2006 MER did not assess Fiji's compliance in relation to understanding and mitigating risk, although it did set out a range of risks relevant to Fiji and some risk mitigation measures.
2. *Criterion 1.1* - The Fiji Money Laundering and Financing of Terrorism National Risk Assessment Framework (NRA) was published in June 2015. The assessment was prepared by the National Anti-Money Laundering Council (NAMLC), through an NRA Task Force, and with technical assistance provided by the Asian Development Bank (ADB). While this is Fiji's first NRA, over 2009-2011 Fiji took part in a regional risk assessment study by the IMF. Information from this study provided Fiji with a general understanding of the ML/TF risks, both regionally and domestically, to inform policy direction. Fiji also conducts annual risk assessments as part of strategic analysis, based on emerging crime information.
3. Fiji's NRA exercise was guided by a comprehensive action plan, prepared by the NAMLC in March 2014. This action plan clearly set out the objectives, benefits, scope and coordination process, methodology, consultation process, collection framework, reporting process and the necessity for regular updating the NRA. The NRA acknowledges the report as a foundation document that broadly outlines the high-level ML/TF risks for Fiji. The NRA drew on data and information obtained through interviews and workshops, as well as from government agencies, financial institutions, media reports and other public sources and the opinions/value judgements of agencies contributing to data collection.
4. The NRA identifies Fiji's highest-level ML/TF risk results from illicit drug-related offences and fraud on the government in the form of tax evasion (including income tax evasion, VAT fraud and evasion of duties and licence fees). Other ML/TF threats arise from illicit funds resulting from deception, misappropriation, cybercrime, theft, bribery and corruption and the illicit cross-border movement of currency. Although the financing of terrorism (TF) has not been identified in Fiji, the NRA acknowledges that it is possible TF threats may arise from these same illicit activities and given the global concern with widespread terrorism and terrorist activities, TF is rated more highly as a potential threat.
5. The high-risk sectors are identified as the commercial banks, restricted foreign exchange (FOREX) dealers, investment/safe custody facilities, the real estate sector, companies (based on global concern about the use of companies for ML/TF) and NPOs. There is no evidence of ML/TF involving NPOs in Fiji; however, it is included as a highly vulnerable sector based on the global concern about potential TF using NPOs. Other factors influencing the vulnerabilities arise from Fiji's geographic location and porous borders, significant use of the cash economy and capacity challenges with respect to human and technological resources.
6. The NRA does not identify any specific high-risk countries either as origins of proceeds of crime and TF with Fiji as a destination or as destination countries for proceeds and TF from Fiji. Fiji intends to consider specific high risk countries for inclusion as part of its next NRA. Reasonable conclusions are drawn on the main ML and TF risks for Fiji, using a range of reliable information sources. The NRA identifies companies as a highly vulnerable sector; however, there is no evidence that the ML/TF risks associated with all types of legal persons created in the country have been assessed, as required under R.24.

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

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

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

10. *Criterion 1.5* – At the individual agency level, Fijian authorities have commenced a realignment of resources to address identified risks in NRA. In December 2016, the NAMLC endorsed a proposal to provide support and assistance to Police and Customs to target the critical areas of criminal proceeds recovery and transnational illicit drug movements. This proposal reflects national co-ordination of resources to prevent and mitigate ML/TF.

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

12. *Criterion 1.7* - Fiji has issued guidance to financial institutions and DNFBPs which requires them to undertake enhanced measures when dealing with higher-risk customers and transactions. This guidance is enforceable as result of amended regulations introduced in February 2017 which provide a range of penalties that can be imposed by the FIU upon any reporting entity who fails to comply with any instruction, guideline or directive issued by the FIU. The FTR Act also does not require financial institutions and DNFBPs to ensure that high-risk information is incorporated into their individual risk assessments.

13. *Criterion 1.8* - FIU PA/5/2007 (para 4) outlines the risk-based approach that financial institutions and DNFBPs should apply and allows simplified measures and controls for CDD and monitoring when dealing with lower risk customers and transactions. In addition, s.21 of the FTR Regulations allows financial institutions to undertake simplified CDD where a customer or transaction is assessed as having a lower ML/TF risk. The requirements under a simplified CDD process are defined in s.21 (3) and (4). Sections 13 and 19 of FIU Guideline 4 also provide guidance on simplified CDD for lower risk customers or transactions. While the NRA has only recently been completed, the measures on the requirements for the risk-based approach have already been included in the relevant regulations, policy guidelines and

advisories. Financial institutions are required to undertake RBA when managing ML/TF risks and the obligation to undertake such measures is now enforceable as a result of the 2017 amendment to the Financial Transactions Reporting Act.

14. *Criterion 1.9* - Financial institutions and DNFBP supervisors have adequate powers of supervision, and the regulations and guidelines are now enforceable as per the previous paragraph. The real estate sector is a recognised risk with the NRA and therefore this sector supervisor needs to ensure that Real Estate Agents are implementing their obligations in accordance with the sectoral risks identified in the NRA. The FIU is currently in the process of building a closer relationship with the real estate sector through the Real Estate Agents Licensing Board and a MOU between the two agencies was signed on 24 April 2017.

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

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

17. *Criterion 1.11* - Section 21 of the FTR Act and s.29 of the FTR Regulations require financial institutions and DNFBPs to establish and maintain AML/CFT policies, procedures and systems, as well as have compliance management arrangements to ensure compliance with the measures (s.29 (1)(b) of the FTR Regulations refers). Section 29(2) of the FTR Regulations requires these policies, procedures and systems to have regard for the ML/TF risks. Paragraph 14 of FIU PA/5/2007 requires FIs and DNFBPs to determine and apply appropriate AML/CFT policies, procedures and controls to mitigate ML/TF risk identified (para 4ii). As mentioned above, these AML/CFT policies, procedures and controls should be approved by management (para 14), and be subjected to compliance testing to monitor its implementation (par 14). Under paragraph 4(ii) and (iii) of the FIU PA/5/2007 financial institutions and DNFBPs must undertake enhanced measures to manage and mitigate the risks where higher risks are identified.

18. Banking Supervision Policy Statement No. 6 requires banks and credit institutions to establish an effective ML/TF Risk Management Framework consisting of systems, structures, processes and people to address the ML/TF Risk Management process (para 4.1). As part of this Framework, banks and credit institutions must develop and implement an AML/CFT Policy, which must include measures outlined in paragraph 4.2. The AML/CFT Policy must be approved by the Board or its proxy (para 4.4).

Implementation of the controls and measures required under the AML/CFT Policy must be monitored by the AML compliance officer and internal audit section (para 7.1; 8.1). However, credit unions, jewellers and dealers in precious metals and stones are not required to measures stipulated in c1.11, as they are not subject to the FTR Act.

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

Weighting and Conclusion

20. The NRA has recently been adopted by the government and authorities have commenced the implementation of national strategy and alignment of resource with a risk focus. It is also significant that regulations and guidelines designed to ensure an effective risk based compliance are now enforceable which addresses an important deficiency. Some sectors are also not yet covered by supervisory requirements. **Fiji is rated largely compliant for R.1.**

Recommendation 5 – Terrorist financing offence

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

22. *Criterion 5.1* - Fiji has criminalized TF through s.70A of the POCA. Section 70A(1) of the POCA states that it is an offence for a person to provide, collect or make available by any means any property either directly or indirectly intending, knowing or having reasonable grounds to believe the property will be used in full or in part for the purposes of terrorist act. The definition of ‘terrorist act’ refers to any act or omission in or outside Fiji Islands that constitutes an offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, or ‘TF Convention’, and a number of other acts that generally correspond to the acts described in the relevant international conventions. The Public Order (Amendment) (No. 2) Act 2017 (POA) introduced several significant provisions for purposes of extending TF offence consistent with Article 2 of the International Convention for the Suppression of the Financing of Terrorism. Among the newly introduced offences include offences against internationally protected persons (s. 12F), the offence of hostage taking (s. 12G), movement of nuclear material (s. 12H), possession or use of nuclear material (s. 12I), possession or use of radioactive material or devices (s. 12J), acts of violence on board ships or fixed platforms (s. 12K), use of nuclear material on board ships or fixed platforms (s. 12L) plastic explosive offences (s. 12N) and terrorist bombing offences (s. 12O).

23. *Criterion 5.2* - The POCA criminalizes the TF offence to a certain extent but does not expressly criminalize the act of collecting or providing property to terrorist groups and individual terrorists when there is no connection to a terrorist act. However, the newly introduced s. 12W and s. 12P of the POA

sufficiently criminalizes the act of collecting property, facilitating transactions or provision of financial services or other related services for the benefit of an organization, group or individual declared by the court as a specified entity or listed by UNSC pursuant to the relevant Resolutions. S. 12X of the POA adequately criminalizes the financing of foreign terrorist fighters.

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

25. *Criterion 5.4* - The offence of providing, collecting or making available any property to be used in a terrorist act as provided under s.70A(1) of the POCA, as well as s. 12W and s. 12X of POA, neither requires the property to be used in an actual terrorist act nor to be linked to a specific terrorist act.

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

27. *Criterion 5.6* - Natural persons convicted of a TF offence under the POCA can be subjected to a maximum fine of FJD120 000 (~USD57 000) or maximum imprisonment for 20 years or both. The low amount of fine is mitigated by the ability of the courts to impose a combination of both fine and imprisonment in respect of a convicted offender. Similarly, a natural person convicted of a TF offence under the POA is liable upon a conviction to maximum fine of FJD150,000 (USD72 000) or maximum imprisonment for 20 years or both. Persons convicted of ancillary offences are liable to the same penalty as the TF offence.

28. *Criterion 5.7* - Criminal sanctions in the form of a fine are applicable. Legal persons that are convicted of TF offences under s.70A the POCA are subjected to a maximum fine of FJD600 000 (~USD284 000), which is proportionate and dissuasive for legal persons. Section 71 of the POCA legislates a number of presumptions pertaining to the establishment of ‘state of mind’ of a body corporate in relation to conduct of its directors, servants and agents; and Part 8 of the Crimes Decree sets out the general principles and elements that need to be proved in relation to liability of legal persons for conduct of their directors, servants and agents. Even though there is no express provision to the effect that criminal prosecution, and therefore sanctions, could be pursued against both the natural person and the legal person (if any) in relation to the same offence, the applicable laws do not indicate otherwise. The sanctions provided under the POA for TF offences are applicable to legal persons as the terminology “persons” includes both legal and natural persons.

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

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

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

Weighting and Conclusion

32. The amendments made to the POA sufficiently address the technical gaps identified in MER 2016. **Fiji is rated compliant for R.5.**

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

33. In the 2006 MER, Fiji was rated non-compliant for SR III. The factors underlying the rating included: (1) the scope of ‘terrorist property’ does not extend to property owned or controlled by terrorists or those who finance terrorism and property jointly owned by ‘persons targeted by the measures’ or third parties; (2) it was not clear whether ‘terrorist property’ covers property of individuals designated by United Nations Security Council or by other designation mechanisms; (3) Fiji had not implemented the United Nations Security Council Resolution (UNSCR) 1267 and 1373; (4) there was no system in place to communicate freezing actions to financial institutions; (5) no guidance was issued to the financial institutions; (6) it was not clear whether a restraining order issued under s.19B of the POCA can be challenged and it was not clear whether any protection is available to bona fide third-parties affected by restraining orders against terrorist property. There were also concerns that while the POCA creates a legal framework with regard to restraining and forfeiting of terrorist assets, the implementation of the relevant provisions had been put on hold until a comprehensive anti-terrorism law is enacted. Following the adoption of the MER 2016, Fiji has swiftly introduced amendments to the Public Order (Amendment) (No.2) Act 2017 in its efforts, among others, to ensure compliance with the requirements of Recommendation 6. The amendments to the POA came into force on 17 February 2017.

34. *Criterion 6.1:*

35. *6.1(a)* – The Minister of Justice has been identified as the competent authority responsible for proposing persons or entities to the 1267/1989 Committee and 1988 Committee for designation.

36. *6.1(b)* – S.12P(1) of the POA sets out the criteria that will be used by Fiji for designation of specified entities (individuals and organizations). The criteria for designation are as follows:-

- (i) the individual or organisation has knowingly committed, attempted to commit or participated in committing or facilitated the commission of a terrorist act;
- (ii) has knowingly acted on behalf of, at the direction of, or in association with a person or entity which knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; and
- (iii) an entity which is wholly owned or effectively controlled directly or indirectly by a person or entity which has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act.

37. *6.1(c)* –The Minister may through the Attorney-General apply to the court for designation of a person or entity as a specified entity if there is a reasonable grounds to believe that a person or entity meets the criteria for designation. There is no restriction that a proposal for designation is conditional upon the existence of criminal proceeding.

38. *6.1(d)* – Fiji has not adopted procedures to follow the UN procedures and standard forms for listing by the 1267/1989 Committee or 1988 Committee. However, Fiji has indicated that their domestic procedures are consistent with the UN procedures and would be used for listing by the Committee.

39. *6.1(e)* – Fiji does not have any clear policies on the information that would be provided to the relevant United Nations committee to support a proposed designation but has indicated that the information collected under S.12P(1) of the POA would be used. Fiji’s stance on whether Fiji’s status as a designating state could be made known in respect of a designation to 1267/1989 Committee:-

40. *Criterion 6.2:*

41. 6.2(a) – The Minister of Justice has been identified as the competent authority responsible for proposing persons or entities as specified entities.

42. 6.2(b) – S.12P(1) of the POA sets out the criteria in relation to the designation of individuals and entities as specified entities.

43. 6.2(c) – Although there are no specific written procedures in dealing with request for designation of a person or entity by a foreign country, such requests will be determined based on the criteria for designation set out under s.12P of the POA, i.e. whether there are reasonable grounds to believe that a person or entity has: (i) knowingly committed/attempted to commit/participated in committing or facilitated in the commission of a terrorist act; (ii) knowingly acting on behalf of, at the direction of, or in association with an entity involved in a terrorist act; or (iii) an entity wholly owned or effectively controlled directly or indirectly by a person or entity involved in a terrorist act.

44. 6.2(d) – The Minister of Justice will make an application to court through the Attorney-General if the Minister has reasonable grounds to believe that an entity meets the designation criteria. Fiji's laws do not contain any restrictions to the effect a designation is conditional upon the existence of a criminal proceeding.

45. 6.2(e) – Based on ss.16(3) and 25(1)(f) of the FTR Act, Fiji is able to disclose identifying information supporting the designation to a foreign FIU or appropriate foreign authority, if the person or entity is a designated person or entity in Fiji.

46. *Criterion 6.3:*

47. 6.3(a) – The FTR Act and FTR Regulations do not provide any express legal powers for the relevant authorities to collect or solicit any information to identify persons and entities where there are reasonable grounds or reasonable basis to believe or suspect meet the criteria for designation. However, s. 12V of the POA, to a certain extent, compels persons in possession or control of a property suspected to be terrorist property or with information regarding a transaction (including proposed transaction) involving a terrorist property to disclose such information to FPF or LEAs. However, Fiji may rely upon the following provisions to certain extent to collect or solicit information to identify persons and entities that meet the criteria for designation:

- (i) s.25(1)(b) of the FTR Act empowers the FFIU to collect information regarding serious offence which include terrorist act and terrorism financing offence;
- (ii) s.16 of the FTR Act requires a person to disclose the following information to FFIU:
 - (a) the existence of a terrorist property or suspected terrorist property in his possession; and
 - (b) transaction or proposed transaction involving or suspected to involve terrorist property;
- (iii) s. 12V of the POA compels persons in possession or control of a property suspected to be terrorist property or with information regarding a transaction (including proposed transaction) involving a terrorist property to disclose such information to FPF or LEAs.

In addition, the FPF is in the position to solicit information by employing investigative mechanism to identify persons that meet the criteria for designation.

48. 6.3(b) – S. 12P of the POA expressly states that the court must deal with the application made by the Minister of Justice through the Attorney-General for designation of a person or entity as a specified entity *ex parte*.

49. *Criterion 6.4* - S. 12W(1)(b) and (c) read together with s. 12Q and definition of “specified entity” under section 2 of the POA enables Fiji to implement targeted financial sanctions. The effect of those provisions is that the specified entities under the relevant UNSC Resolutions and successor Resolutions are listed accordingly as specified entities in Fiji as if a declaration had been made by the court pursuant to section 12P that an entity is a specified entity. FIU or relevant agencies are required under section 12Q(2) of the POA to publish a notice in their respective websites of any addition or removal of any specified entity from the UNSC List.

50. It cannot be ascertained whether the targeted financial sanctions are implemented without delay. With regard to the following mandatory measures required to be undertaken by Fiji under its applicable national law i.e. s. 12Q of the POA, it is noted that:

(i) for designation in accordance with UNSC 1267/1989 and 1988 sanctions regime, the initial declaration by the Minister of Justice in the Gazette that FFIU or relevant authorities publish in their website on the list of specified entities is not available;

(ii) FFIU or the relevant agencies is required to publish in their website a notice on the list of specified entities and to continue to give notice as and when the UNSC adds or removes any specified from its list. At this juncture, FFIU had published a link to the updated consolidated list maintained by UNSC.

51. *Criterion 6.5* - Fiji identified the Minister of Justice as the competent authority responsible for implementing and enforcing targeted financial sanctions.

52. 6.5(a) – Section 12W(1)(a) of the POA prohibits citizen of Fiji and entities incorporated in Fiji from dealing either directly or indirectly in any property of a specified entity including funds derived or generated from property owned or controlled directly or indirectly by the specified entity. Section 12W(3)(a) falls short of the requirement in criteria 6.5(a) as the requirement under the said provisions is not applicable in respect of foreign citizens and foreign companies in Fiji. However, Fiji may rely on the existing provisions under the POCA. Under an order made by the court upon application by the DPP pursuant to s.19B (1)(a) of the POCA may prohibit natural persons and entities within Fiji from disposing of, or dealing with, the terrorist property or any part of the property or interest except in the manner specified in the order made by the court. The application to the court can be made *ex-parte*. However, such order is still not sufficient to freeze the funds of foreign citizens and foreign entities in Fiji as the POCA only requires freezing of the property that is identified in the restraining order and not all funds or other assets of designated persons and entities. However, it should be noted that the court may make a restraining order in respect of funds or other assets in Fiji or outside Fiji.

53. 6.5(b) – Pursuant to section 12W(1)(b)(i) of the POA, the citizens and entities incorporated in Fiji are required to freeze the property of a specified entity including funds derived or generated from property owned or controlled directly or indirectly by the specified entity. Even though no specific reference is made to the funds jointly owned, the wording of s. 12W(1)(b)(i) is broad enough to capture all funds and assets owned or controlled by the specified entity. The definition of ‘freezable property’ under the POA is limited to property owned or controlled by a specified entity, a property of a person or entity designated by the UNSC and the properties derived or generated from the above-mentioned properties. The obligations to freeze under the POA are not confined to those that can be tied to a particular terrorist act, plot or threat. However, it should be noted that the requirement to freeze under section 12W(1)(b)(i) does not extend to

the property of persons and entities acting on behalf of, or at the direction of, specified entities. Due to the inapplicability of section 12W(1)(b)(i) of the POA in respect of foreign citizens and foreign entities in Fiji, reliance could only be placed on s.19(b)(1)(a) of the POCA where the obligation to freeze the funds or other assets of designated persons and entities is only applicable in respect of the property that is identified in the restraining order issued by the court. Under the POCA, the definition of ‘terrorist property’ covers both property that is proceeds from a terrorist act or a property that has been, is being, or is likely to be used to commit a terrorist act or used by a terrorist group or a property that is owned or controlled by a terrorist group. With regard to property that is jointly owned with the designated persons or entities, it is not clear whether the entire property can be frozen.

54. 6.5(c) – S. 12W(1)(b)(iv) of POA prohibits citizens of Fiji and entities incorporated in Fiji from making available any property or any financial or other related service, directly or indirectly, for the benefit of a specified entity. Nevertheless, the prohibition is not applicable to foreign citizens and foreign entities in Fiji. S.12W(1)(a) of the POA prohibits persons within Fiji and entities incorporated in Fiji from providing funds for the use of a specified entity. The prohibition under S.12W(1)(a) of the POA which is applicable to all “persons” and entities incorporated in Fiji can be read to include foreign national and foreign entities in Fiji due to the interpretation of the word “person”. Fiji does not fully comply with criteria 6.5(c) as s.12W(1) does not prohibit the act of making available funds as well as financial or related services to the entities owned or controlled directly or indirectly by specified entities and persons acting on behalf of, or at the direction of, specified entities. Section 70A(2)(b) of the POCA to a certain extent prohibits provisions of financial or related financial services for the benefit of a terrorist group. However, the POCA does not specifically impose any prohibition on persons and entities within Fiji from making available any funds, other assets or economic resources to the designated persons and entities, entities owned or controlled directly or indirectly by designated persons and entities and persons and entities acting on behalf of, or at the direction of, the designated persons and entities.

55. 6.5(d) - The recent amendments to the POA empower Fiji to adopt the designations made by the UNSC under the relevant UNSC Resolutions. The adoption is subject to certain pre-requisites stipulated under the POA including an initial publication of a notice by the Minister in the Gazette declaring that the FIU and relevant Government agencies will publish in their respective websites of the list of specified entities designated by UNSC. Subsequently, the authorities will give notice on the additions to and deletions of specified entities from the UNSC List. FFIU has published on its website a link to the updated consolidated list maintained by UNSC. Domestic designations will be made through declarations by the court which must be published in the Gazette. It should be noted that Fiji has yet to operationalize the implementation of the targeted financial sanctions relating to terrorism and terrorist financing under the POA. No guidance has been issued to the financial institutions and DNFBPs in accordance with this sub-criterion.

56. 6.5(e) - Section 12V of the POA requires any person, which would include financial institutions and DNFBPs, to report the existence of any property of a specified entity and transactions or attempted transactions involving specified entities to FPF or authorised relevant enforcement agencies.

57. 6.5(f) - Section 20(1) of the FTR Act provides protection from civil, criminal or disciplinary action for disclosures made to the FIU whether the persons or entities are in possession or control of the terrorist property or transactions involving terrorist property. The protection under s.16 of the FTR Act is not sufficient to protect the rights of bona fide parties acting in good faith when implementing targeted financial sanctions.

58. *Criterion 6.6:*

59. 6.6(a) - There are no publicly known procedures for submission of de-listing requests to the relevant UN Committee for those designated persons and entities who no longer meet the designation criteria.

60. 6.6(b) – The procedures and mechanism to de-list and unfreeze funds of specified entities are not publicly available.

61. 6.6(c) – S. 12R of the POA legislates the procedure pertaining to the application to the court for revocation of an earlier declaration of a person as a specified entity. An application for such declaration can either be made by the Attorney-General upon the advice of the Minister or the specified entity itself. In cases where the application for revocation of a declaration is made by the specified entity itself, the specified entity is required to give a reasonable written notice of the application to the Minister and the Attorney-General. In hearing an application made by the specified entity, the court may hear from the Minister through the Attorney-General. 12R(6) of the POA states that specified entities listed in Fiji due to their listing under UN sanctions regime will automatically cease to be specified once they are delisted by the UNSC or UN Sanctions Committee. The procedure on hearing in relation to revocation of designation is set out in s.12S of the POA while s.12T contains provisions pertaining to the review of declarations made by the court under s.12P(3) and 12Q(1) of the POA by the Minister of Justice every 3 years. In addition, judicial review may be available to ensure that the “process” of designation is undertaken in accordance with the rules in place, but there are no publicly known procedures providing for a substantive review of a particular designation.

62. 6.6(d) - There are no specific procedures to facilitate review by the 1988 Committee including those Focal Point mechanisms with regard to the designation pursuant to the UNSCR 1988. However, s. 12T of the POA requires the Minister to review a deemed declaration made by Fiji every three years due to a listing by UN in accordance with UNSCR 1988. If there are no reasonable grounds for a declaration to continue to apply to a specified entity, the Minister of Justice may request to the Attorney-General to apply to the court for the declaration to be revoked at national level.

63. 6.6(e) - There are no procedures informing the designated persons and entities on the availability of the United Nations Office of the Ombudsperson to accept de-listing petitions.

64. 6.6(f) - There are no procedures to unfreeze funds or other assets of innocent third parties who are inadvertently affected by the freezing.

65. 6.6(g) – Delistings by UNSC will be communicated to the general public including FIs and DNFBPs through publications of notice by FIU and relevant government agencies on their respective websites. Revocation of a declaration of a person as a specified entity by court is required to be published in the Gazette. No guidance has been provided to financial institutions and DNFBPs on de-listing and acts of unfreezing. However, such guidance can be communicated through FIU and RBF’s usual communication channels with the public and FIs as well as DNFBPs.

66. *Criterion 6.7* – While the POA requires freezing of property by citizens of Fiji and entities incorporated in Fiji, the access to frozen funds for permitted purposes are not legislated. Under the POA, the court that is empowered to make freezing orders has the discretion to allow access to the funds or other assets. The court may allow access to frozen funds or other assets for purposes of basic expenses, payment of certain fees, expenses and service charges or extraordinary expenses, however, this is not regulated to be in keeping with conditions set by the UN in UNSCR 1452.

Weighting and Conclusion

67. The deficiencies in the legislative provisions in the POA dealing with requirement to freeze property of specified entities include:

- (i) foreign citizens and foreign entities in Fiji are not subject to the relevant provision in POA requiring freezing of properties of the specified entities; and
- (ii) there is no requirement to freeze property of persons and entities acting on behalf of, or at the direction of, specified entities.

68. **Fiji is rated partially compliant for R.6.**

Recommendation 7 – Targeted financial sanctions related to proliferation

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

70. *Criterion 7.1* - Fiji has amended its POA to introduce s. 12W which is a common provision for implementation of targeted financial sanctions relating to both proliferation financing and terrorist financing. S.12W(1)(b) of the POA states that where a declaration has been made by the court under s.12P(3) or specified entities declared pursuant to s.12Q(1) in line with UNSC Resolutions 1718 and 1737 and successor resolutions, citizens of Fiji and entities incorporated in Fiji are subject to the prohibitions stated in s.12W(b) to (d) of the POA which sets out the obligation to freeze funds of a specified entity or facilitating a transaction involving funds of a specified entity, providing any financial or other related services for the benefit of a specified entity or make available funds for the benefit of a specified entity. S.12W(1)(a) of the POA prohibits persons or entities incorporated in Fiji from providing or collecting by means, directly or indirectly, property to be used by a specified entity. It cannot be ascertained whether Fiji is implementing the relevant targeted financial sanctions without delay as the following information on the mandatory pre-requisites in s.12Q of the POA relating to adoption of UN listed entities are not available:-

- (i) Notification in the Gazette by the Minister declaring that the FIU or relevant agencies must publish in their websites a notice of the list of specified entities as well on additions or removal of specified entities in accordance with any addition or removal made by the UNSC;
- (ii) Notifications published by FIU or the relevant authorities in their website on the list of specified entities and any additions or deletions to such list.

71. *Criterion 7.2* - The provisions in the POA, in particular s.12P, 12Q and 12W, establish legal authority for implementation and enforcement of targeted financial sanctions related to proliferation. Fiji has identified the Ministry of Justice as the responsible competent authority for implementing and enforcing targeted financial sanctions related to proliferation.

72. 7.2(a) – S. 12W(1)(b)(i) of the POA requires citizens of Fiji and entities incorporated in Fiji within or outside Fiji not to deal with (freeze) properties of a specified entity (organization, group or individual). By virtue of s. 12Q(1) of the POA, persons and entities designated by the UNSC pursuant to UNSC Resolution 1718 and 1737 are listed as specified entities in Fiji subject to certain pre-requisites namely the requirement FIU or the relevant government agencies in their respective website. However, s. 12W(b)(i) of the POA is not sufficient to require all natural and legal persons within Fiji to freeze without delay and without prior notice the funds of specified persons as the said provision does not apply to foreign citizens and foreign entities in Fiji.

73. 7.2(b) – All properties owned by specified entities are subject to freezing pursuant to section 12W(1)(b)(i) of the POA. The requirement to freeze is not subject to limitation that the property of the specified entity must be tied to a particular act, plot or threat of proliferation. The wording of s. 12W(1)(b)(i) of the POA is broad enough to cover the properties that are owned or controlled directly or indirectly even though no specific reference is made to property that is jointly owned by a specified entity. The obligation to freeze property includes funds derived or generated from property owned or controlled by a specified entity. However, there is no requirement to freeze properties of persons acting on behalf of, or at the direction of specified entities.

74. 7.2(c) S.12W(1)(b)(iv) prohibits citizens of Fiji and entities incorporated in Fiji from making available any funds and other assets to, or for the benefit of specified entities. However, s.12W(1)(a) of the POA prohibits persons in Fiji which would include foreign nationals in Fiji as well as entities in Fiji (incorporated in or outside Fiji) from knowingly provide either directly or indirectly funds with the intention that the funds are to be used by a specified entity.

75. 7.2(d) – S.12Q(1) of the POA provides a more practical implementation of the relevant UNSC Resolutions by way of adoption of the list of persons and entities designated by the UNSC. S. 12Q(2) of the POA requires the Minister to publish a notice in the Gazette declaring that FIU or the relevant Government agencies must publish notice of the specified entities in their respective websites and must continue to give notice of any addition to or deletion from the UNSC list accordingly. It cannot be ascertained whether Fiji meets this criteria as the Ministerial Gazette notification and the notice on the list of specified entities had not been made available. No guidance has been issued to persons that may be holding targeted funds. However, such guidance can be communicated through FIU and RBF's usual communication channels with the public and FIs as well as DNFBPs.

76. 7.2(e) - S.12W(1)(d) requires citizens of Fiji and entities incorporated in Fiji, which would include financial institutions and DNFBPs incorporated in Fiji, with the existence of properties of the specified person in their control or possession or with information pertaining to transaction or proposed transaction involving a specified entity to disclose such information to FPF or the authorised law enforcement agencies. However, the requirement to report property frozen as well transactions involving specified entity is not applicable to foreign nationals and foreign entities in Fiji.

77. 7.2(f) - Fiji has not adopted any measures to protect the rights of bona fide third parties acting in good faith when implementing the obligations stipulated under R.7.

78. *Criterion 7.3* - Fiji has yet to formulate and adopt measures for monitoring and ensuring compliance by financial institutions and DNFBPs with the freezing obligations. Non-compliance with the measures relating to implementation of targeted financial sanctions and failure to make required disclosures to the relevant authorities triggers maximum fine not exceeding \$150,000 (USD 81,000) or maximum imprisonment for 20 years or to both.

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

80. 7.4(a) - Fiji has not developed and implemented any procedures enabling the designated persons and entities to petition a request for de-listing at the Focal Point for de-listing or informing the designated persons and entities to petition the Focal Point directly for de-listing.

81. 7.4(b) Fiji has not drawn up any publicly known procedures to unfreeze the assets of persons and entities with the same or similar name as the designated persons and entities upon adequate verification.

82. 7.4(c) - There are no procedures authorising access to funds and other assets in circumstances where the conditions for exemptions under the relevant UNSCRs are met.

83. 7.4(d) – Upon a ministerial notice under s.12(2) of the POA, initially the FIU and the relevant government agencies will publish in their respective website the list of persons and entities designated by UNSC. Subsequently, FIU and the relevant government agencies will continue to publish the changes to the UN List which will be adopted by Fiji. This means FIU and the relevant government agencies will publish delisting of a specified entity in accordance with the relevant UNSC Resolutions. The publication in the websites of the relevant authorities will serve as a communication mechanism including to the FIs and DNFBPs. No guidance has been provided to financial institutions and DNFBPs on de-listing and unfreezing actions.

84. *Criterion 7.5 (a)* – By virtue of the definition of the term “freezable property” in s.2 of the POA, any property that is owned or controlled by a specified entity or a property of a listed entity by virtue of s.12Q(1) of the POA or is derived or generated from the property owned or controlled by a specified entity or from property of specified entity. There is neither any provision in the law nor mechanism to permit payment due under contracts, agreements or obligations that arose prior to the freezing requirements in accordance with the relevant UNSC Resolutions.

85. *Criterion 7.5(b)* There are no provisions in the applicable laws or mechanisms allowing a designated person or entity to make any payment in respect of contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions.

Weighting and Conclusion

86. The foreign nationals in Fiji and foreign entities in Fiji are not subject to the requirement to freeze the properties of the funds and other assets of designated persons and entities. Further, there is no requirement to freeze properties of persons acting on behalf of, or at the direction of specified entities. **Fiji is rated partially-compliant for R.7**

Recommendation 10 – Customer due diligence

87. In the 2006 MER, Fiji was rated partially compliant with the former R.5. The factors underlying the rating included: the FTR Act had not yet been implemented; the specific AML/CFT CDD requirements were only partially in line with international standards; the CDD requirements were only implemented by banks, not all the non-bank financial institutions; there were no specific CDD measures for trusts; and financial institutions were not required under the FTR Act to conduct enhanced due diligence in relation to higher risk customers.

Detailed CDD requirements

88. The FTR Act and FTR Regulations contain measures in relation to CDD applicable to financial institutions and DNFBPs in Fiji. The FTR Regulations are made under s.42 of the FTR Act by Fiji’s Minister of Justice to give effect to the provisions of the FTR Act. The FTR Regulations have requirements in relation to CDD.

89. Section 29(2) of the FTR Act provides the FIU with the power to enforce compliance, including issuance of an action plan and directions to comply, with Part 2 of that Act (obligation to keep records and verify identity) and Part 3 of the Act (obligations to report). Under ss.29(3) & (4), a financial institution may be taken to court if it fails to comply with the FIU’s directive. In addition s43(2) of the FTR Act, a

legislation passed by Fiji Parliament on 8 February 2017, has penalty provisions for a person who fails to comply with any instruction, guideline or directive issued by the FIU.

90. *Criterion 10.1* - Subsection 9(1) of the FTR Act requires a financial institution to maintain accounts in the true name of the account holder. Subsection 9(2) prohibits financial institutions from opening, operating or maintaining anonymous accounts or accounts in fictitious, false or incorrect name. In addition, ss. 38(1) also has sanction provisions for a person who opens, operates or authorised the opening or the operation of an account with a financial institution in an anonymous or fictitious name.

91. *Criterion 10.2* - Subsection 4(1)(a) of the FTR Act requires financial institutions to identify and verify a customer from reliable and independent source if a financial institution enters into a continuing business relationship. The due diligence of a customer also applies even in the absence of a continuous business relationship where the financial institution conducts any transaction.

92. Subsection 4(1)(b) of the FTR Act also requires customer due diligence to be conducted where a financial institution carries out an electronic funds in circumstances covered by recommendation 16.

93. Subsections 4(1)(c) and (d) of the FTR Act transfer requires customer due diligence to be conducted if there is a suspicion of ML offence or terrorism and if there is doubt about the veracity or adequacy of the customer identification it had previously obtained.

94. *Criterion 10.3* - Subsections 4(1) and (2) of the FTR Act require financial institutions to identify and verify its customers based on reliable and independent source documents, data or information. This CDD requirement applies to permanent and occasional customers.

95. *Criterion 10.4* - Subsection 4(2)(d) requires financial institutions to verify that any person purporting to act on behalf of a customer that is a legal person, is authorised to do so and should identify this person.

96. *Criterion 10.5* - Subsection 4(2)(b) requires the identification and the adequate verification of the existence of principal owners, directors and beneficiaries. Section 5 of the FTR Regulations requires CDD to include the identification and verification of beneficial owners and section 10(3) of the FTR Regulations requires the financial institution to take reasonable measures to understand and document the ownership and control structure of the legal person, including identifying the natural person that ultimately owns and controls the legal person. The penalty for non-compliance with these Regulations is outlined in section 42 of the FTR Regulations.

97. *Criterion 10.6* - Subsection 4(6) of the FTR Act requires a financial institution to take reasonable measures to ascertain the purpose of any transactions and the origin and ultimate destination of the funds involved in the transactions. By obtaining information in relation to the transactions, financial institutions gain understanding of the purpose and intended nature of the business relationship. Interpretation of the Act is that 'transaction' includes opening of an account.

98. *Criterion 10.7* - (a) Subsections 4(6), 4(7) and 10(1) of the FTR Act relate to requirements for monitoring transactions and for financial institutions to take measures to monitor transactions, with sanctions for non-compliance applicable. (b) Under section 11 of the FTR Act, financial institutions must conduct continuous due diligence of its customer and business relationship, and to monitor customer's transactions to ensure they are consistent with customer's business and source of funds. In addition, section 5, 17 and 18 require that the information gathered must be maintained.

99. *Criterion 10.8* - For customers that are legal persons or legal arrangements ss.4(2) of the FTR Act requires the financial institution to verify the customer's ownership and control structure. In addition,

ss.10(1) and (3) of the FTR Regulations requires the financial institution to obtain and verify the business licence from the relevant authority and take reasonable measures to understand and document the ownership and control structure of the legal persons or legal arrangements. In addition, the FIU has issued Guideline 4, a legal instrument, which provides guidelines on understanding the ownership and control structure of customers that are legal persons. The penalty for non-compliance with the Guideline is provided under ss.43(2) of the FTR Act.

100. *Criterion 10.9* - Section 4(2) of the FTR Act requires that for a customer that is a legal entity, a financial institution must adequately verify its legal existence and the structure of the legal entity, including information relating to the, name, address, legal form, its control structure, principal owners, directors, beneficiaries and the provisions regulating the power to bind the entity. In addition, the person that acts on behalf of the entity must also be identified. Ss.10(1)c of the FTR Regulation requires the identity of the natural person purporting to act on behalf of the customer that is a legal person or legal arrangements.

101. *Criterion 10.10* - Subsection 4(2)(b) requires financial institutions to verify the principal owners, directors and beneficiaries of a customer that is a legal entity. Ss10(3) of the FTR Regulations requires financial institutions to identify the natural person(s) who ultimately has/have controlling ownership interest in a legal person. In addition ss.10(4) of the FTR Regulation requires the identification and verification of the principal owner (this is taken to mean 'beneficial owner') of a legal person, any person who has effective control, each person who exercise a signing authority.

102. *Criterion 10.11* - Subsection 4(2)(b) requires that for a legal entity, financial institutions must verify the beneficiaries of the legal entity. For trust or other similar arrangements, ss.10(6) of the FTR Regulation requires the identity of the settlor, the trustee(s), and any beneficiaries whose interests is 30 percent or more of the value of Trust or arrangement.

103. *Criterion 10.12* - S13 of the FTR Regulations requires financial institutions to conduct customer due diligence measures on each beneficiary of the life insurance policies and other investment related insurance policies.

104. *Criterion 10.13* – S20 of the FTR Regulations requires financial institutions to determine whether enhanced customer due diligence should apply to beneficiary of a life insurance policy as required in this criterion. The FTR Regulations, s.13, 'Identification of insurance beneficiaries', requires financial institutions to identify each beneficiary under the insurance policy and states that a financial institution 'may', not 'should', undertake the identification and verification of a beneficiary before the time of pay-out.

105. *Criterion 10.14* - Subsections 4(1) and (2) of the FTR Act requires a financial institution to verify the identity of the customer and any beneficiaries when it enters into a business relationship or, in the absence of such a relationship, conducts a transaction. S 15 of the FTR Regulation provides for circumstances where customer verification may be delayed.

106. *Criterion 10.15* - The FTR Act has no provision requiring financial institutions to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. FIU Guideline 4 (s.5.2) requires financial institutions to develop and adopt procedures to manage the risk of ML posed due to delayed verification of a customer. Penalties for non-compliance with the FIU guideline are set out in s42 of the FTR Regulations.

107. *Criterion 10.16* - The FTR Act does not have provision requiring financial institutions to apply customer due diligence on existing customers. However, s 22 of the FTR Regulations have a provision requiring due diligence on existing customers penalties for contravention of this requirement are set out in s42 of the FTR Regulation.

108. *Criterion 10.17* --Section 3 FTR of the Regulations requires financial institutions to apply the AML/CFT measures on a risk-based approach. Section 20 of the FTR Regulations provides that financial institutions must undertake enhanced CDD measures on any customer and transaction that is determined to be at a higher risk for ML and TF. Section 14 of FIU Guideline 4 outlines the requirements for enhanced due diligence and circumstances when enhanced CDD should be applied and s.3 of RBF Policy Statement # 6 requires financial institutions to undertake RBA.

109. *Criterion 10.18* - Section 3 of the FTR Regulations requires financial institutions to apply the AML/CFT measures on a risk-based approach. Section 21 of the FTR Regulations provides that financial institutions may apply simplified CDD measures where risk for ML and TF is lower. The minimum customer details that a financial institution must obtain and verify are the customer's (1) name, (2) address and (3) occupation or (4) legal form and (5) nature of business and activity conducted by the customer. In addition, s.21(5) of the FTR Regulations and s.13.5 of FIU Guideline 4 specify simplified CDD must be terminated when there is a suspicion of ML/TF activities and s.13 of FIU Guideline 4 outlines the requirements for simplified CDD and circumstance when simplified CDD may be applied.

110. *Criterion 10.19* - Section 7 of the FTR Act provides that the financial institution must not proceed with the transaction where the identity of the customer is not satisfactorily obtained and for it to report the attempted transaction to the FIU as a suspicious transaction. Non-compliance with this requirement is an offence and is liable on conviction to monetary penalties or term of imprisonment set out in s43 of the FTR Act.

111. *Criterion 10.20*- S6 of the FTR Regulations provides for circumstances where customers are exempted from customer due diligence requirements. However, there is no provision in the FTR Act or Regulation for exemption of the CDD process in circumstances where conducting the CDD process would tip-off the customer. Moreover, there is no requirement in those circumstances that requires the financial institution to report a STR.

Weighting and Conclusion

112. Fiji has amended its FTR Act and Regulations and inserted penalty provision for the contravention of any requirements in the legislation. As a result, the CDD requirements can be enforced where liability for the offence is a fine or a term of imprisonment. The only area where Fiji has not met Recommendation 10 is in Criterion 10.20 where there is no provision in the FTR Act or Regulations for exemption of the CDD process in circumstances where conducting the CDD process would tip-off the customer. There is also no requirement in those circumstances for the financial institution to report a STR. **Fiji is rated largely compliant for R.10.**

Recommendation 11 – Record-keeping

113. In the 2006 MER, Fiji was rated partially compliant and found that although the FTR Act imposes requirements in relation to keeping records and methods of retention, not all institutions have implemented the requirements.

114. *Criterion 11.1* - This criterion requires that the records are maintained for at least five years following completion of the transaction. Subsection 8(1) of the FTR Act requires financial institutions to establish and maintain records of all transactions conducted, including any correspondences relating to these transactions. Furthermore, s.8(3) of the FTR Act specifies these records must be kept for a minimum period of seven years from the date of any transaction or correspondence. Non-compliance with these requirements is an offence and liable on conviction to penalties set out under s43 of the FTR Act.

115. *Criterion 11.2* - Subsections 8(1)(b) and (c) of the FTR Act requires financial institutions to establish and maintain records of a person's identity obtained under the s.4 ("Verifying customer's identity") and s.5, ('Correspondent banking relationship'). Section 8(3) of the FTR Act specifies these records must be kept for a minimum period of 7 years from the date of: (a) the evidence of a person's identity was obtained; (b) of any transactions or correspondence; (c) the account is closed or business relationship ceases, whichever is the later.

116. *Criterion 11.3* - Subsection 8(2) of the FTR Act sets out the records that financial institutions must maintain as reasonably necessary to enable transactions to be readily reconstructed at any time by the FIU or a law enforcement agency. 8(4) of the FTR Act requires that records be maintained in a manner and form that enables the financial institution to comply as soon as practicable with requests from information from the FIU or a law enforcement agency.

117. *Criterion 11.4* - Under ss.8(4) of the FTR Act financial institutions are required to maintain customer identification information and transaction records in a manner and form that enables it to comply as soon as practicable with requests for information from the FIU or a law enforcement agency. Section 31(2) of the FTR Regulations requires the compliance officer and other employees designated by such officer to have timely access customer data, CDD information, transaction records and other relevant information.

Weighting and Conclusion

118. Amendments to Fiji's FTR Act and Regulations to insert provisions for penalties for non-compliance with the legislations and FIU directives have addressed the technical gaps. **Fiji is rated compliant for R.11.**

Recommendation 15 – New technologies

119. In the 2006 MER Fiji was rated non-compliant with R.15. The main factor underlying the rating was there was no requirement on financial institutions to establish policies and procedures to manage the ML/TF risks of misuse of technological developments for ML/TF and of non-face to face transactions at that time.

120. *Criterion 15.1* - The NRA action plan covers the identification and assessment of the ML/TF risks related to new technologies, however as the NRA was only adopted in June 2015, the follow-up of the assessment is not clear, including how the results have been communicated to all financial institutions. Not all financial institutions are required to assess the risks of new products, business practices and delivery mechanisms before their introduction in the market. Only banks and credit institutions are required under the Banking Supervision Policy Statement No. 6 (enforceable instrument) to carry out ML/TF risk assessment prior to the launch of new products, services and delivery channels. Section 3 (2) and 29 (2) of the FTR Regulations only require other financial institutions to apply a risk-based approach with risk mitigation measures in relation to customer, transaction and products as well as services offered. There are no requirements on carrying out risk assessments, including the use of new or developing technologies for both new and pre-existing products. There are requirements on risk management under the Insurance Supervision Policy Statement on Minimum Risk Management and the Restricted Foreign Exchange Dealers/Moneychanger Supervision Policy No. 1, but the risk assessment does not cover ML/TF areas.

121. *Criterion 15.2* - Similar to the above, only banks and credit institutions are required to identify and assess ML/TF risks prior to the launch of new products, business practices and delivery mechanisms and introduce risk mitigation measures accordingly.

Weighting and Conclusion

122. The requirement to identify and assess ML/TF risks related to new technologies only applies to banks and credit institutions but not to other non-bank financial institutions. The NRA assessment in 2015 did cover assessment on new technologies but it is not clear whether financial institutions have identified and assessed their ML/TF risks related to new technologies. **Fiji is rated partially compliant for R.15.**

Recommendation 16 – Wire transfers

123. Fiji was rated partially compliant with former SR.VII. The factors underlying the rating included: (1) the legal requirements under the Act were largely consistent with the elements of SR.VII, however the CDD rules on wire transfers below FJD1 000 (~USD500) were unclear; (2) the practice of financial institutions was not fully consistent with the FTR Act; and (3) there were weaknesses identified with regard to the sanctioning and supervision system under the FTR Act that undermined the framework of rules relating to wire transfers to the same extent.

124. *Criterion 16.1* – S.12 of the FTR Act requires financial institutions to include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers. The requirement for reporting cross border electronic funds transfer under s.13 (2)(a) and (b) of the FTR Act requires the report to be in the prescribed form. The prescribed form under the subsection 26(2) of the FTR Regulations requires both the relevant originator information and the relevant beneficiary information to be included.

125. S.13(2) of the FTR Act requires that any electronic transfer exceeding \$10,000 (USD \$5,000) or any other prescribed amount must be reported. The prescribed form to report electronic transfer does not specify the threshold amount to report but refers to the requirement under s13(2) which has a threshold amount before reporting is required. S.26 of the FTR Regulations also states that the Regulation is for the purpose of ss.13(2) of the FTR Act. However, the drafting of s.26(a) and (b) of the FTR Regulation uses the word ‘any’ electronic funds transfer carried out by the financial institution must be reported. This is taken that all electronic funds transfers are required to be reported.

126. *Criterion 16.2* – Fijian authorities indicated that batch transfers do not exist in Fiji. Although subsection 27(6) of the FTR Regulation permits the reports to be transmitted by batch as agreed to between the financial institution and the FIU. The FTR Regulations requires the cross-border wire transfers to contain all the relevant information in relation to the customer, beneficiaries and financial institutions.

127. *Criterion 16.3* – According to s.4 (9)(d) of the FTR Act, occasional cross-border electronic transfers of less than FJD 1000 (~USD500) are exempted from the CDD requirements (in s.4) to identify originator information unless the financial institution has reason to suspect that the transaction is suspicious or unusual. Under s.13 (2) (a) and (b) of the FTR Act only electronic funds transfer exceeding FJD 10,000 (~USD 5000) are required to be reported with information specified in the prescribed form. As stated in the paragraph above, s.26.1(a) and (b) of the FTR Regulations stipulate that any electronic fund transfers in or out of Fiji Islands must be reported with information required in the prescribed forms.

128. *Criterion 16.4* – The reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers. In addition, the Act and Regulations require verification and continuous due diligence of the customer information including where the financial institution has reason to suspect that the transaction is suspicious or unusual.

129. *Criterion 16.5* – S.12(1) of the FTR Act requires financial institutions to include accurate originator information and other related messages on electronic funds transfers and other forms of funds transfers and

such information must remain with the transfer. In addition, the reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers.

130. *Criterion 16.6* – S.12 of the FTR Act provides originator information requirements for domestic wire transfers while the reporting requirements under s.13 (2) (a) and (b) of the FTR Act and s.26 of the FTR Regulations cover the CDD information of all electronic funds transfers. In addition, s.23 (4) of the FTR Regulation requires the ordering financial institutions to make information available to the beneficiary institution within three working days.

131. *Criterion 16.7* - Section 8 of the FTR Act requires financial institutions to maintain records of all transactions including wire transfer transactions.

132. *Criterion 16.8* - Under s.7 of the FTR Act, if the ordering financial institution is unable to complete the CDD process on the originator, the financial institution is prohibited from proceeding with the transfer.

133. *Criterion 16.9* – Subsection 23(7) of the FTR Regulation requires an intermediary financial institution in the cross-border wire transfer to maintain all the required originator information accompanying the funds transfer. Although this provision does not also require the intermediary to retain the beneficiary information with the wire transfer as required by C.16.9, under section 8 of the FTR Act, all financial institutions are required to establish and maintain records of all transactions carried out.

134. *Criterion 16.10* – There is no requirement under the FTR Act that specifically requires intermediary financial institutions to maintain the required originator information with all wire transfers regardless of the intermediary financial institution's technical capacity. However, there is a requirement under s. 8 of the FTR Act for financial institutions to establish and maintain records of all transactions carried out and for at least 7 years.

135. *Criterion 16.11* – S.10(1)(d) of the FTR Act requires all financial institutions to monitor for electronic fund transfers that do not contain complete originator information. Although there are no specific requirements to apply measures consistent with straight-through processing to identify cross-border wire transfers that lack originator information or required beneficiary information, there are provisions requiring financial institutions to conduct due diligence and pay special attention to customer's transactions – S.11(b) of the FTR Act, take reasonable steps to ascertain origin and ultimate destination of the funds involved in transactions - 4(6) of the FTR Act and must verify the identity of person whom the transaction is conducted for and the person that the ultimately benefit from the transaction – s.4(7) of the FTR Act. In addition, section 19 of the FTR Regulation requires that a financial institution must implement internal controls and procedures that establish the origin and destination of the funds involved in a transaction.

136. *Criterion 16.12* - Subsections 23(8) and (9) of the FTR Regulations address the requirements of c16.12

137. *Criterion 16.13* – S.10(1)(d) of the FTR Act requires all financial institutions (including beneficiary financial institutions) to monitor for electronic fund transfers that do not contain complete originator information. In addition subsection 23(8) and (9) of the FTR Act requires beneficiary financial institution to identify and scrutinize a funds transfer that are not accompanied by complete originator information.

138. *Criterion 16.14* - The FTR Act does not provide any requirements for measures to address this criterion.

139. *Criterion 16.15* – Sub-section 23(8) and (9) requires beneficiary financial institutions to have procedures in place to determine when to execute, reject, or suspend a wire transfer lacking required originator information. However, the legislation does not include the same requirement where the beneficiary information is lacking.

140. *Criterion 16.16* – All MVTS providers and their agents operating in Fiji are covered under the FTR Act and are required to comply with the requirements on wire transfers.

141. *Criterion 16.17* – S.14 of the FTR Act requires financial institutions to report suspicious transactions when there are reasonable grounds for suspicion. However, there is no specific requirement for a MVTS to take into account all the information from both the ordering and beneficiary sides in a wire transfer to determine whether an STR has to be filed.

142. *Criterion 16.18* - There is no requirement under the FTR Act for taking freezing action and complying with the prohibition from conducting transactions with designated persons and entities, as per obligations set out in the relevant UNSCRs.

Weighting and Conclusion

143. There are deficiencies in the legislation requiring financial institutions to verify the identity of beneficiary in accordance with the requirement of c16.14 as well as the requirement to have a risk-based policies and procedures where beneficiary information is lacking. There is also no specific requirement for a MVTS to take into account all the information from both the ordering and beneficiary sides in a wire transfer to determine whether an STR has to be filed. In the context of processing wire transfer there is no legislation requiring financial institutions to take freezing action in relation to relevant UNSCR designated persons and entities. **Fiji is rated largely compliant for R.16.**

Recommendation 17 – Reliance on third parties

144. In the 2006 MER Fiji was rated compliant with former R.9. The FTR Act imposed adequate obligations that comply with the international standard. At that time, financial institutions did not rely on third parties for CDD.

145. *Criterion 17.1* – S.6 of the FTR Act sets out the actions financial institutions, including DNFBPs, must take when they rely on third parties to undertake its CDD obligations in accordance with the FATF standards. Section 16(9) of the FTR Regulations specify if a financial institution relies on a third party, it is still ultimately responsible for the implementation of the CDD measures and s.16(7) and (8) of the FTR Regulations outlines circumstances when a financial institution must not relay on a third party. The amendments to the FTR Act and Regulation impose penalties on financial institutions and DNFBPs for non-compliance with these requirements.

146. *Criterion 17.2* – S.16(4)(e) of the FTR Regulations provides for instances where the third party is not located in Fiji and requires that the third party is located in a jurisdiction that is implementing effectively the FATF Recommendations.

147. *Criterion 17.3* – -S. 6 of the FTR Act and section 16 of the FTR Regulations set out the requirements for reliance on 3rd party to perform CDD measures. However, there are no requirements for group level supervision.

Weighting and Conclusion

148. Fiji does not have clear requirements for group level supervision for financial institutions. **Fiji is rated largely compliant for R.17**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

149. In the 2006, MER Fiji was rated partially compliant with former R.15 and compliant with former R.22. Factors underlying the rating included the following: limited internal control requirements were only implemented by banks in accordance with a Policy 6 at the time; not all non-bank financial institutions had implemented AML/CFT internal controls; and none of the financial institutions established in Fiji at that time operated foreign branches.

150. *Criterion 18.1* - The RBF Banking Supervision Policy Statement No. 6 (Revised 2014) sets the minimum requirements for a ML/TF risk management framework. The requirements include setting out roles and responsibilities of the board, senior management and the appointed AML compliance officer, to have ongoing employee training programmes and the establishment of an independent audit function to test procedures and systems. Further requirements to meet this criterion are set out s 21 of the FTR Act and s 29, 31, 32 and 33 of the FTR Regulations which are subjected to penalties for non-compliance.

151. *Criterion 18.2* - There are no specific requirements in the FTR Act relating to financial groups. Fiji does not have any requirements to implement group-wide programmes against ML/TF.

152. *Criterion 18.3* – S.21(5) of the FTR Act requires financial institutions to ensure that its foreign branches and majority owned subsidiaries located in another country adopt and observe measures consistent with Part 2 and 3 of the FTR Act.

Weighting and Conclusion

153. The requirements under c.18.1 and c.18.3 are met. However, there is no evidence of legislation to meet the requirement for criterion c. 18.2. Reduced weight is given to this deficiency given the low number of financial groups in Fiji. **Fiji is rated largely compliant for R.18.**

Recommendation 22 – DNFBPs: Customer due diligence

Preamble: Scope of DNFBPs

154. The DNFBP sector consists of accountants, lawyers, real estate agents, casinos and dealers of precious metals and stones.

155. As at December 2013, there were 787 members/accountants registered with the Fiji Institute of Accountants; there are 38 registered chartered accountants in public practice and operating 20 accounting firms. As at 10 April 2015, there were 563 licenced lawyers. As at January 2015, there were 133 registered real estate agents. There are only small size dealers of precious metals and precious stones which engage in retail business of homemade jewels with value below the FATF threshold of USD/EUR 15,000.

156. Casinos operating in Fiji have to obtain a licence from the OAG according to the Gaming Decree 2009 and are subject to supervision for compliance with AML/CFT requirements by the FIU. Fiji's first casino license was granted in 2011, but the licence was revoked in early 2015. According to the June 2015 NRA report, interactive gaming also exists in Fiji and is regulated under the Gaming Decree 2009 but not covered under the AML/CFT regime. Casino operations aboard cruise ships are required to discontinue operating while in Fiji.

157. All the DNFBPs are covered under the AML/CFT framework, but due to the small size and family nature of jewellers in Fiji, the legal requirements are not yet implemented for dealers of precious metal and dealers of precious stone.

158. There are other business sectors not designated under the FATF recommendations but covered under the AML/CFT framework that are not yet subject to the requirements of the FTR Act. These include pawnbrokers, bookmakers, dealers in art/antiques/precious metals/precious stones or jewels, travel agencies and dealers in motor vehicles/aircrafts/other vessels.

159. Fiji was rated partially compliant with former R.12 in the 2006 MER. The factors underlying that rating included: (1) the obligations on dealers in precious metal and stones were not in force, contingent on prescribing a minimum threshold for transactions to be covered; (2) the FTR Act obligations had only recently been imposed upon DNFBPs and had not been implemented; and (3) the sanctions prescribed under the FTR Act for breaches of obligations under the Act were equally applicable to DNFBPs.

160. *Criterion 22.1* - The FTR Act and FTR Regulations requirements apply to 'financial institutions'. The schedule to the FTR Act defines 'financial institutions' to include DNFBPs under R.22, with the exception of casinos. Fiji advised that casinos are not legal in its jurisdiction. DNFBPs are therefore subjected to the CDD requirements in the FTR Act and the FTR Regulations.

161. *Criterion 22.2* - The DNFBPs have obligations to comply with the record keeping requirements in the FTR Act and Regulations. The FTR Act and Regulations met the criteria in Recommendation 11.

162. *Criterion 22.3* - DNFBPs are only required to comply with foreign PEP requirements. They are not required to comply with domestic PEP requirements.

163. *Criterion 22.4* - The FTR Act does not require financial institutions including DNFBPs to mitigate ML/TF risks, having regard to the types of products and services they offer and there are no explicit requirements to identify and assess the ML/TF risks that may arise in relation to new technologies.

164. *Criterion 22.5* - DNFBPs must comply with the reliance on third-parties requirements under the FTR Act and Regulations. The FTR Act and Regulations meet the criteria set out in Recommendation 17.

Weighting and Conclusion

165. The FTR Act and Regulations do not meet all the criteria of R.12 and R.15. There is no requirement for DNFBPs to meet Recommendation 12 in relation to domestic PEPs and there is no requirement for DNFBPs to meet Recommendation 15. **Fiji is rated partially compliant for R.22.**

Recommendation 23 – DNFBPs: Other measures

166. Fiji was rated as partially compliant with former R.16 in the 2006 MER. The factors underlying that rating included that the STR obligations of dealers in precious metal and stones were not yet in force, contingent on prescribing a minimum threshold for transactions to be covered. STR requirements have only been recently imposed upon DNFBPs by the FTR Act and were not yet implemented.

167. *Criterion 23.1* – DNFBPs are required to comply with all the requirements of the FTR Act, including requirements on reporting suspicious transaction. As mentioned above, the STR requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented but the vulnerabilities of the sector are considered low.

168. *Criterion 23.2* - DNFBPs are required to comply with the requirements of the FTR Act and FTR regulations to set up internal controls on AML/CFT purposes. The penalties for non-compliance with the requirements are set out in s 43 of the Act and s42 of the Regulations.

169. *Criterion 23.3* – The FTR Act only requires financial institutions to pay special attention to business relations and transactions with persons in a country that does not have adequate systems in place to prevent or deter ML or the financing of terrorism. There are no specific measures in place in relation to countries called into special attention by FATF or requirements to apply counter measures proportionate to the risks.

170. *Criterion 23.4* - DNFBPs are required to comply with all the requirements of the FTR Act including requirements on tipping-off and confidentiality. This criterion is not fully met because Recommendation 21 on Tipping Off and Confidentiality is also not fully met with minor deficiency.

Weighting and Conclusion

171. The FTR Act does not cover all the material elements of the requirements for other measures under R.19 and R.21 the requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented. **Fiji is rated partially compliant for R.23.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

172. In the 2006 MER Fiji was rated partially compliant with former R.33. The 2006 report noted that the Companies Act 1985 created a registration system and a set of record keeping obligations and gave the registrar useful powers to ensure the transparency of legal persons operating in Fiji. However, access to information on beneficial ownership and control was limited.

173. Fiji has reformed the legislative framework governing legal persons through the introduction of an omnibus legislation in form of the Companies Act 2015 (CA) which came into operation on 1 January 2016 and repeals the Companies Act 1985, Capital Markets Decree 2009, Unit Trusts Act and Registration of Business Names Act. The Companies Act 2015 was intended to, among others, modernize the company law, streamlining the regulation within Fiji, and improve corporate governance measures and ensuring accountability by company directors and officers.

174. *Criterion 24.1 (a)* - S. 15 of the CA sets out the different types of companies that can be registered in Fiji i.e. private companies (small, medium and large private companies) and public companies (companies limited by shares which do not meet requirement for registration as a private company, companies limited by shares that are included in the official list of the Securities Exchange, companies limited by shares and guarantee, companies limited by guarantee and unlimited liability company). Basic features of a company are set out under Part 3 (description of private company and public company) and Part 4 (legal capacity and powers of the company, memorandum and articles of association and registered office and place of business) of the CA. S. 56 of the CA allows for foreign companies to carry on business in Fiji subject to certain pre-requisites. Information on other forms of legal persons in Fiji is not available.

175. S.32 of the CA also requires registration of business name by firms, individuals, companies and foreign companies in certain circumstances including where the business is carried on under a business name which does not consist of the true family names of all partners who are companies or foreign companies or the business name which does not consist of the full company name as registered under the CA.

176. The partnerships in Fiji are governed under the Partnership Act. Foreign limited partnerships may register under the Companies Act 2015 to undertake business in Fiji.

177. *Criterion 24.1(b)* - The process for creation of companies i.e. the registration process is provided for under Division 2 of Part 3 of the CA. S.57 of the CA stipulates the registration process for foreign companies. S. 81 of the CA imposes a requirement on a company or trustee of a Managed Investment Scheme to set up and maintain a register of members. S. 82(1) of the CA states that the register of members must contain the following information:

- (a) the member's name and address;
- (b) the date on which the entry of the Member's name in the register is made;
- (c) The following additional information for company with share capital:
 - (i) the date on which every allotment of Shares takes place;
 - (ii) the number of Shares in each allotment;
 - (iii) the shares held by each member;
 - (iv) the class of shares;
 - (v) the share numbers or share certificate numbers (if any);
 - (vi) the amount paid on the shares;
 - (vii) whether or not the shares are fully paid; and
 - (viii) the amount unpaid on the shares (if any).
- (d) The register of Managed Investment Scheme must show the following details:-
 - (i) the date on which every issue Interest takes place;
 - (ii) the number of Interests in each issue;
 - (iii) the Interests held by each Member;
 - (iv) the class of Interests; and
 - (v) the amount paid or agreed to be considered as paid on the Interests.

178. S. 82(3) of the CA in relation to maintenance of register of members by companies states that the register of a company that has a share capital and is not a Listed Company must indicate any share that a member does not hold beneficially. It should be noted that this provision merely require recording in the register of members that a particular member does not hold the shares beneficially. Section 251 of the CA sets out the provisions on the requirement for notices relating to non-beneficial and beneficial ownership of shares. Similarly, S.251 of the CA requires a notice to be given on the person holding the shares beneficially and not on the beneficial owners. Thus, the above provisions do not require obtaining and recording of beneficial ownership information. S.86 of the CA requires a company or trustee of a Managed Investment Scheme to allow anyone to inspect a register kept under Part 9 of the CA. For foreign companies, the use of the word 'may' in s. 63(1) of the CA gives the impression that a register of member can be kept in the branch in Fiji at the discretion of the foreign company. S.63(2) of the CA states that the foreign company is only obliged to register shares held by a member residing in Fiji if requested to do so by the said member. While s.63(3) of the CA requires the foreign company to keep its register in the same manner as the CA requires a company, there is no requirement for a foreign company in Fiji to obtain and record beneficial ownership information. In addition, there is no express requirement for a foreign company to make publicly available the information regarding basic and beneficial ownership of foreign companies. However, Regulations 11 of the Companies Regulations (CR), which came into force on 1 January 2016, empowers the Registrar or the Reserve Bank to require a person to disclose to disclose to the Registrar or the Reserve Bank, as the case may be, the name and current address of any person entitled to the beneficial interest of a 'security'. Regulations 11 of the CR must be referring to the term 'securities' referred to in the CA. In addition, regulation 5(a) of the FTR Regulations requires CDD to include the identification and verification of beneficial owners and regulation 10(3) of the FTR Regulations requires the financial institution to take reasonable measures to understand and document the ownership and control structure of the legal person, including identifying the natural person that ultimately owns and controls the legal person. The FTR Regulations can be enforced and are binding upon the financial institutions.

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

180. Information held by the Registrar of Companies is publicly available for inspection and copying. In addition, companies must make their own registers of members and directors open to any person for inspection (s.117) subject to court order on refusal (s.117(4)).

181. *Criterion 24.2* - The ML/TF risks associated with all forms of legal persons was not assessed in the National Risk Assessment (NRA) of 2015. Fiji does not keep information on the number of various forms of legal persons operating in the country - this explains the lack of assessment of risk associated with the varying forms of legal persons. The NRA (p 34) only assesses generally the risk associated with companies but does not breakdown the analysis into assessment of all forms of legal persons as required by this criterion. Neither does there appear to be any evidence of other assessments outside the NRA of 2015 on the risks posed by all types of legal persons for ML and TF.

182. *Criterion 24.3* - Companies created in Fiji are required to be registered with the Registrar of Companies under s. 20 of the CA. In order to register a company, a person is required to lodge an application with the Registrar in the prescribed form, a copy of the proposed Articles of Association and the liability of the members. S. 21 of the CA states that upon registration of the company, the Registrar must issue the company with a certificate of registration certifying that the company is incorporated, the type of company and the liability of the members of the company. S. 50 of the CA requires that every company must have a registered office in Fiji while s.51 of the CA states that on incorporation, a company's place of business is the place of business specified in the application for registration. S. 129(1) of the CA requires a company to lodge with the Registrar a notice in the prescribed form setting out the personal details (names, residential address etc.) of a director, alternate director or a company secretary within 28 days after they are appointed. S.32 of the CA requires a company which is not carrying on business under its full company name to register its Business Name with the Registrar. S.42 requires Registrar to keep a register of all Business Names registered under the CA and the firms and persons to whom the Business Names are registered. S.57 requires a foreign company within 28 days of establishing a place of business in Fiji to apply to the Registrar for registration using the prescribed form accompanied by information including a statutory declaration together with a copy of the charter, memorandum, articles or constitution of the company, list of directors or equivalent officers, names and address of local agent together with the written statement of the local agent and the registered address and principal place of business. While there is no express provision in the CA requiring the Registrar to record the above mentioned information in a company registry, it is implied that the Registrar would maintain this information. The information maintained by the Registrar is not publicly available but can be obtained upon request subject to a fee.

183. *Criterion 24.4* – The CA contains a number of provisions that require, to a certain extent, contribute in requiring the retention of the relevant information e.g. s.30 (a company must set out its name on all its public documents and negotiable instruments signed in Fiji), s.50(5) (a company must display its name prominently at every place at which the company carries on business), s.50(6) (a company must display its name and the words 'registered office' at its registered office), s.128 and 129 (a company must give the Registrar notice of resignation, retirement and personal details of directors, alternate directors and secretaries) and s. 46(1) (companies to lodge with the Registrar the adoption, modification or repeal of their Articles of Association). In respect of foreign companies, s.58 requires the Registrar to issue a certificate of registration upon registration of a foreign company and s.59 requires foreign companies to notify the Registrar after considerable time the changes in the constituent documents, directors, postal agent of Local Agent or address of the registered office or principal place of business. The wording of section 63(1) of the CA gives the impression that a foreign company may choose to have a branch register

of members to be kept in Fiji. S. 63(2) of the CA only makes it mandatory for a foreign company to register shares of a Fiji resident in the registry kept in the branch if required to do so by the member. S.82 sets out the information that must be contained in the register of a company which include information on members including the class of shares and share numbers. However, there is no requirement under the CA to maintain information on the associated voting rights. S. 85 requires a register to be maintained by the companies to be kept at the company or trustee's registered office, the company or trustee's principal place of business in Fiji, a place in Fiji whether of the company or of someone else where the work involved in maintaining the register is done or another place in Fiji approved by the Registrar. It should be noted s.85(3) of the CA provides that notice is not required for moving the register between the registered office and the principal place of business in Fiji. A branch register of members of foreign company can be kept in Fiji.

184. *Criterion 24.5* – The CA requires changes of the following to be notified to the Registrar:

- (a) S. 39(1) requires companies to notify the Registrar of any change in Business Name within 28 days;
- (b) S.50(2) requires companies to notify the Registrar of any change in the address of registered office within 14 days;
- (c) S.51(2) requires companies to notify the Registrar changes in principal place of business within 14 days;
- (d) S.77(1) requires companies to make an application to the Registrar to change a company type;
- (e) S.89 requires companies to notify the Registrar of changes in member register within 28 days;
- (f) S. 90 requires private companies to notify the Registrar of any changes in share structure i.e. total number of company shares on issue, the classes into which shares are divided and in respect of each class of share particulars of total number of shares, total amount paid up for the class and total amount unpaid for the class;
- (g) S. 129(2) requires companies to notify the Registrar of any change in the personal details of director, alternate director or company secretary within 28 days; and

185. S. 59 requires foreign companies to notify the Registrar within 56 days of any changes made to the charter/statutes/memorandum/articles/instruments of a foreign company, directors, names/address of local agent and address of registered office/principles place of business of a business of a foreign company.

186. The general provisions in s. 668 provides for offences relating to making of false or material misleading statements or omission of a material matter in a document required under the CA or lodged with the Registrar. S. 669 provides that an officer or employee of the company who gives false or material misleading information or omit from information a material matter in the information provided to a director, auditor, member, debenture holder or trustee for debenture holder, an auditor of the controller or a Securities Exchange is guilty of a criminal offence.

184. *Criterion 24.6* - For c.24.6 each of three sub-criteria are individually discussed, bearing in mind that they are alternatives:

187. 24.6 (a) - There is no requirement imposed on the companies to obtain and hold up-to-date information on the companies' beneficial ownership. S. 251(3) of the CA merely requires a transferee who holds shares beneficially to give a notice to the company within 14 days upon registration of the transfer setting out the following details:-

- i. name and address of the transferee;
- ii. statement to the effect that as from registration of the transfer, the transferee holds relevant shares beneficially;
- iii. particulars of the relevant shares; and
- iv. signature by or on behalf of the transferee.

186. S. 251 of the CA requires transferee holding shares to notify the company within 14 days from the registration of transfer of non-beneficial and beneficial ownership of shares. The above mentioned provision does not require the companies or the Registrar to obtain and hold up-to-date information on the companies' beneficial ownership. Similarly, the shareholder is not required to provide the information relating to the beneficial owner other than merely stating that the shares are held for another person. In addition, a shareholder is not obliged to notify the change in beneficial ownership if there is no transfer of shares involved e.g. if the beneficial ownership of the shares changes from beneficial owner A to beneficial owner B but being held by the same shareholder, such change is not required to be notified to the company by the shareholder. While Regulation 11 of the Companies Regulation 2015 states that the Registrar/RBF may require a person to disclose to the Registrar or RBF, as the case may be, the name and current address of any person entitled to the beneficial interest of a 'security' which is assumed to be referring to 'securities'. The above provision even though provides an avenue for the Registrar to obtain information on companies' beneficial ownership, it is not sufficient for purposes of c.24.6(a) which requires companies or company registries to obtain and hold up-to-date information on companies' beneficial ownership.

187. *24.6(b)* The CA does not impose any specific obligation on companies to take reasonable measures to obtain and hold up-to-date information on its beneficial owners beyond the direct owners of shares. The only thing a private company is required to do is to merely indicate in the register that the shares are not held beneficially if that is the case.

188. *24.6 (c)* - Pursuant to FTR Regulations 2007, financial institutions are required to undertake CDD measures including identification of beneficial owners and take reasonable measures to understand and document the ownership and control structure of legal persons including the name and permanent residential address of the natural person(s) who ultimately own or control the legal person (see recommendation 10). Lawyers, accountants and real estate agents (as well as other DNFBPs) are defined as 'financial institutions' under the FTR Act Schedule (see recommendation 22). The CDD requirements for lawyers, accountants and real estate agents in relation to beneficial owners of legal persons are the same as for other financial institutions under the FTR Regulations 2007. While transfer of shares of companies listed on a stock exchange would be subject to the requirement to notify whether he or she is holding the shares for a beneficial owner, there are no applicable disclosure requirements to ensure adequate transparency of beneficial ownership.

189. *Criterion 24.7* - There is no requirement that beneficial ownership information is accurate and as up to-date as possible. However, reading together s.4(2)(b) of the FTR Act with paragraph 7.8 of FIU Guideline 4 which is legally enforceable, the financial institutions are required to keep updated records of a customer's identity which includes beneficial ownership information.

190. *Criterion 24.8* - There is no requirement in the CA or elsewhere to ensure that companies cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, by:

- Requiring that one or more natural persons resident in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and

available beneficial ownership information, and giving further assistance to the authorities, and/or

- Requiring that a DNFBP in the country is authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities, and/or
- Taking other comparable measures, specifically identified by the country

191. *Criterion 24.9* – S. 386(1) of the CA requires a company or Managed Investment Scheme to keep financial record that correctly record and explain all transactions and would enable true and fair financial statements to be prepared and audited. S.381(2) states that the financial records must be retained for 7 years after the transactions covered by the records are completed. S.82(6) of the CA states that a register of members must show the name and details of each person who stopped being a member of the company within the last 7 years. S. 381 is not sufficient for the purpose of meeting c.24.9 as the records under the said provision are limited to financial records only and the obligation is only imposed on a company/Managed Investment Scheme. Similarly, Regulation 29 of the Companies (Securities Exchanges and Licensing) Regulations 2015 requires holders of Securities Industry Licence to maintain and preserve for 7 years in its office of records, documents and books of account as may be required by the Reserve Bank and produce the same if required to do so is not sufficient for the purposes of c.24.9 The FTR Act, however, provides for financial institutions and DNFBPs (including lawyers and accountants) to keep records of legal persons for a minimum period of seven years from the date the account is closed or business relationship ceases (FTR Act s. 8(3)(c)).

192. *Criterion 24.10* - Law enforcement authorities have adequate powers to access ownership information on companies held either with companies themselves or with the Registrar of Companies. But the range of information collected is limited to direct ownership information. Wider beneficial ownership information (as defined by the FATF) is not required to be collected or maintained except by the financial institutions. The FFIU, RBF and law enforcement authorities have access to the beneficial ownership information held by the financial institutions. FPF and FICAC can access information from individual companies through search warrants. Similarly, FRCA issues administrative summons (s. 36 of the Tax Administration Decree (TAD)) to obtain company information or documents required for investigations. The FIU has powers to access company information from the Registrar under s.25(b) and (d) of the FTR Act.

193. *Criterion 24.11* – S.195 of the CA states that a company does not have the power to issue a bearer share or bearer stock, share warrants or stock or convert shares into stock. Since the repealed Companies Act 1985 allowed the issuance of bearer share, the CA provides for transitional provision dealing with the issue of bearer share. S. 734(1) of the CA allows a bearer of a bearer share, bearer stock or bearer warrant to surrender the same to the company within a year from the coming into operation of the CA. The companies are required to cancel the bearer share, bearer stock or bearer warrant, issue the bearer with an equivalent number of share and include the bearer’s name in the register of members.

194. *Criterion 24.12* - The CA permits shareholders to hold shares on behalf of another person beneficially. S. 251 of the CA merely requires the shareholder to inform the company that he/she is holding the shares “non-beneficially” and the company register would indicate that the relevant shares not held beneficially. As such, the CA does not require the shareholder to make disclosures pertaining to the actual owner. S.129(2) of the CA requires a company to provide details of changes in the personal details of a director/ alternate director or company secretary within 28 days after the appointment. Similarly, if a person ceases to be a director/alternate director or company secretary, the company must notify the Registrar within 28 days. The 28 days’ time given is too long for information to be provided to the Registrar.

195. *Criterion 24.13* - The penalties under the CA apply to legal and natural persons. The maximum fine and imprisonment for offences in relation to legal persons and legal arrangements ranges from a fine of FJD300 (USD140) to FJD270,000 (USD131,000) and maximum imprisonment term up to 5 years depending on the severity of the offences. The sanctions for some of those offences are set out below:

- a) Failure to register Business Name by a company (s. 32) – maximum fine of FJD6000;
- b) Failure to inform Registrar of any change in the location of registered office – maximum fine of FJD300;
- c) Failure of a foreign company to register (s. 57) – maximum fine of FJD300;
- d) Failure to maintain a register of members (s.81) – maximum fine of FJD600;
- e) Refusal to allow anyone to inspect company register (s.82) – maximum fine of FJD300; and
- f) Failure to notify Registrar of the location of the company register (s.85) – maximum fine of FJD600.

196. *Criterion 24.14* - Fiji can provide international cooperation in relation to basic ownership information. Fiji is able to provide international cooperation concerning beneficial ownership information as defined by the FATF methodology (see c24.10) in circumstances where the information is available from financial institutions. Under MOUs signed with foreign FIUs, and under the Egmont Group sharing arrangements, the Fiji FIU is able to facilitate and respond to requests from foreign FIUs for basic beneficial ownership information held with the company Registrar.

197. Fiji Police Force can access basic company information (without a warrant) held at the registrar of companies and provide this to foreign counterparts. The Police are also able to use their investigative powers to obtain beneficial ownership information from companies on behalf of foreign law enforcement authorities using formal mutual legal assistance channels.

198. *Criterion 24.15* - There is no evidence that Fiji monitors the quality of assistance it receives from other countries in relation to requests.

Weighting and Conclusion

199. The absence of requirements for the companies and Registrar to obtain and record beneficial ownership information and lack of measures in respect of legal persons and arrangements other than companies are major shortcomings. Further, the companies are not subject to record keeping requirements. Given the vulnerability rating of companies in the NRA (high) these are major shortcomings. Fiji does, however, have measures in place to meet or partly meet a number of the criteria. **Fiji is rated partially compliant for R.24.**

Recommendation 25 – Transparency & beneficial ownership of legal arrangements

200. Fiji was rated partially compliant with former R 34. The 2006 MER found that apart from the recordkeeping requirements and CDD obligations on TCSPs in the FTR Act, there were no mechanisms to ensure the transparency of trusts and similar arrangements. Further, at the time of the 2006 MER the FTR Act provisions in relation to TCSPs had not been implemented or enforced. FATF's revised methodology and recommendations (R 25) contain new requirements that were not assessed under the 2004 methodology.

201. Express trusts in Fiji are formed under common law and subject to limited statutory measures in the Trustee Act.

202. *Criterion 25.1* - There is no requirement in Fiji law (common law or statute law) for trustees of express trusts to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust. Trustees are also not required to hold information on other regulated agents as provided in this criterion.

203. Professional trustees including lawyers, accountants and trust companies are defined as “financial institutions” in the FTR Act under which they must hold information in relation to their business dealings (s.8). Further, under the FTR Regulations 2007 at s.10, these financial institutions must take reasonable measures to understand the ownership and control structure of “legal arrangements” (defined as an express trust or other similar arrangement”) including the ultimate beneficial owner of trusts. This extends under s.10(6) as meaning, identifying the settlor and trustee, and any beneficiary whose interest is “30 per cent or more of the value of the trust or arrangement.” This definition does not comply with the definition of “beneficiary” in the FATF methodology (where it is not restricted to a value threshold). Information maintained by these professions must be held for a period of seven years after the business relationship ceases (FTR Act s. 8(3)(c)).

204. *Criterion 25.2* - There is no requirement that any information held by express trustees, trustees of other forms of trust, and professional trustees is kept as accurate and up-to-date as possible, or is updated on a timely basis.

205. *Criterion 25.3* - There is no obligation on trustees to disclose their status when entering into a business relationship or conducting an occasional transaction with a financial institution entity or DNFBP.

206. *Criterion 25.4* - There is no prohibition in law on trustees providing trust-related information to competent authorities.

207. *Criterion 25.5* - Competent authorities, e.g., FICAC, police, have the adequate legal powers to access information on trusts held with trustees or financial institutions and DNFBPs. The FIU has powers to access information on trusts held by financial institutions and DNFBPs (FTR Act) Law enforcement agencies can rely on the FIU to provide information. Tax authorities have adequate powers of search under s.35 of the Tax Administration Decree 2009.

208. *Criterion 25.6* - Fiji does not require all trustees to hold basic information for exchange with competent authorities including law enforcement. There is no specific framework governing the exchange of information in relation to trusts. However, Fiji FIU has powers under the FTR Act to collect and disseminate information to foreign FIUs. The Mutual Assistance in Criminal Matters Act allows a foreign country to request Fiji to issue an order requiring relevant documents to be produced or made available for inspection.

209. *Criterion 25.7* - There are no laws, including under the Trustee Act, providing for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees. Accordingly, Fiji lacks proportionate and dissuasive sanctions for of trustees to comply with their trust obligations.

210. *Criterion 25.8* - There are no proportionate and dissuasive sanctions available (criminal, civil or administrative) to enforce the requirement to grant competent authorities access in a timely manner to information where held regarding trusts. The Trustee Act does not provide for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees.

Weighting and Conclusion

211. Information available on trusts is limited. Beneficial ownership information is not available. Fiji did not assess the vulnerabilities of trusts for ML and TF. Based on the vulnerability rating of companies in the NRA (high), the deficiencies in this recommendation are also considered significant. Fiji does however have measures in place to meet or partly meet a number of the criteria. **Fiji is rated partially compliant for R.25.**

Recommendation 28 – Regulation and supervision of DNFBPs

212. In the 2006 MER Fiji was rated partially compliant with former R.24. At that time, the supervisory framework envisioned by the Act was not sufficiently resourced to achieve effectiveness. Furthermore, the 2006 report, at R.23, advises that in general the supervisory framework created by the FTR Act is unclear and “does not give authorities a definite role in implementing and enforcing AML/CFT requirements” (p.83).

213. *Criterion 28.1:*

214. 28.1(a) - Casinos are deemed financial institutions under Schedule 2 (u) of the FTR Act. Persons and entities that wish to operate a casino in Fiji must be first licensed by the OAG (refer s.4, s.8, s.9 of the Gaming Decree (2009).

215. 28.1(b) - The casino laws require fit-and-proper tests for shareholders and management in casinos operating in Fiji.

216. 28.1(c) - Casinos are/will be (there are no licenced land-based casinos yet in Fiji) supervised for compliance with AML/CFT requirements by the FIU (s.28, s.29 and s.36 of the FTR Act; s.34 and Schedule 2 of the FTR Regulations).

DNFBPs other than casinos

217. *Criterion 28.2* - The second schedule of the FTR Regulations designates the FIU as the supervisor for DNFBPs.

218. *Criterion 28.3* - Following the amendments to the FTR Act that was passed on 8 February 2017 and the FTR Regulations that came into force 17 February 2017, the competent authority, the FIU has enforceable powers to monitor compliance with the AML/CFT requirements. However, at the time of the assessment, monitoring of DNFBPs' compliance with AML/CFT requirements were only limited to offsite monitoring of suspicious reports and onsite monitoring of two accounting firms and two law firms in December 2016.

219. *Criterion 28.4:*

220. 28.4(a) - The amendments to the FTR Act and Regulations have provided the FIU with the necessary powers to monitor compliance.

221. 28.4(b) - The Legal Practitioners Decree 2009, the Institute of Accountants Act and Real Estate Agents Act 2006 empower the Legal Practitioners Unit, the Institute of Accountants and Real Estate Agents Licencing Board to carry out licensing and registration of legal professionals, accounting professional and real estate agents with fit-and-proper tests. There are also provisions under ss.44 and 45 of the Legal Practitioners Decree 2009, s.33 of the Institute of Accountants Act and ss.69 and 70 of the Real Estate Agents Act to impose disciplinary actions, including suspension of licences for misconduct.

222. Before approving an application for a licence, or salesperson's certificate, the Real Estate Agents Licensing Board must consider an applicant's character, financial position, the interests of the public and whether the applicant is a fit-and-proper person (ss.21 and 43 of the Real Estate Agents Act).

223. A condition for admission to practice as a lawyer is that he/she must be a fit-and-proper person (s.35 of the Legal Practitioners Decree). Furthermore, a person's annual certificate to practice can be refused or cancelled by the Chief Registrar if he/she has been convicted of an offence involving moral turpitude or fraud (s.44).

224. Persons must be fit-and-proper persons and must be of good character or reputation in order to be registered as members of the Fiji Institute of Accountants (s.20; s.22; s.23A of the FIA Act).

225. Section 36(a) of the FTR Act provides for the FIU to adopt any necessary measures to prevent unsuitable persons from controlling or participating directly or indirectly in the management or operation of a financial institution, including a DNFBP. The FIU has powers to impose penalties under ss.43(2) of the FTR Act and ss.42(2) of the FTR Regulations for non-compliance with its direction.

226. 28.4(c) - Section 28(1) of the FTR Act empowers the FIU to monitor compliance with record-keeping, customer identification (Part 2) and STR reporting (Part 3) requirements. Non-compliance with these and other requirements in the FTR Act and Regulations, any Guidelines and Directives issued by the FIU are subjected to penalties under s 43 of the Act and s 42 of the Regulations.

227. *Criterion 28.5* - Fiji FIU is given some power to monitor the AML/CFT compliance of the DNFBPs as described in c28.3 above; however, supervision is not undertaken on a risk-sensitive basis. The compliance monitoring of the DNFBP sector has been primarily an off-site approach through use of compliance questionnaires (issued 2011, analysed 2011-12) and through off-site monitoring of transaction reports submitted to the FIU to assess their compliance with the AML/CFT requirements. This approach was used in order to assess as many entities as possible. Since the MER, Fiji has conducted two onsite inspections of law firms and two onsite inspections of accounting firms in December 2016, but not of the high risk real estate sector.

Weighting and Conclusion

228. The FIU is the designated competent authority for supervision of the DNFBPs, however risk-based systems for monitoring compliance with the AML/CTF requirements are not yet in place. The frequency and intensity of AML/CFT monitoring of the DNFBP sectors carried out by the FIU is primarily limited to offsite monitoring and issuing questionnaires to the entities, with some recent onsite inspections, which is not sufficient to ensure compliance of DNFBPs in meeting the requirements with recommendations 18, 19 and 21. **Fiji is rated partially compliant for R.28.**

Recommendation 35 – Sanctions

229. In the 2006 MER Fiji was rated partially compliant with former R.17. The factors underlying the rating included: heavy reliance on the criminal sanctions to enforce compliance with the AML/CFT requirements, non-existence of sanctions for a number of AML/CFT requirements imposed on financial institutions and DNFBPs under the FTR Act and inability of the supervisory authorities to impose any sanctions for non-compliances with the AML/CFT requirements. The other deficiencies concerned effectiveness issues that are not relevant for purposes of assessing technical compliance under the new methodology. During the 2016 mutual evaluation, Fiji had yet to address the gaps identified in the previous

assessment. Amendments to the FTR Act and FTR Regulations as well as the introduction of the Companies Act 2015 subsequent to the 2016 MER entail positive effect towards Fiji's compliance with R.35.

230. *Criterion 35.1* - Criminal sanctions provided under the FTR Act for non-compliance with AML/CFT requirements committed by legal persons ranges from a maximum of FJD30 000 (~USD14 000) to FJD300 000 (~USD142 000) per offence. For non-compliance with AML/CFT requirements committed by individuals, the FTR Act provides for sanctions ranging from maximum fine of FJD12 000 (~USD5 600) and/or two years imprisonment to a maximum fine of FJD60 000 (~USD28 500) and/or ten years imprisonment.

231. The FTR Act provides for a different scale of sanctions for legal persons and individuals depending on the nature of the relevant offences. Legal persons are subject to higher fines, while natural persons are subject to a lower fine coupled with imprisonment. The sanctions provided under the FTR Act especially in respect of the offences committed by legal persons (a fine in the amount of FJD150,000 to FJD300 000 (~USD142 000)) is not proportionate and dissuasive. The amendment made to s.42 of the FTR Act empowers the Minister to prescribe penalties for an offence in regulations made pursuant to FTR Act up to a maximum fine of \$150,000 (USD81,000) or maximum imprisonment term of 5 years or to both. The recent amendments to both the FTR Act and FTR Regulations had addressed a key finding highlighted in the MER 2017 by attaching sanctions for all fundamental AML/CFT requirements in the FTR Act and FTR Regulations.

232. Non-compliance of an instruction or guidelines issued by FFIU triggers criminal penalties subject to the maximum fine of FJD30,000 (USD14,000) and/or maximum imprisonment of 5 years in respect of individuals and a maximum fine of FJD150,00 (USD81,000) in respect of body corporate. In addition, the FIU may impose a fine not exceeding FJD5,000 for each day during which a FI fails to comply with the instruction or guidelines. The FIU is empowered under the FTR Act to issue a direction to a financial institution that has failed to comply with any obligation to implement an action plan to ensure compliance pursuant to s.29 of the FTR Act. Failure to comply with the directive may lead to the AG initiating civil actions where the court may impose financial penalties against the financial institution as well as its officers and employees consistent with the penalties provided under the FTR Act. Contraventions of directive also trigger criminal sanctions in respect of both individuals and entities similar to sanctions provided for non-compliance with instructions and guidelines. With the insertion of section 43 of the FTR Act which contains provision on general penalty, persons who fail to comply with any instruction including an instruction to enforce compliance with the FTR Act, guideline or directive issued by FFIU, would be subject to the sanctions provided under section 43 of the FTR Act.

233. By virtue of the amendments to the regulations made under FTR Act, Fiji had provided for sanctions for non-compliance committed by both individuals (maximum fine of FJD30,000 (USD81,000) and/or maximum imprisonment up to 5 years) and legal persons (maximum fine of USD81,000).

234. RBF may pursue administrative sanctions, i.e., impose an initial maximum fine of FJD5 000 (~USD2 400) and maximum daily fine of FJD1 000 (~USD470) or issue a direction to comply against banks or credit institutions pursuant to s.15 of the Banking Act for violation of the AML/CFT directions contained in the Banking Supervision Policy Statement No.6 issued pursuant to s.14 of the Banking Act 1995. RBF does not have powers to impose sanctions in respect of other financial institutions under its purview. However, RBF's licensing conditions of banks, credit institutions, restricted foreign exchange dealers and insurance companies (in most circumstances if not all) require the financial institutions' compliance with other laws and regulations relevant to its operations. In certain circumstances requirements to comply with the FTR Act have been specifically imposed as a licensing condition. Any non-compliance with licensing conditions may trigger suspension or revocation of licence under the

respective laws such as the Banking Act, Insurance Act, Exchange Control Act. The RBF may suspend or revoke the licence of the banks or credit institutions in the event of non-compliance with the directions or licensing conditions on AML/CFT requirements imposed under the FTR Act.

235. In relation to requirements relating to R.6, the POA provides for a maximum fine of FJD150,000 (USD81,000) and/or imprisonment up to 20 years. The POCA provides for a maximum fine of FJD120 000 (~USD57 000) and/or imprisonment up to 20 years for offences committed by individuals and fine up to FJD 600 000 (~USD284 000). Contravention of a restraining order made by the court may trigger contempt proceedings in court. The sanctions provided under the POCA, even though the scope of the provisions is limited, are considered proportionate and dissuasive. An individual failing to disclose information relating to terrorist property would be subject to a maximum fine of FJD60 000 (~USD28 400) and/or five years imprisonment and a legal person would be subject to maximum fine of FJD150 000 (~USD71 000).

236. For requirements under R.8, the relevant laws governing the NPOs with the exception of Companies Act do not provide for sanctions for the relevant CFT requirements. The Companies Act 2015 provides for sanctions ranging from a fine of FJD300 (US150) up to FJD270,000 (US130,600) for offences committed under the said law. However, the sanctions under the Companies Act 2015 for offences related to requirements under R.8 ranges for relevant offences range from a fine of FJD300 (~USD150) up to FJD1,500 (~USD800). Accordingly, the penalties provided under the Companies Act for non-compliance with CFT requirements by NPOs are not proportionate and dissuasive.

237. The ability of the authorities to pursue sanctions against financial institutions as well as against directors and officers of those financial institutions, together with the maximum term of imprisonment, mitigates the low amount of fine provided under the relevant laws.

238. *Criterion 35.2* - Section 40 of the FTR Act establishes liability for directors, controllers and officers of financial institutions and DNFBPs for non-compliance committed by legal persons. The recent amendment to section 40 of the FTR Act removed the requirement to prove the element of knowledge, authority, permission or consent by the director, controller or officer in order for them to be convicted in respect of an offence committed by a body corporate. The effect of the amendment to section 40 of the FTR Act is that if a body corporate is convicted of an offence under the FTR Act or FTR Regulations, every director, controller or officer concerned in the management of the body corporate is deemed guilty of the offence regardless of their knowledge, authority, permission or consent in relation to the offence.

239. With regard to requirements relating to R.6, the POCA contains provisions relating to establishment of the intention to commit an offence through the conduct of directors and officers. In relation to the requirements relating to R.8, sanctions would also apply to directors or senior management where the specific obligations are imposed on them. There is, however, a lack of clarity under the POA and POCA whether sanctions could also be applied against directors and senior management for non-compliance committed by legal persons.

Weighting and Conclusion

240. The sanctions provided under the FTR Act (the primary legislation through which the AML/CFT requirements are imposed) are limited to criminal sanctions. Further, the sanctions applicable against legal persons for non-compliance with AML/CFT obligations under the FTR Act are not proportionate and dissuasive. **Fiji is rated largely compliant for R.35.**

FIJI

Table 2: Compliance with FATF Recommendations (Updated July 2017)

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
R.1 – Assessing risk and applying a risk-based approach	LC	<ul style="list-style-type: none"> • The NRA does not identify any specific high-risk countries either as origins of proceeds of crime and TF with Fiji as a destination, or as destination countries for proceeds and TF from Fiji. • The FTR Act does not require that financial institutions and DNFBPs ensure that high-risk information is incorporated into their individual risk assessments. • Given the risk identified with real estate the FIU (sector supervisor) is not ensuring the sector is implementing its obligations in accordance with the sectoral risks identified in the NRA. • Due to the deficiencies in the coverage of financial institutions and DNFBPs under the FTR Act, not all financial institutions and DNFBPs are required to take appropriate steps to identify, assess and understand their ML/TF risks. • Credit unions, jewellers and dealers in precious metals and stones are not required to measures stipulated in c1.11, as they are not subject to the FTR Act as they are considered very low risk. This will be reviewed as part of the follow up review of the NRA. • The NRA has not yet been fully communicated across all sectors.
R.5 – Terrorist financing offence	C	
R.6 – Targeted financial sanctions related to terrorism & terrorist financing	PC	<ul style="list-style-type: none"> • No express legal authority and procedures are in place to collect and solicit information of persons and entities suspected to meet the criteria for designation. However, Fiji may rely on the existing provisions under the FTR Act to a certain extend. • The newly introduced provisions under the Public Order Act (POA) are not sufficient for the following reasons: <ul style="list-style-type: none"> (i) as foreign citizens and foreign entities in Fiji are not subject to freezing requirements; and (ii) there is no requirement to freeze property of persons and entities acting on behalf

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>of, or at the direction of, specified entities.</p> <ul style="list-style-type: none"> • It cannot be ascertained whether targeted financial sanctions are implemented without delay under the POA. • Targeted financial sanctions cannot be implemented without delay under the POCA due to the requirements to obtain restraining orders from court and identification of each property specifically in the application to court. • No guidance has been issued to FIs and DNFBPs on their obligations. • No measures to protect bona fide third parties implementing TFS. • There are no publicly known procedures for submission of de-listing requests to the relevant UN Committee. • There are no procedures informing the designated persons and entities on the availability of the United Nations Office of the Ombudsperson to accept de-listing petitions.
R.7 – Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • It cannot be ascertained whether targeted financial sanctions related to proliferation is implemented without delay as there is neither any evidence of ministerial notification in the Gazette requiring the relevant authorities to publish the list of specified entities in their website nor publication of the designated persons' list in the websites of the relevant authorities. • The newly introduced provisions under the POA for implementation of targeted financial sanctions relating to proliferation financing are inadequate for the following reasons: <ul style="list-style-type: none"> (i) as the foreign citizens and foreign entities in Fiji are not subject to the obligation to freeze any property of the specified entity; and (ii) there is no requirement to freeze the properties of persons acting on behalf of, at the direction of, specified entities. • No guidance has been issued to financial institutions and other persons or entities that may be holding targeted funds. • Requirement to notify the competent authorities on assets frozen or actions taken by Fijian nationals and entities incorporated in Fiji i.e. not applicable to financial institutions and DNFBPs in Fiji that

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>were incorporated outside Fiji.</p> <ul style="list-style-type: none"> • No measures to protect the rights of bona fide third parties when implementing obligations under R.7. • No measures to monitor and ensure compliance by FIs and DNFBPs. • There are no publicly known procedures for the following:- <ul style="list-style-type: none"> (i) to submit de-listing requests to UNSC; (ii) to unfreeze the funds or other assets of persons or entities with the same name as designated persons; (iii) to authorise access to funds where exemption conditions under the UNSC Resolutions are met; (iv) no guidance has been issued to FIs and other persons on the obligations to respect de-listing or unfreezing action.
R.10 – Customer due diligence	LC	<ul style="list-style-type: none"> • The remaining criterion in this recommendation that has not met the FATF standard is criterion 10.20 – CDD and tipping off.
R.11 – Record keeping	C	
R.15 – New technologies	PC	<ul style="list-style-type: none"> • The requirement to identify and assess ML/TF risks related to new technologies only applies to banks and credit institutions but not to other non-bank financial institutions or DNFBPs. • The NRA assessment in 2014 did cover assessment on new technologies but it is not clear whether financial institutions have identified and assess their ML/TF risks related to new technologies.
R.16 – Wire transfers	LC	<ul style="list-style-type: none"> • No requirement for beneficiary financial institutions to verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information. • No specific requirement for a MVTS to take into account all the information from both the ordering and beneficiary sides in a wire transfer to determine whether an STR has to be filed. • No requirement to take freezing action in relation to relevant UNSCR designated persons and entities.
R.17 – Reliance on third parties	LC	<ul style="list-style-type: none"> • Fiji does not have clear requirements for group level supervision for financial institutions.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
R.18 – Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> • There is no requirement for financial institutions to implement group-wide programmes against ML/TF.
R.22 – DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> • The FTR Act and Regulations do not meet the requirements under R.12 and R.15 and therefore DNFBPs are not required to comply with all the requirements for R.12 and R.15. • The lack of requirement for DNFBPs to comply to obligations in relation to domestic PEPs and no requirements in relation to meeting R.15.
R.23 – DNFBPs: Other measures	PC	<ul style="list-style-type: none"> • The FTR Act does not cover all the material elements of the requirements for other measures under R.21 and R.19. • There are no specific measures in place in relation to countries called into special attention by FATF or requirements to apply counter measures proportionate to the risks – R.19 • The requirements under the FTR Act for dealers of precious metal and stones have not yet been implemented.
R.24 – Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> • The Companies Act 2015 only requires notice to be given to the Registrar if a person hold the shares beneficially but does not require the identification and disclosure of beneficial owners' information. • There has been no assessment, including in that of the NRA, of risks posed by all types of legal persons for ML and TF. • Not mandatory for foreign companies to maintain register of members in their Fiji branch. • Changes to shareholders and shareholdings of foreign companies are not required to be notified to the registrar. • Companies Act 2015 does not require the collection and recording of information on the company's beneficial ownership beyond the direct owner of shares by either the company itself or the company registry. • Companies Act 2015 does not require companies to take reasonable measures to obtain and maintain information on its beneficial owners beyond the direct owners of shares. • There do not appear to be any provisions in relation to companies listed on the stock exchange

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>where disclosure requirements ensure adequate transparency of beneficial ownership.</p> <ul style="list-style-type: none"> • There is no requirement that beneficial ownership information is accurate and as up to-date as possible. • There is no requirement in the Companies Act 2015 or elsewhere to ensure that companies co-operate with competent authorities to the fullest extent possible in determining the beneficial owner. • The requirement in the Companies Act 2015 for maintenance of records is limited to financial records. • While law enforcement authorities are able to provide basic information held either with companies or with the Registrar of Companies, the law enforcement authorities are only able to provide beneficial ownership information in circumstances where such information is available from the source of financial institutions. • There are no provisions in the Companies Act 2015 requiring disclosure to the company or the Registrar of the identity of the nominator of shares of directors.
R.25 – Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • There is no requirement for trustees of express trusts to obtain and hold adequate, accurate and current information on the identity of settlors, trustees, protectors (if any) and beneficiaries of trusts, including any natural person who exercises ultimate effective control over a trust. • Trustees are not required to hold information on other regulated agents as provided in c25.1. • There is no requirement that any information held by express trustees, trustees of other forms of trust, and professional trustees is kept as accurate and up-to-date as possible, or is updated on a timely basis. • There is no obligation on trustees to disclose their status when entering into a business relationship or conducting an occasional transaction with a financial institution entity or DNFBP. • Fiji does not require all trustees to hold basic information for exchange with competent authorities including law enforcement. • There is no specific framework governing the

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>exchange of information in relation to trusts.</p> <ul style="list-style-type: none"> • There are no laws, including under the Trustee Act, providing for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees: • There are no proportionate and dissuasive sanctions for of trustees to comply with their trust obligations. • There are no proportionate and dissuasive sanctions available (criminal, civil or administrative) to enforce the requirement to grant competent authorities access in a timely manner to information where held regarding trusts.
R.28 – Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • Supervision of DNFBPs is not undertaken on a risk based basis. • Systems for monitoring compliance with AML/CFT are not yet in place.
R.35 – Sanctions	LC	<ul style="list-style-type: none"> • There is a reliance on criminal sanctions to enforce compliance with the AML/CFT requirements. • The laws applicable to NPOs with the exception of companies do not provide any sanctions for non-compliance of the relevant requirements. • Sanctions applicable against legal persons for non-compliance with AML/CFT obligations under the FTR Act are not proportionate and dissuasive. • There is a lack of clarity under the POCA whether sanctions could also be applied against directors and senior management for non-compliance committed by legal persons.