



Anti-money laundering and counter-terrorist financing measures

Niue

Mutual Evaluation Report

October 2025





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EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Niue as at the date of the on-site visit from 25 November to 5 December 2024. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Niue's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- 1) Niue has a unique risk and context as a microstate with low money laundering and terrorism financing (ML/TF) risks. National risk assessments (NRA) were published in 2017 and 2024, but there are gaps in the scope of the NRAs and shortcomings in the methodology used. However, competent authorities have a reasonable understanding of Niue's ML and TF threats and vulnerabilities.
- 2) Niue has robust arrangements for national coordination and cooperation, with a National Security Committee (NSC) that can be leveraged for anti-money laundering and counter financing of terrorism (AML/CFT) measures, and which is supported by a newly established AML/CFT Officials Committee. Under these arrangements Niue adopts a case-by-case approach to dealing with new and emerging threats which is appropriate to Niue's unique risk and context. However, Niue does not have a national AML/CFT policy that is informed by risks and regularly reviewed.
- 3) While the national security remit of the NSC would cover countering proliferation financing (CPF), the only coordination and cooperation on CPF that has occurred has been in response to suspected PF-related targeted financial sanctions (TFS) breaches by ships registered with Niue's shipping registry. This is consistent with the NSC's case-by-case approach to emerging issues.
- 4) Niue has extremely small financial and designated non-financial businesses and professions (DNFBP) sectors, with three reporting entities. These are a development bank, an agent of an international money or value transfer services company and a lawyer. All three reporting entities have a general understanding of the Niue-specific risk indicators for ML/TF. The only bank operating onshore to provide access to retail banking services closed in 2013. A New Zealand incorporated and registered bank, now provides Niueans with access to bank accounts through an agency in Niue. The provision of these bank accounts and transactional banking services is regulated and supervised under New Zealand's AML/CFT law.

- 5) Law enforcement agencies (LEAs) in Niue do not access and use, or develop, financial intelligence or any other relevant information in investigations of ML, associated predicate offences or TF. This is consistent with Niue's risk and context. There have been only two instances of low-level predicate offending detected since the 2012 mutual evaluation report (MER).
- 6) Niue's FIU (NFIU) was non-operational from 2020 to 2024 during the COVID-19 pandemic and recommenced operations in September 2024. NFIU is understaffed and requires additional IT tools to ingest reports and conduct proper analysis. NFIU has disseminated two intelligence reports since the last MER in 2012, which were not related to ML or TF offences, or predicate offences. This is consistent with risk and context. NFIU has never received a suspicious transaction report (STR) from any regulated entity but does receive Border Cash Reports (BCRs) and Cash Transaction Reports (CTRs).
- 7) NFIU's independence is affected by a legal requirement that NFIU can only disseminate an STR or financial intelligence if the Solicitor General considers it appropriate.
- 8) Niue Police has not investigated or prosecuted any ML matters and, consequently, has not secured any convictions for ML, which is consistent with Niue's risk and context. There are gaps in Niue's criminalisation of ML which may undermine effective prosecution of the widest range of ML, should the need arise.
- 9) Niue has not conducted any seizures or confiscations related to ML and TF, which is consistent with risk and context. There are no specific actions or measures in place to prioritise tracing proceeds of crime, assets, instrumentalities and property of equivalent value, or to encourage their seizure and confiscation.
- 10) LEAs have general investigative capability but do not have the capability, specialised skills or the experience to identify and investigate the financial element of complex proceeds generating cases if one was ever to arise. Niue has assisted foreign LEAs to investigate predicate offences and potential ML offences by providing information, including financial information, biometric data and travel movements.
- 11) Niue has not identified, investigated, or prosecuted TF offences, which is consistent with Niue's risk and context. There are gaps in Niue's criminalisation of TF which may undermine effective prosecution of the widest range of TF, should the need arise. Niue authorities do not have the capability, specialised skills or the experience to identify and investigate TF.
- 12) There is no legal and operational framework for implementing targeted financial sanctions (TFS) for TF or PF without delay. Niue's open shipping registry is considered a PF risk and has been the subject of a United Nations Security Council (UNSC) review relating to two vessels suspected of using Niue's flag to circumvent TFS that apply to the Democratic People's Republic of Korea (DPRK).
- 13) The legislative framework for preventive measures has moderate deficiencies, but the two financial institutions (FIs) focus on complying with customer due diligence (CDD) requirements under New Zealand law, which has a stronger compliance with the FATF Standards. The two FIs understand Niue's risk profile. The DNFBP has AML/CFT obligations under Niue's domestic law but is not complying with any CDD requirements.

- 14) There has been no supervision of the three reporting entities for compliance with obligations under the FTRA.
- 15) Legislative deficiencies remain regarding the transparency of legal persons and legal arrangements which impact on the ability of Niue to ensure the transparency of either. The ML/TF risks associated with all types of legal persons and the vulnerability to misuse of both legal persons and legal arrangements are not well understood.
- 16) Niue has not requested, or responded to a request for, mutual legal assistance or extradition on ML or TF, which is consistent with Niue's risk and context. NFIU and LEAs regularly engage in other forms of international cooperation consistent with risk and context.

Risks and General Situation

2. Niue is a self-governing microstate comprising a single raised coral atoll of 259 km² located in the centre of a triangle of Polynesian islands made up of Tonga to the east, Samoa to the North and the Cook Islands to the south-west. New Zealand is located 2,400 km to the south-west. The capital of Niue is Alofi, and the official languages are Niuean and English. The population of Niue is approximately 1,680 people and approximately 400 of these are foreign workers mainly from other Pacific Islands and the Philippines. Since the 1960s, Niue has experienced steady population decline as Niueans moved freely to New Zealand and Australia. Niue's diaspora population is large with more than 30,000 Niueans estimated to live in New Zealand.¹

3. Niue's GDP for 2021 was NZD 38 million (USD 23 million) and GDP per capita was NZD 22,595 (USD 13,550).² A significant amount of the GDP comes from foreign aid.³ The development of a sustainable and independent economy for Niue is hampered by geographic isolation, limited natural resources, a very small population, elevated operating costs and vulnerability to external shocks, such as cyclones.⁴ Niue relies significantly on official development assistance received from New Zealand provided in the form of both direct budget support and project-related aid. Tourism is a large contributor to the economy and tourism levels have yet to recover to pre-COVID-19 pandemic levels. Some cash crops are grown for export (honey, vanilla, and noni juice) and most goods and services are imported from New Zealand, including food, machinery, cars and petrol.

4. Niue is exposed to limited ML/TF threats because of its geographic isolation, small population, extremely small financial and DNFBP sectors, and economic and cultural context. There are two FIs and one DNFBP operating on the island; a development bank, an MVTs agent and a lawyer. A major change since the 2012 MER has been the closure of the only bank operating onshore that provided a range of retail banking services, including access to bank accounts. A New Zealand bank now provides Niueans with access to bank accounts as foreign customers under an agency banking relationship established

¹ 2018 New Zealand Census of Population and Dwelling: <https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/niuean>

² <https://niuestatistics.nu/economic/national-accounts-estimates-of-niue-2021/>

³ The annual Official Development Finance disbursements to Niue between 2008 and 2022, averaged NZD 22 million (USD 13.2 million). Lowry Institute, Pacific Aid Map 2024:

<https://pacificaidmap.lowryinstitute.org/country/niue/#11.17/-169.859/-19.071>

⁴ <https://www.adb.org/sites/default/files/publication/604766/niu-2023.pdf>

under the Niue Bank Amendment Act 2013. The provision of these bank accounts is regulated and supervised under New Zealand's AML/CFT law. The lack of options to conduct cross-border transactions likely deters criminals from using Niue as a destination for movement of illicit funds.

5. The first national risk assessment was completed in 2017, with an updated risk assessment completed in 2024. Both assessments rated Niue as low risk for ML/TF. There have never been any cases investigated for ML, or corruption in Niue, or criminal activity that has generated large amounts of proceeds of crime.

6. The 2024 NRA assessed the vulnerabilities associated with the use of cash, company formation, high value assets, purchase of valuable assets, new technologies, trade-based money laundering (TBML), unregistered financial services and foreign investment as posing a low risk. The threats posed by illicit drugs, fraud, tax offences, and organised crime were also rated low, while the threat of illegal, unreported and unregulated fishing (IUU) were assessed as low to medium.

7. The 2017 NRA and the 2024 NRA update rate TF risk as low. There has been no known or suspected terrorist activity, and no prosecutions or convictions for TF. The 2024 NRA update rated the overall threat of PF as low but rated the shipping registry (from a sanctions perspective) as posing a medium risk.

Overall Level of Effectiveness and Technical Compliance

8. Except in respect of transactional banking services, most technical deficiencies identified in the 2012 MER persist. Compliance remains at the NC or PC level across the majority of the FATF 40 Recommendations, with deficiencies remaining in a significant number of requirements relating to ML/TF/PF, preventive measures, supervision, FIU, suspicious transaction and cross-border reporting, transparency and beneficial ownership of legal persons and arrangements requirements, targeted financial sanctions, powers of competent authorities and other institutional measures including international cooperation.

9. Niue has moderate levels of effectiveness for four Immediate Outcomes and low levels of effectiveness for seven Immediate Outcomes. In many areas, factors affecting effectiveness include deficiencies in the AML/CFT legislative framework, the absence of AML/CFT specific policy and operational priorities, and inadequate training, expertise and resources allocated to AML/CFT issues.

10. Niue is currently working on draft AML/CFT legislation to strengthen technical compliance with the FATF Recommendations.

Assessment of Risk, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33 & 34)

11. Niue has moderate shortcomings with the Recommendations on AML/CFT policies and coordination and on assessing risk and applying a risk-based approach. There are also moderate shortcomings with the availability of statistics, and fundamental improvements are required for the provision of guidance and feedback for reporting entities.

12. Niue has a unique risk and context with a small population, low levels of crime, a very small economy, no generally investable assets (such as land or commodities) and an extremely small financial

sector. There are two FIs; Niue Development Bank (NDB), which provides micro loans for economic development and an agent acting for an international MVTs company (MVTs agent) that remits wages of foreign workers offshore. The total value of outgoing and incoming remittances each year is low (USD 80,000 remitted out and USD 60,000 remitted in during 2023-2024). An agent of a New Zealand bank provides transaction banking services onshore, but the agent is not a Niue FI, and the agent and the New Zealand bank are subject to New Zealand's AML/CFT regulatory framework. On this basis, Niue does not have a financial system that provides a range of opportunities to launder illicit funds, with the movement of the funds of Niuean residents predominantly flowing through an offshore New Zealand bank. The DNFBP sector comprises one lawyer who provides a limited range of legal services mainly to Niuean and New Zealand customers predominantly related to trust and company services. The lawyer does not operate a trust account, does not hold money on behalf of clients and does not act as a director for a company. Any transactions conducted by clients relating to legal work would require the client to hold a bank account in New Zealand.

13. Niue has made good progress in increasing its understanding of its ML/TF risks over the past seven years, completing its first national risk assessment (NRA) in 2017 and producing an update to the NRA in 2024. The NRAs are based on qualitative information gathered by interviewing the government and private sector entities and a limited range of data (police and trade data), with the 2024 NRA update considering the two instances of predicate offending. The lack of ML/TF activity and the extremely low incidence of predicate offending mean there are no case studies, typologies or ML or TF-related statistics to inform the risk assessment process. Both risk assessments rate Niue's ML and TF risks as low. The overall PF risk is also rated as low, while noting that Niue's shipping registry poses a medium PF risk. While there are some gaps in the coverage of the risk assessments, the findings of both assessments are reasonable.

14. While cash is still used widely in Niue, the size of the cash economy has decreased significantly with the introduction of online banking and EFTPOS facilities. Niue has no data on the extent to which cash is still used and would benefit from a deeper understanding of the extent of the cash economy and any associated threats, and vulnerabilities, such as cross-border cash smuggling. There is a four year back-log of tax returns to be processed, and a significant number of taxpayers are not filing their annual returns for several years. However, tax crime risk is likely to be low because of the size of Niue's economy, the proportion of the working population that has tax deducted on a 'pay as you earn' basis, the quantum of the average income and the attention that unexplained wealth or unusual activity attracts. Any businesses wishing to place cash in the financial system would need to; deposit the cash with the agent of the New Zealand bank located in Niue, which is subject to monitoring under New Zealand AML/CFT law; remit money offshore using the MVTs agent (which has daily limit of USD 5,420) and is subject to monitoring by the offshore headquarters; or physically transport the cash across the border to New Zealand to deposit in a bank account or otherwise use. The purchase of high value goods in Niue is visible to the authorities as they must be imported, and such goods are generally paid for using Internet based banking provided by the New Zealand bank.

15. The NSC was established by the Cabinet under its executive authority and sits under the Office of the Secretary of Government (SOG). The NSC is designated to coordinate government action and activities with respect to AML/CFT matters. Members of the NSC are the SOG (also representing External Affairs) (Chair), Solicitor-General (also representing Crown Law Office (CLO)), Chief of Police (also representing port and civil aviation security, and disaster management), Financial Secretary

(representing as the Comptroller of Customs and Ministry of Finance), Director for the Department of Agriculture, Forestry and Fisheries (representing the Head of Niue Biosecurity and the Head of Fisheries), Chief of Immigration, the Niue Immigration department and the Director for Health.

16. The NSC oversees the implementation of a National Strategic Plan 2016-2026, which outlines the broad strategic direction of the Niue government covering a 10-year period. The plan is a high-level roadmap, and includes a national security priority, which relates to the safety and protection of residents and visitors, property and the environment. The plan is not informed by identified ML/TF risks and does not include an AML/CFT-related action plan. Competent authorities with AML/CFT responsibilities do not have specific objectives related to national AML/CFT policies that inform their activities. Niue has a National Security Strategy which was in draft form at the time of the on-site and awaiting Cabinet endorsement.

17. There is strong national coordination and cooperation through the NSC and overlapping membership on most high-level policy and operational committees for government. The NSC and competent authorities manage emerging risks and threats on a case-by-case basis as they arise, but do not routinely discuss ML/TF issues, which is consistent with Niue's risk and context. Ordinarily, heads of government departments have at least weekly meetings and Cabinet usually meets twice weekly. This means that the Government can be made aware of and address quickly on a one-off basis any circumstances which might arise. The structural frameworks for inter-agency cooperation could be leveraged to respond to new and emerging ML/TF/PF threats if the need arose. The Niue authorities provided examples (COVID-19 pandemic and cyclones) of how a whole of government response is mobilised quickly to coordinate and cooperate in the event of emerging threats. This mechanism is yet to proactively develop a national policy on AML/CFT or coordinate an operational response to ML and TF threats, noting the low ML/TF risks faced by Niue.

18. In September 2024, two months before the on-site visit, the NSC also established an AML/CFT working group comprising key competent authorities to strengthen coordination of AML/CFT efforts, which is a positive development. However, there is no national AML/CFT policy, informed by the findings of the risk assessments and proportionate to Niue's risk and context, to guide and prioritise the work of the NSC, AML/CFT working group and competent authorities.

19. The results of Niue's NRAs have not been used to inform or provide for a policy for the use of exemptions and requirements for enhanced and simplified measures. Niue's legal framework does provide exemptions for CDD measures, but these are not solely based on an assessment of low risk and do not require reporting entities to take enhanced measures to manage and mitigate the risks where higher risks are identified. Niue has an opportunity to promote financial inclusion by implementing simplified measures and exemptions based on identified low risk.

20. The three reporting entities operating in Niue and competent authorities interviewed during the on-site visit demonstrated a shared understanding that Niue faces low ML/TF risks, and that the most likely risk indicators for criminal activity would be unexplained wealth or unusual activity.

Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – IO.6, 7-8; R.1, R.3, R.4, R.29-32)

21. Niue has moderate shortcomings in compliance with the Recommendations relating to the ML offence, confiscation measures, FIU, and powers of competent authorities and other institutional measures (operational and law enforcement). There are minor shortcomings with the requirements for responsibilities of law enforcement and investigative authorities. Fundamental improvements are needed in the effective functioning of the financial intelligence unit (FIU) and the confiscation of proceeds and instrumentalities of crime. There are moderate shortcomings for ML investigation, prosecution and sanctions.

22. The Niue FIU (NFIU) is established under the Financial Transactions and Reporting Act 2006 (FTRA). NFIU is responsible for receiving and analysing STRs and other information, and disseminating information based financial intelligence reports and has wide powers to request information from other relevant competent authorities. NFIU was non-operational from 2020 to 2024 following a transfer of resources to Customs to support the control of cross-border movements in the context of the COVID-19 pandemic and a subsequent period of organisational planning and recruitment. NFIU recommenced operations in September 2024 with the appointment of a Head of FIU.

23. NFIU's independence is affected by a requirement under the FTRA that NFIU can only disseminate an STR or financial intelligence to a domestic or foreign LEA or a foreign supervisory body if the Solicitor General considers it appropriate. NFIU also requires the approval of the Minister for Finance to enter into an agreement or arrangement with foreign agencies for the exchange of information. Some additional resourcing is required for NFIU to support its ability to conduct operational analysis and dissemination.

24. LEAs do not access and use, or develop, financial intelligence or any other relevant information in investigations of ML, associated predicate offences, or TF as there has been no ML or TF activity detected in Niue, and only two instances of predicate offending since the last MER. These predicate offences related to theft and fraud, and there was no associated ML component of these offences. Since the 2012 MER, NFIU has disseminated two intelligence reports and neither of these reports related to a domestic STR. NFIU has good working relationships with LEAs. While information is exchanged between these competent authorities at the operational level, the information does not relate to ML, TF or predicate offences.

25. There have been no STRs reported from reporting entities since the last MER. While this is consistent with Niue's risk and context, deficiencies in Niue's AML/CFT reporting obligations (see R.20) and a lack of effective outreach to reporting entities regarding these obligations (see IO.4) may result in NFIU not receiving some information relating to suspected scams. Reporting entities have an obligation to submit all required reports (STRs, Border Cash Reports (BCRs) and Cash Transaction Reports (CTRs)) manually, and NFIU conducts its analysis of these reports manually. Deficiencies in Niue's cross-border declaration system (see R.32) may result in NFIU not receiving relevant information.

26. Niue Police has responsibility for the investigation of ML and other criminal offences but has not investigated or prosecuted any ML matters which is consistent with Niue's risk and context. Most

offences within Niue are related to disorderly conduct, assaults and domestic violence, and various traffic offences. Niue Police has conducted two investigations of predicate offences. One offence has been prosecuted relating to the theft of NZD 40,000 (USD 24,000). The offender travelled overseas and spent the funds but was not charged with self-laundering. The offender received a community service order for the theft offence and arrangements for the recovery of the proceeds were made by Court, with the offender ordered to repay money fraudulently obtained. Charges have been laid for the second offence for “obtaining money by false pretences”, demonstrating that Niue Police can conduct investigations with a financial element.

27. LEAs generally have powers to obtain information for the purposes of investigating ML but there are gaps. LEAs have general investigative capability but do not have the capability or experience to identify and investigate the financial element of complex proceeds generating cases if one was ever to arise. Niue Police do not receive specialised training in financial investigations and most intelligence received by Niue Police comes from foreign agencies. If a suspicion of ML arose in Niue, NFIU and Niue Police would reach out to regional partners such as New Zealand or Australia for specialised assistance for a financial investigation. While this is reasonable in view of Niue’s unique risk and context, Niue lacks standard operating procedures to ensure ML matters can be dealt with efficiently and consistently.

28. Niue Police has a close working relationship with Niue Customs and Immigration for controlling border security and has assisted foreign LEAs investigate predicate offences and potential ML offences by providing information, including financial information, biometric data and travel movements (see IO.2).

29. While Niue’s legal framework for criminalising ML and investigating and prosecuting ML has deficiencies, the scarcity of predicate offending and the absence of ML investigations and prosecutions are consistent with Niue’s risk and context. The available sanctions for both natural and legal persons for ML appear proportionate and dissuasive but their effectiveness has not been tested.

30. The FTRA, Proceeds of Crime Act 1998 (POCA), and Terrorism Suppression and Transnational Crimes Act 2006 (TSTCA) establish the legal framework for Niue’s conviction-based confiscation regime. This legal framework generally enables Niue to detect, restrain and confiscate domestic and foreign proceeds of crime. There have been no criminal assets frozen or seized in Niue and no international requests made or received relating to the seizure and confiscation of criminal proceeds. This is consistent with the absence of ML or TF activity in Niue, and low number and nature of predicate offending.

31. Niue does not have any policy or operational objectives for pursuing the confiscation of criminal proceeds, instrumentalities and property of equivalent value. The 2024 NRA update notes concerns that some Niuean businesses may carry cash takings out of the jurisdiction to avoid tax obligations and indicates that the BCR threshold may need to be lowered, this is not addressed in any policy or operational plan. If a complex confiscation matter arose, Niue Police would seek assistance from New Zealand or another regional jurisdiction with specialised skills in confiscation and management of assets.

32. Niue has no standard operating procedures (SOPs) for managing, disposing of and repatriating or sharing seized or confiscated assets, but the High Court has the power to make orders for the management of such assets. Niue authorities had the opportunity to apply to the court to seize the yacht of a foreign national as an instrument of crime in 2014. No application was made to seize the yacht, notwithstanding the offender was prosecuted and convicted, and the yacht has been stored out in the open with no action taken to prevent wear and tear for the past decade, at the owner's own risk.

33. Niue has a written declaration system for incoming and outgoing cross-border transportation of currency (of or above NZD 10,000/USD 6,000) and BNIs, which only applies to cash or BNI on the person or in their luggage, but not where the cash is transported via mail or cargo. There have been six declarations made for cross-border movements of cash above the relevant threshold of NZD 10,000 /USD 6,000 (but not more than NZD 20,000/USD 12,000) since 2015 and adequate explanations were given in each instance. It is not clear whether the lack of detection of cash smuggling is consistent with Niue's risk and context, given the size of Niue's cash economy has not been quantified.

Terrorist and Proliferation Financing (Chapter 4 – 10.9, 10, 11; R.1, R.4, R.5-8, R.30, R31 & R.39)

34. Niue has moderate shortcomings with Recommendations on the TF offence and major shortcomings in relation to Recommendations related to targeted financial sanctions of TF and PF, and to NPOs. Fundamental improvements are needed to enable effective investigation and prosecution of TF, the prevention of TF and abuse of the NPO sector, and combatting PF.

35. Niue criminalises offences related to terrorism and TF under the TSTCA, but there are gaps: providing or collecting funds for a terrorist organisation, or an individual terrorist, is not criminalised; there appear to be no ancillary offences; and there are no dissuasive and proportionate sanctions that apply to legal persons.

36. There have been no prosecutions or convictions for TF and no requests for international assistance received relating to TF which is consistent with Niue's low TF risk profile. The vulnerability for TF is very low, noting Niue's very small population and economy, level of social cohesion, very limited financial and DNFBP sectors and geographic isolation. Unusual or suspicious activity stands out and the lack of access to financial services and its geographic isolation mean Niue is not a favourable transit point for funds related to terrorism. Fundraising by non-profit organisations (NPOs) within Niue is generally for religious or sporting purposes. There are prescribed processes for fundraising and anything outside of these parameters would attract attention. No abuse of NPOs for TF purposes has been identified.

37. If suspicion of TF arose, Niue Police would be responsible for opening an investigation. Niue police officers have not received training on identifying and investigating TF or financial crimes more broadly. There are no procedures in place that would facilitate the detection of TF through intelligence collection or analysis, or in linking TF with existing investigations. There are also no procedures in place setting out how a TF investigation would be coordinated and conducted. These factors may impede Niue's ability to effectively identify TF if it arose. However, the main way in which Niue is likely to detect TF is in response to information or intelligence received from a foreign partner. Where a suspicion of TF is identified, Niue Police would immediately seek expert advice from a regional partner, such as New Zealand, to support the investigation.

38. The NSC has responsibility for CFT measures as PF is a national security matter, but it is not clear that the National Security Strategy provides for integrated and coordinated responses to terrorism and TF and the assessment team was not provided with access to the strategy.

39. Niue has measures attracting proportionate and dissuasive sanctions for TF against natural persons, but as the only available sanction is imprisonment, no sanctions are available for legal persons. The effectiveness and dissuasiveness of the sanctions has not been tested. The opportunity to consider and apply alternative criminal justice measures has not arisen in the context of TF for Niue.

40. Niue's legal and regulatory framework for implementing TFS is established by the United Nations Act 1946 (UNA), United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulation 2004 (UN Sanctions Regulation) and TSTCA. This legal framework only provides a legal basis for elements of UNSCR1267 and cannot be implemented because the responsible Minister has not published a list of terrorists and terrorist entities in the Gazette, to which the prohibition against making available property, financial, or other related services to, or for the benefit of, applies.

41. Niue does not have a legal framework for implementation of UNSCR 1373. Niue does not have its own designation system, does not recognise other jurisdictions' designations, and has not established a competent authority responsible for designating persons or entities pursuant to any UNSCRs. There are no mechanisms or procedures for identifying targets for designation, gazetting, or listing sanctioned individuals, or coordinating with other agencies on designations.

42. The Incorporated Societies Act 1908 (ISA) governs the incorporation of NPOs, regulating societies comprising 15 persons or more that are associated for any lawful purpose but not for pecuniary gain. Niue's NPO sector is very small and predominantly domestically focused. Most NPOs in Niue appear to be mainly small family, sporting, community, specific interest (e.g., organic farming, fishing, computers, climate change etc.) or religion-based organisations. Niue has not conducted an assessment to determine which subset of NPOs fall under the FATF definition or identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse. Niue's risk assessments did not specifically examine the nature of threats posed by terrorist entities to NPOs likely to be at risk of TF abuse, as well as how terrorist actors abuse those NPOs. However, unusual fundraising outside of small established community groups and clubs in Niue would attract attention and is likely to be detected.

43. The Niue Government has limited visibility of the NPO sector, based on existing information collected by the Government through various legislative regimes, which is not up to date. Niue does not know how many registered NPOs are no longer operating, or the quantum of unregistered NPOs operating in Niue. However, Niue's whole of government approach to emerging issues could be leveraged to address any NPO-related threats, if they arose.

44. No guidance or outreach is provided to NPOs on their vulnerabilities to misuse for TF. The only monitoring of NPOs occurs as part of the requirement for NPOs that have voluntarily registered under the ISA to submit annual returns, but this obligation is not enforced.

45. The TSTCA and POCA provide the legislative framework for the forfeiture and confiscation of terrorist property, and the TSTCA allows for the prohibition of dealing and freezing of assets of

designated properties. This legislative framework has major shortcomings and TFS cannot be implemented without delay. There is no evidence of TF activities in Niue so there has been no confiscation of proceeds or assets and instrumentalities involving any terrorists, terrorist organisations or terrorist financiers. This aligns with Niue's low TF risk profile.

46. Niue has not implemented TFS without delay to comply with UNSCRs related to the proliferation of WMDs and its financing. The 2024 NRA update rates Niue's overall PF risk rating as low but separately assessed medium PF risks associated with the shipping registry. There have been no sanctioned entities identified as operating in or moving funds or assets through Niue, no funds have been frozen in connection with TFS related to PF and Niue has no trade links with DPRK. The two FIs operating in Niue do not have any direct trade links with DPRK. However, since Niue has no mechanisms to implement the legislation, it is unclear how Niue would respond when there are matches in the UNSC Consolidated List.

47. While the terms of reference for the NSC do not specifically include PF policy and operational coordination, the NSC has a broad national security remit. On this basis, Niue's whole of government approach to responding to emerging issues under the auspices of the NSC could be leveraged to address any emerging PF-related threats. The SOG, in consultation with the relevant members of the NSC, responded to sanctions-related threats arising from Niue's Shipping Registry. The NSC does not proactively engage more broadly in PF-related policy planning. Competent authorities do not have adequate skills or resources to combat PF but would seek expert advice from foreign partners if a PF matter arose.

48. Niue has operated its open shipping registry since 2012, with the registry generating an estimated NZD 3.7 million (approximately USD 2.2 million) of revenue since being established. At the time of the on-site, 126 vessels were flagged to Niue under the registry, which is administered by a private business operating in Singapore with minimal oversight by Niue authorities. The processes for registration of vessels include identifying and verifying beneficial ownership of vessels down to two levels, and TFS screening tools are applied to legal and beneficial owners. No SOPs exist for escalating identified issues or handling potential sanctions matches. There is also no publicly available procedure for unfreezing funds or other assets of persons or entities where false positives occur.

49. The Niue shipping registry has been the subject of review by the UNSC in relation to two vessels suspected to be using Niue's flag to circumvent DPRK-related TFS. The review exposed weaknesses in both the initial registration process and ongoing monitoring mechanisms. In response, Niue commissioned an independent audit in 2023 of registered vessels to determine if any other vessels have a link to DPRK. The audit reviewed 126 vessels and identified five as having a name or part of the name similar to naming conventions applying to vessels known to be risks in relation to DPRK sanctions. Niue is engaging with the shipping registry to improve practices—such as identifying BOs of vessels and implementing screening measures during and after registration.

50. The three reporting entities regulated under the FTRA do not have obligations to comply with TFS related to PF, limited obligations relating to TF-related TFS and no obligations to conduct enhanced due diligence (EDD) to manage and mitigate any higher risk identified, and no guidance has been provided for reporting entities. The MVTs agent operating in Niue demonstrated an awareness of TFS during the on-site visit and relies on its headquarters in another jurisdiction to conduct TFS screening

of customers. In the absence of any legal requirement, the Niue Development Bank (NDB) and the DNFBP do not conduct TFS screening of loan applicants and have no awareness of PF risks.

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

51. Overall Niue has moderate/major shortcomings with the Recommendations on preventive measures. However, Niue's financial secrecy measures have no shortcomings and the record-keeping and tipping off and confidentiality measures have only minor shortcomings. The Recommendations for correspondent banking and reliance on third parties are not applicable to Niue. Major improvements are needed in effective application of AML/CFT preventive measures by FIs and DNFBPs.

52. The FTRA was enacted in 2006 and appears to cover all reporting entities which fall in the FATF definition of FIs and DNFBPs (and VASPs). There are a very limited number of such entities in operation: one agent of an international MVTs provider, one development bank and one lawyer (providing some trust company services).

53. Staff within the NDB deliver services associated with the MVTs agent, NDB and the banking agent, with staff generally following the basic CDD requirements under New Zealand's AML/CFT legislation, rather than the requirements under the FTRA. This contributes to the effectiveness of Niue's AML/CFT preventive measures. The MVTs agent demonstrated a sound understanding of ML/TF risks during the on-site visit, identifying that Niue's ML/TF risks are low and the main risk indicators for ML/TF specific to Niue are unexplained wealth and unusual activity. Most customers of the MVTs agent are foreign workers (around 400) who remit wages back to families in Pacific Islands, the Philippines, New Zealand and Australia. Remittances outside of this customer profile would immediately raise suspicions, as would unexplained wealth. The MVTs agent understands the risks associated with dealing with high-risk jurisdictions and PEPs as customers but did not appear to understand specific vulnerabilities associated with remitting funds offshore where the sender or the recipient may not be the BO of the funds.

54. The MVTs agent treats every customer as an occasional customer, so CDD is conducted every time a customer is remitting or receiving a transfer of funds in accordance with the requirements of New Zealand's AML/CFT and the global AML/CFT program of the MVTs agent's foreign parent entity. The MVTs agent relies on its headquarters in a foreign jurisdiction to conduct ongoing due diligence, including transaction monitoring. Structuring of remittances to avoid CTR reporting in Niue would be difficult because two staff members are responsible for all remittances. Transaction monitoring and screening of customers is conducted by the MVTs' foreign headquarters and most transfers are under NZD 500 (USD 300). The single DNFBP does not consider that the legal services provided pose any ML/TF risks and is not applying any CDD or risk mitigating measures.

55. The NDB is a government owned bank that provides loans for economic development. A total of NZD 14 million (USD 8.4 million) is available for the loans, which is funded by the Niue Government. While the NDB's CDD checks focus on identifying the customer and understanding the ability of the customer to repay the loan, the scale and nature of NDB's operations pose low ML/TF risks. Other CDD requirements (i.e., screening, PEP identification) based on NZ regulations are applied to NDB clients as the clients are required to have an account with the New Zealand bank for direct debit repayments.

56. The lawyer demonstrated an understanding of Niue's low ML/TF risks, and identified that unexplained wealth, an unclear source of funds, and any unknown customer posed increased risks which is consistent with the responses from competent authorities. The lawyer does not conduct CDD for clients on the basis that everyone knows everyone in Niue, but some standard CDD information is recorded as part of standard business processes.

57. The FTRA does not require reporting entities to identify, assess and understand their ML/TF risks and only requires reporting entities to apply minimal risk-based measures. However, higher risk scenarios are unusual given Niue's risk and context and, while the CDD requirements implemented by the two FIs are not informed by Niue's specific ML/TF risks, they are likely to mitigate most ML/TF risks.

58. The three reporting entities have never filed a STR with the NFIU, despite the MVTS refusing a transaction which appeared to be a scam, and the DNFBP being contacted by offshore customers asking about company formation in Niue, which raised suspicion of unlawful intent.

59. There are some important technical compliance deficiencies in the obligations for EDD measures, noting that FIs generally deal with customers that pose low ML/TF risks consistent with Niue's risk and context.

60. Only the MVTS agent has internal AML/CFT controls and procedures in place which are based on the MVTS' global, group wide compliance program. While these do not ensure compliance with the AML/CFT requirements under the FTRA or respond to Niue's specific risk and context, they mitigate ML/TF risks given Niue's risk and context. The NDB is following internal controls in place with the banking agency relative to CDD and other measures. However, there are no other internal controls in place such as compliance and audit arrangements.

Supervision (Chapter 6 – IO.3; R.14, R.26-28, R.34, R.35)

61. There are moderate shortcomings with Niue's compliance with the Recommendations on MVTS regulation, the powers of supervisors and sanctions. Major shortcomings exist with the supervision of FIs and DNFBPs, and guidance and feedback. Fundamental improvements are needed in effective AML/CFT supervision of FIs and DNFBPs commensurate with their risks.

62. Niue designated an AML/CFT supervisor (referred to as the 'Banking Supervisor' in the FTRA) for the three reporting entities (two FIs and one DNFBP) regulated under the FTRA for the first time in September 2024. The two FIs are not core principles institutions and do not provide transactional banking services to Niueans. There are no VASPs operating in Niue. The sole DNFBP in Niue is a lawyer offering a limited range of legal services, some of which fall under the FATF Standards.

63. Niue does not have robust licensing, registration, and controls to prevent criminals or their associates from holding or controlling FIs, or DNFBPs in line with the FATF Standards. However, the NDB is a government owned development bank and has a governing Board responsible under legislation for employing a suitably qualified general manager. Board members would generally be aware if any employees had a criminal history because of the size of the population, and character references are obtained for Niuean workers. The MVTS agent holds a business licence and fit-and-proper person considerations are taken into account as part of the annual licence renewal. In addition,

the general manager of the MVTs agent is a foreign national based in New Zealand and is subject to background checks as part of the visa application process. There are no professional licensing requirements for the lawyer, but the courts can determine whether the lawyer should have leave to appear before the court and can refuse such leave if the lawyer is found not to be a fit and proper person. The lawyer is required to obtain an annual business licence, which takes into consideration fit-and-proper requirements.

64. The AML/CFT supervisor is familiar with key ML/TF risks, but not the inherent and residual risks associated with the three reporting entities operating in Niue, indicating that the three reporting entities do not seem to have any ML/TF vulnerabilities.⁵

65. The AML/CFT supervisor, who is also the head of NFIU, commenced engagement with the two FIs to raise awareness of their ML/TF risks and AML/CFT obligations prior to the on-site visit. However, active engagement with the sole DNFBP in Niue has not yet commenced.

66. Niue has not implemented risk-based supervision to monitor compliance with AML/CFT requirements for FIs and the DNFBP regulated under the FTRA, and there are no supervisory tools or a framework for risk-based supervision.⁶ The locally employed staff who deliver the MVTs agent services participate in annual compliance training as part of the foreign parent company's global program. If this training is not completed, staff are locked out of the MVTs' computer systems. The MVTs agent is audited by its foreign headquarters for compliance with the global AML/CFT program online every four years.

67. While the FTRA provides for proportionate sanctions for non-compliance with AML/CFT obligations, Niue has yet to implement supervision to ensure compliance, leaving the effectiveness and dissuasiveness of these sanctions untested. However, there are no sanctions against directors or senior management.

68. Niue has not commenced any supervision of reporting entities for compliance with AML/CFT obligations under the FTRA. On this basis, Niue has not demonstrated that supervisory actions by the NFIU have significantly influenced the level of compliance with the FTRA by FIs and DNFBPs.

Transparency and Beneficial Ownership (Chapter 7 – 10.5; R.24-25)

69. Niue has moderate shortcomings with its compliance with the Recommendation for transparency and beneficial ownership of legal persons and major shortcomings for the Recommendation for transparency and beneficial ownership of legal arrangements. Fundamental improvements are needed for an effective system to prevent the misuse of legal persons and arrangements for ML or TF commensurate with, and proportionate to, Niue's risk and context.

70. The different types, forms and basic features of legal persons in Niue are set out in the Companies Act 2006 (Companies Act), the Partnership Application Act 1994 (Partnership Act), and the

⁵ The head of NFIU plans to conduct a risk assessment of reporting entities to support the development of a supervision strategy.

⁶ The AML/CFT supervisor plans to conduct a risk assessment of reporting entities to support the development of a supervision strategy.

Incorporated Societies Act 1908 (Incorporated Societies Act). There is a registration and licensing requirement for domestic and foreign companies but registration requirements for incorporated societies are voluntary. No information on the beneficial ownership of legal persons is collected except for the name of the direct shareholder, and no beneficial ownership information is verified by the registry. Basic information on legal persons collected as part of the registration process is available in part from the Companies Office and elsewhere online.

71. Niue does not have measures in place to mitigate ML/TF risks for domestic or foreign trusts. Niue authorities are aware of three trusts operating in Niue; however, it is accepted that there are also likely to be small family trusts operating. There are minimal obligations for collecting information on beneficial ownership and control of trusts, and beneficial ownership information is not required to be obtained by Reporting Entities and made available to authorities.

72. Domestic trusts can be formed in Niue and foreign trusts can operate in Niue. Niue does not have measures in place to mitigate ML/TF risks for either. However, any trustee operating in Niue would need to apply for a bank account with the New Zealand bank to operate the trust, and any onboarding of the trustee and operation of the bank account would be subject to New Zealand's AML/CFT laws. Niue's legislative framework for trusts established by foreign settlors (referred to here as "foreign trusts") poses ML vulnerabilities for Niue, as it enables Niue to be potentially used by foreigners to avoid tax in their home jurisdictions. The confidentiality provisions that apply to trustees of domestic and foreign trusts impede the transparency of trusts and the ability of competent authorities to access information on basic and beneficial ownership.

73. Bearer shares are not permitted in Niue, and the requirement to identify shareholders partially mitigates the risks associated with bearer share warrants and nominee shareholders. The use of nominee directors is not prohibited and there are no apparent measures to mitigate associated risks.

74. While competent authorities have information gathering powers, their ability to access beneficial ownership information on legal persons and arrangements in a timely manner is constrained by the absence of any requirement for: legal persons to record this information; the company register to collect and verify beneficial ownership information for legal persons; and for reporting entities to identify and verify the beneficial owners of legal persons and arrangements under the FTRA.

75. Sanctions for noncompliance with the requirements under the Companies Act appear generally proportionate and dissuasive but their dissuasiveness has not been demonstrated as they have not been applied.

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

76. Niue's legal framework for MLA and extradition as well as for the criminalisation of ML and TF has some deficiencies which may impact the ability of Niue to provide MLA for these offences. Niue has demonstrated that it can facilitate the removal of foreign nationals by deporting them to New Zealand under the immigration law, where they can be repatriated without entering New Zealand.

77. The Department of Foreign Affairs is the primary contact point responsible for receiving MLA requests, with requests to be communicated via diplomatic channels through New Zealand. The Niue Crown Legal Office (CLO) is responsible for managing and coordinating incoming and outgoing

requests, but has never received or made an MLA or extradition request. This aligns with Niue's risk and context as a microstate with an extremely small financial sector and low ML/TF risk.

78. There are no clear processes or procedures for executing MLA and extradition requests, and any requests would be managed under a manual case management system. In practice MLA and extradition requests would be dealt with on a case-by-case basis. This is consistent with Niue's risk and context, and Niue's whole of government approach to dealing with new and emerging issues as they arise, to make the best use of Niue's limited resources.

79. Relevant competent authorities, particularly NFIU, Niue Police and Customs, regularly exchange information with foreign counterparts consistent with risk and context and seek expert assistance from regional partners on policing, customs and immigration matters as required. Niue is also a member of several regional bodies and has established mechanisms for the informal sharing of information with foreign counterparts as part of its membership of these bodies. No international cooperation has occurred in practice relating to the investigation of ML/TF, identification or tracing of proceeds of crime or AML/CFT supervision.

80. Niue has not made or received any international requests for basic or beneficial ownership information of legal persons or arrangements, which is in line with its risk and context. It is not clear that Niue would be able to respond to requests relating to beneficial ownership, as this information is not collected by reporting entities or competent authorities or kept up to date.

Priority Actions

81. The report sets out a series of priority actions that Niue should take:

- a) Disseminate the 2024 NRA update to all competent authorities and the private sector and continue to provide the public and private sector with updated findings on ML/TF risks.
- b) Develop a national AML/CFT policy, informed by the findings of the risk assessments and proportionate to Niue's risk and context, to guide and prioritise the work of the NSC, AML/CFT working group and competent authorities.
- c) Prioritise the implementation of legislative reform to address the identified deficiencies with the criminalisation of ML and TF and preventive measures.
- d) Ensure the operational independence of NFIU and provide NFIU with additional staffing and IT resources (such as data entry and data management tools) to better support core functions of NFIU.
- e) Implement a legal framework for TFS for TF and PF that complies with Recommendations 6 and 7 and implement robust oversight of the operations of the shipping registry to ensure the implementation of measures to mitigate sanctions-evasion related risks.

- f) Develop standard operating procedures for investigating and prosecuting ML and TF, and identifying, tracing, freezing, seizing and managing proceeds and instrumentalities of crime.
- g) Provide guidance and continue to conduct outreach to the three reporting entities to raise awareness of ML/TF risks, and specifically ML/TF vulnerabilities, as well as the obligations under the FTRA, including STR obligations.
- h) Implement risk-based supervision to ensure adequate preventive measures are employed to mitigate ML/TF risks and appropriate sanctions for non-compliance with AML/CFT obligations are applied.
- i) Establish legal requirements to obtain beneficial ownership information for legal persons and legal arrangements, and ensure that adequate, accurate and up-to-date information on beneficial ownership is available to competent authorities.
- j) Implement measures to mitigate the ML/TF risk associated with nominee directors.

EXECUTIVE SUMMARY

Effectiveness & Technical Compliance Ratings

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

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

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

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

MUTUAL EVALUATION REPORT OF NIUE

Preface

This report summarises the AML/CFT measures in place in Niue as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Niue's AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by Niue, and information obtained by the evaluation team during its on-site visit to Niue from 25 November to 5 December 2024.

The evaluation was conducted by an assessment team consisting of:

- Moira KONROTE, Office of the Director of Public Prosecutions, Fiji (legal assessor)
- Anna Liza GUEVARRA, Bangko Sentral ng Pilipinas, Philippines (financial assessor)
- Epenesa LABAN, Samoa International Finance Authority, Samoa (financial assessor)
- Michael SOMERVILLE, AUSTRAC, Australia (FIU / law enforcement assessor)
- Jimmy SENDERSLEY, Financial Intelligence Unit, Solomon Islands (FIU / law enforcement assessor)

The assessment process was supported by Ms Carolyn Marsden, Ms Caroline Bicheno and Ms Marnie Campbell of the APG Secretariat.

The report was reviewed by Tsz-wun Phoebe TSANG of the Financial Intelligence and Investigation Bureau, Hong Kong Police Force, Mirnah Amir MAKKAU of the Indonesian Financial Transaction Reports and Analysis Center (INTRAC/PPATK) and by the FATF Secretariat.

Niue previously underwent a second round APG Mutual Evaluation in 2012, under the 2004 FATF Methodology. The report of that evaluation is available at www.apgml.org.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1

ML/TF Risks and Scoping of Higher-Risk Issues

1. Niue is a small island self-governing state comprising a single raised coral atoll of 259 km² located in the centre of a triangle of Polynesian islands made up of Tonga to the east, Samoa to the North and the Cook Islands to the south-west. New Zealand is located 2,400 km to the south-west. The capital of Niue is Alofi, and the official languages are Niuean and English. Niue census information reported in 2022 a population of 1,681 people who considered Niue to be their place of usual residence.⁷
2. Niue is surrounded by an Exclusive Economic Zone (EEZ) of approximately 296,941 km² which is designated as a multiple use marine park.
3. Niue became a British Protectorate at the turn of the 20th century. In an agreement with the British government, New Zealand took over responsibility for Niue in 1901 and formally administered Niue from 1901 to 1974. In 1974 Niue became a self-governing state in free association with New Zealand. Niue uses the New Zealand dollar for currency and all Niueans are New Zealand citizens with the right of free access to New Zealand. In 2024, Niue celebrated its 50th anniversary of the adoption of its Constitution and the establishment of self-governance.
4. Niue is a parliamentary democracy, and under the Constitution of Niue (Niue Constitution) the Head of State is King Charles III. The Governor-General and Commander-in-Chief of the Realm of New Zealand is the representative of His Majesty the King in relation to Niue. Under and subject to the Niue Constitution, the executive authority of Niue may be exercised on behalf of the King by the Cabinet, which has the general direction and control of the executive government of Niue. The *Niue Constitution Act of 1974* (Niue Constitution) allows for a unicameral parliament with a Legislative Assembly comprising 20 elected members. Fourteen members are elected to represent each village, and the remaining six members are elected from the National Register called a Common Roll. A Prime Minister is elected to lead the Government by the Legislative Assembly who in turn selects three associates, making a four-member Cabinet.
5. Since the 1960s, Niue has experienced steady population decline as Niueans moved freely to New Zealand and Australia. More than 30,000 Niueans are estimated to live in New Zealand.⁸ The population loss has eroded Niue's tax revenue base and the size of the workforce and is an enduring constraint on economic development. Niue is increasingly becoming reliant on migrant workers to fill labour shortfalls.
6. Niue's GDP for 2021 was NZD 38 million (USD 22.42 million) and GDP per capita was NZD 22,595 (USD 13,331).⁹ The development of a sustainable and independent economy for Niue is hampered by geographic isolation, limited natural resources, a very small population, elevated operating costs and vulnerability to external shocks.¹⁰ Cyclones occasionally devastate the island's

⁷ Census 2022: <https://niuestatistics.nu/>

⁸ 2018 New Zealand Census of Population and Dwelling: <https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/niuean>

⁹ <https://niuestatistics.nu/economic/national-accounts-estimates-of-niue-2021/>

¹⁰ <https://www.adb.org/sites/default/files/publication/604766/niu-2023.pdf>

infrastructure, including housing and tourist facilities and climate change impacts may also intensify Niue's water supply and quality issues.

7. Niue relies heavily on official development assistance received from New Zealand. This is provided in the form of both direct budget support and project-related aid. In 2023-2024, Niue received NZD 12.66 million (USD 7.6 million) funding from international donors for investment and development purposes; NZD 4.35 million (USD 2.61 million) from New Zealand and NZD 8.31 million (USD 4.98 million) from other donors. This is an increase of NZD 3.5 million (USD 2.1 million) from 2022-2023. In 2004 Niue established the Niue International Trust Fund with its trustees being Niue, New Zealand and Australia.

8. Tourism is a large contributor to the economy and accounted for 20% of GDP prior to the COVID-19 pandemic. The number of tourists visiting Niue post pandemic is gradually increasing but is still yet to recover to pre-pandemic levels. Some cash crops are grown for export; honey, vanilla, and noni juice. Most goods and services are imported from New Zealand, including food, machinery, cars and petrol.

9. Niue has one international passenger/freight air service a week, which increases to two services per week in the peak season for tourists (July to September). There is only one embarkation point to Niue: Auckland, New Zealand. All visitors travelling to Niue by air are therefore subject to New Zealand's border controls. There is one authorised seaport that anyone travelling by boat may disembark from. Niue receives less than 200 smaller vessels (pleasure crafts and yachts) annually and has a high rate of inspection (20%). These vessels are usually westbound yachts, particularly those travelling from French Polynesia to Tonga. During 2024, Niue registered visits from 158 yachts up until 5 December (end of the on-site visit). Visits from larger vessels are not possible with the current port infrastructure. There is only one shipping line, which makes scheduled monthly visits to Niue to provide supplies from Auckland, New Zealand. Goods are transported from the freight vessel offshore to the island. This vessel also calls into the neighbouring countries of the Cook Islands and Tonga as part of the route; however, it does not usually collect freight for Niue from the Cook Islands and Tonga and where this does happen, advance notice must be provided.

10. Historically, Niue introduced measures in 1994 designed to promote the island as an offshore financial centre. By 2006 all operations for Niue's International Business Companies Registry were closed, relevant legislation was repealed, and all international business companies registered were effectively dissolved or restored under the new framework established by the Companies Act 2006. Niue enacted several other significant reforms at that time to address deficiencies in its AML regime.

11. A significant change in materiality for Niue since the last MER in 2012 is that since 2013 over 95% of transactional banking services have been provided by an agent of a bank located and registered in New Zealand under the Reserve Bank of New Zealand Act 1989. The Agency is wholly owned by the Government of Niue. The agent and bank are subject to New Zealand's legislation and supervisory oversight from New Zealand's relevant AML/CFT regulator in relation to those transactional banking services. The New Zealand registered bank is authorised by Niue statute to provide agency banking services in Niue, and the statute makes clear that the provision of services by the agent and the New Zealand bank under the banking arrangement is subject to New Zealand's AML/CFT regime.

Overview of ML/TF Risks

12. Niue is a very low crime jurisdiction and is exposed to limited ML and TF threats because of its geographic isolation, small population, extremely limited financial and DNFBP sectors, and economic and cultural context. Most policing activity relates to low level offending with land disputes and traffic offences accounting for a large proportion of the resources of the Niue Police. There has been no ML or TF activity detected in Niue, and predicate offending is not common. Two theft/fraud matters have been identified since the last MER in 2012, with the finalisation of one matter still pending. For the other matter, the stolen funds were taken offshore and self-laundered in a foreign country. The offender was prosecuted upon return to Niue and the Court ordered the recovery of the proceeds of the offence through an order for the offender to repay the funds.

13. The population of Niue is dispersed across 14 villages, and everyone generally knows everyone through family ties, membership of religious congregations and clubs (such as sporting clubs), or work ties. Unusual activity or unexplained wealth would immediately attract attention and potentially suspicion.

14. Niue's financial sector is very small, comprising a development bank and MVTS agent. The DNFBP sector consists of one lawyer. High value goods are imported, and land cannot be bought or sold. There are extremely limited channels and opportunities to launder illicit funds without attracting attention making Niue an unattractive destination to launder proceeds from foreign predicates. Niue has a shipping registry, and the administration of the registry is outsourced to a private entity based in Singapore. In recent years there have been two Niue flagged vessels involved in sanctions breaches. Niue is planning to strengthen oversight of the registry to ensure TFS are implemented in relation to the vessels flagged to Niue.

15. Niue is a low cash jurisdiction with high uptake of transactions undertaken through EFTPOS (including by tourists) and very little cash in circulation. All transactions are in NZD and there are no money changers or dealers in foreign exchange. There is no ATM on the island. Cash can be withdrawn from the agent of the New Zealand bank located in the NCEL. The amount of cash repatriated by the banking agent to New Zealand in 2024 was almost NZD 2,000,000 (USD 1,200,000). Cash enters the economy from expenditures from tourists, as outdated travel advisories encourage tourists to bring in New Zealand money. Most Niuean residents in paid employment hold accounts with a New Zealand bank as a foreign customer and are paid through these accounts. Cash deposits are taken by the banking agent and very small amounts of excess cash are sent back to New Zealand. It is traditional to give cash for milestone life events. Most Niueans grow food on their own land (subsistence to offset high import costs), and some sell small amounts of subsistence cash crops at the weekly markets.

Country's risk assessment and scoping of higher risk issues

16. Niue completed its first national risk assessment (NRA) in 2017 which rated ML and TF risks as low. The NRA was updated in 2024 and continues to rate ML and TF risks as low. There have never been any cases investigated for ML, TF, or corruption in Niue, or criminal activity that has generated large amounts of proceeds of crime. There has been no known or suspected terrorist activity, and no prosecutions or convictions for TF. Niue provided the assessment team with the 2024 NRA on the last day of the on-site visit, so the results of the NRA did not inform the scoping of higher risk issues during

the on-site visit. However, the findings in the 2024 NRA update would not have changed the focus of the on-site visit.

17. The 2024 NRA considered the following threats posed a low risk: fraud; tax offences; organised crime; and illicit drugs. While the illicit drug threat was assessed as low in the 2024 NRA, Niue authorities are cognisant of the increase in domestic drug use and multi-kilogram drug detections in neighbouring Pacific nations. Visitors to Niue are believed to present the biggest risk in this regard. The threat of illegal, unreported and unregulated fishing (IUU) is rated as low to medium. The 2024 NRA assessed the vulnerabilities associated with the use of cash, company formation, high value assets, purchase of valuable assets, new technologies, trade-based money laundering (TBML), unregistered financial services and foreign investment as posing a low risk, and the shipping registry (from a sanctions perspective) as posing a medium risk (but rated the PF risk overall as low). The ML/TF risks of the FI and DNFBP sectors have not been separately assessed, noting that these sectors only include two financial service providers and a lawyer. However, competent authorities have a general understanding of the ML/TF risks posed by these service providers. A broad range of representatives from competent authorities participated in the development of the NRA, and a representative from each of the three reporting entities was interviewed as part of the process.

18. The finding of low TF risk in the 2024 NRA is based on the results of the 2017 NRA. The finding in the 2017 NRA is solely based on the absence of terrorist and TF activity and any violent extremism. The absence of this activity is consistent with other Pacific Islands and the regional risk picture, as well as Niue's size and overall economic and demographic profile.

19. The 2017 NRA concluded that Niue is not vulnerable to international threats and is not a destination or point of transit or origin for human trafficking. Niue's borders have only two access points, so the threat of being used as a transit point by international drug smugglers or money mules is low.

20. While the methodology for the 2017 and 2024 NRAs has gaps, the assessment team agrees that, based on the results of the NRA and other open-source material, the risk of ML and TF in Niue is low. Niue's size, small population, and economic context provide very few opportunities to generate proceeds of crime and limits the ability of criminals and terrorists to generate and move funds without drawing attention.

21. During the on-site visit for the mutual evaluation, the assessment team focused on examining: the impact of systemic issues such as the capacity and capability of competent authorities and gaps in the legal and regulatory framework; threats from the cash economy, MVTs and new technologies; and the vulnerabilities of the open shipping registry and legal persons and legal arrangements. The assessment team also considered the vulnerability generated by legislation that allows foreign trusts to be created in Niue and provides tax exemptions to trustees that have foreign settlors and beneficiaries.

Materiality*Nature of the economy*

22. Niue is a unique, micro jurisdiction with a small domestic economy that does not provide a commercially viable basis for the local provision of many services traditionally available in other parts of the world. The key source of revenue for the government is income tax, consumption tax (Niue Consumption Tax), import duties and tariffs, shipping registry fees and taxes, and direct budget support from New Zealand and other foreign development assistance. Further income is derived from: fishing access licences, philatelics and numismatics (collectable stamps and coins), State-Owned Enterprises (SOE) dividends, upper airspace fees, landing rights primarily from New Zealand but also Australia.

23. Tourism was increasingly becoming an important factor in Niue's economic growth, but the industry was heavily impacted by the COVID-19 pandemic. Tourism is gradually increasing again, with 7,507 visitors to the island in 2023 compared to 427 in 2021 and 12,756 in 2019.

24. Niue is heavily reliant on imports for food, machinery, and fuel. All high value goods are imported, including cars.

25. The financial and DNFBP sectors are extremely small, reflecting the size of the economy and the population. There is no central bank and only two providers of financial services: an agent of an international MVTs company (MVTs agent) and a development bank that provides loans for Niue's economic development. There is one DNFBP operating; a lawyer who provides limited services covered by the FATF Standards. Niue does not have real estate agents as land cannot be bought or sold, no insurance providers, no exchange for trading in securities or assets, and no logging or mining industries. There are no VASPs operating in Niue.

26. Niue authorities indicate that Niue no longer has a significant cash economy, as most transactions are conducted through electronic banking. The only retail bank to operate in Niue closed in 2013 and basic transactional banking services are now provided under an agency arrangement between a New Zealand bank and the Government of Niue. The banking agency is not characterised as a financial institution in Niue, and any transactions executed by the New Zealand bank through the agency are subject to New Zealand's AML/CFT regime and as such supervised and regulated by the competent authority of New Zealand, with no jurisdictional powers on a day-to-day basis being exercised by Niue. These banking arrangements significantly mitigate Niue's ML/TF risk and support the finding that Niue faces low ML/TF risks.

27. Special purpose legislation was enacted by the Government of Niue to require the New Zealand bank, and the local approved agent acting on its behalf, Niue Commercial Enterprises Limited (NCEL), to comply with New Zealand's AML/CFT legislation as if it applied in Niue. This means the great majority of banking transactions in Niue (estimated as being over 95% of non-cash financial transactions) are now governed by New Zealand's AML/CFT legislation and conducted electronically. NCEL is a government owned company. In 2023, the relevant AML/CFT supervisor in New Zealand conducted an AML/CFT on-site inspection of the bank and did not identify any AML/CFT compliance concerns in terms of the agency relationship with the Niue Government, but there is no regular communication between the New Zealand AML/CFT supervisor and the recently appointed Niue

AML/CFT supervisor relating to the AML/CFT compliance of the banking agent and Niue's AML/CFT supervisor is in the course of establishing processes to supervise the two FIs for compliance with any AML/CFT obligations. The agency banking relationship with the New Zealand bank was extended in 2023 on agreed terms for a further five years.¹¹

Exposure to trade and finance with the DPRK

28. Niue does not appear to be directly exposed to trade and finance with the Democratic People's Republic of Korea (DPRK). Niue has a shipping registry that is administered by a private entity based in a foreign jurisdiction, which add to vulnerabilities to sanctions evasion.

Structural Elements

Governance and capability

29. The main structural elements required for an effective AML/CFT system are present in Niue. There is political stability, rule of law, stable and accountable institutions and an independent, efficient and capable judicial system.

30. The High Court of Niue is the court of general jurisdiction for Niue. The High Court consists of the Chief Justice and other judges and commissioners as sworn in by the Governor General in and over the Realm of New Zealand. The present Chief Justice for Niue is based in New Zealand and is a legally qualified person with professional judicial experience in New Zealand's Māori Land Court. The Niue Court of Appeal has five judges who also have professional judicial experience in New Zealand (both current and former judges). The commissioners of the High Court are local lay persons. The High Court is the court of general jurisdiction for Niue and is presided over by commissioners who sit once monthly depending on the number of criminal cases and its jurisdictional limits. All civil matters are listed before the Chief Justice. The remaining cases are heard in the High Court that sits biannually. Urgent matters are also addressed using virtual platforms as appropriate. Under the Constitution, the Judicial Committee of the Privy Council (JCPC) in London, England is Niue's highest court of appeal. The JCPC is the court of final appeal for the United Kingdom's overseas territories and Crown dependencies, and jurisdictions such as Niue that continue to provide for the Privy Council's jurisdiction. No cases have been taken to the JCPC for many decades.

31. The *Niue Act 1966* provides sanctions against corruption and bribery involving the judiciary, ministers, members of the Assembly, law enforcement officers and other officials. Niue does not have an ombudsman or any other specialised anti-corruption agency. New Zealand's Auditor General audits Niue's accounts. Complaints about the government can be made to the head of the department involved, while the Public Service Commission handles any employer-employee complaints within the public service. The Public Service is the largest employer in Niue, employing 426 people as of 30 June 2023.

32. Niue's most prominent foreign relations tie is with New Zealand, where Niue maintains its only overseas diplomatic mission (Niue's High Commissioner to New Zealand). New Zealand and Australia

¹¹ <https://www.kiwibank.co.nz/about-us/news-and-updates/media-releases/niue-renews-banking-services-relationship-with-kiwibank/>

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maintain a diplomatic presence in Niue. Niue has ties with other Pacific countries that are primarily built on its membership of regional organisations, including the Pacific Islands Forum, the Pacific Community, the Forum Fisheries Agency, Pacific Islands Law Enforcement Officer Network, Pacific Islands Maritime Law Association, South Pacific Regional Environment Program, Pacific Islands Chiefs of Police, Oceania Customs Organisation, Pacific Immigration Directors Conference, the World Health Organisation, United Nations Development Program, Food and Agriculture Organisation and United Nations Educational, Scientific and Cultural Organisation.

33. There are gaps in the available local capacity and expertise in competent authorities due to the small population.

34. New Zealand (NZ) Police delivers several development assistance programs to Niue Police to improve their capacity and capability to manage security and border security issues. These include:

- a. *The New Zealand Transnational Crime Unit Program*: This is a joint program between New Zealand Police, Immigration NZ, NZ Customs, and Corrections that provides capability development support to strengthen the Pacific Transnational Crime Network (PTCN) and Transnational Crime Units (TCU). Support areas include information/intelligence sharing on transnational organised crime issues including providing travel notifications and delivering training/professional development support to Niue Police staff within the Niue TCU.
- b. *Cyber Safety Pasifika (CSP)*: NZ Police provide an FTE for the Australian Federal Police (AFP)-led Cyber Security Support to the Pacific program. Activities include conducting a training needs assessment for Niue and delivering cyber awareness and investigations training.
- c. *Pacific Island Prevention Policing (PIPP) Program*: The program provides fly-in fly-out mentoring and advisory support to Niue Police across the following outputs: development of core and specialist policing skills; supporting continuous learning and best policing practice; strengthening community and external partnerships; supporting intelligence, organisational systems and processes; and supporting staff and leadership development.

Relationship of free association with New Zealand

35. Niue relies on its special relationship of free association with New Zealand under unique constitutional arrangements. New Zealand passed the Niue Constitution Act in 1974 which provides that New Zealand has a continuing responsibility to support Niue in matters of external affairs and defence of Niue if requested by the Niue government. The Niue Constitution also commits New Zealand to provide "necessary economic and administrative assistance to Niue".

36. All Niueans hold New Zealand citizenship, and the New Zealand dollar is official tender within Niue. The statutes that apply in Niue include Acts of the New Zealand Parliament extended to Niue before 1974 that have not been repealed by the Niue Assembly, Niue ordinances (pre-1974) and Acts of the Niue Assembly (post-1974).

Background and other Contextual Factors

De-risking and financial inclusion

37. Niue, along with most other jurisdictions in the Pacific, has experienced challenges securing an enduring banking presence because of concerns about scale and profitability, AML/CFT compliance, supervision and reputation.

38. Financial inclusion is supported for Niue through a New Zealand bank providing access to bank accounts for Niuean residents. This occurs under an ‘agency’ arrangement implemented in 2013 between the bank and the Government of Niue and it provides Niuean residents with access to formal financial channels. The agent for the New Zealand bank in Niue, NCEL, is not characterised as a FI in Niue, and any transactions executed by the New Zealand bank through NCEL are supervised and regulated by the relevant competent authority in New Zealand. No jurisdictional powers are exercised by Niue on a day-to-day basis in relation to the provisions of these banking services to Niueans as foreign customers of a New Zealand bank. More specifically, the New Zealand bank through NCEL conducts the onboarding of Niueans as customers and all customer due diligence (CDD) requirements and holds all relevant documentation relating to these bank accounts. The two FIs operating in Niue (NDB and the MVTS provider) are not subject to New Zealand’s AML/CFT law or supervision by the relevant New Zealand supervisor.

39. The New Zealand bank holds approximately 2,000 accounts for Niueans.

40. The agency arrangement with the New Zealand bank has resulted in widespread use of internet banking. There is no ATM on the island, but EFTPOS facilities are in use. There is one MVTS agent operating in Niue to enable incoming and outgoing remittances.

AML/CFT Strategy

41. The Niue Cabinet established the National Security Committee (NSC) in 2013. The NSC is designated to coordinate government action and activities with respect to AML/CFT matters. The NSC includes the Secretary of Government (SOG), Solicitor General, Head of FIU, Financial Secretary Customs Division, Chief of Police, Head of Immigration, Director of Agriculture and Director of Health. The NSC operates under the National Strategic Plan 2016-2026, which is a high-level plan that includes national security, but not AML/CFT measures specifically. The NSC has developed a National Security Strategy (NSS) to be approved by Cabinet that includes AML/CFT considerations but pending that approval the strategy was not provided to the assessment team. There is no national policy on AML/CFT informed by the key findings of the NRAs, but the NSC is a mechanism for coordinating a national response to emerging issues, including ML and TF-related issues if they arise.

42. Niue established an AML/CFT Officials Committee (AMLOC) as a sub-committee of the NSC in September 2024. The terms of reference for the AMLOC are to:

- a) facilitate the effective operation of Niue’s AML/CFT regime on a ‘whole of government’ basis;

- b) address any matters referred to AMLOC by the AML/CFT Supervisor, FIU or any other government agency, or which any member of AMLOC refers to AMLOC in respect of AML/CFT, whether generally or in respect of a particular matter;
- c) share between members of AMLOC information relating to AML/CFT, and act upon or cooperate on AML/CFT matters as required and appropriate, subject to applicable law;
- d) consider and comment on policies, procedures and any legislative requirements relating to AML/CFT for each government agency, including prior to any Cabinet approval;
- e) receive, consider and (where applicable) approve reports and recommendations from the AML/CFT Supervisor through the Secretary of Government; and
- f) keep under review the NSS and the National Risk Assessment (NRA) in relation to AML/CFT and advise (as AMLOC considers necessary) Cabinet, the National Security Committee, a government agency or any other person or entity any action AMLOC considers should be taken.

43. There have been challenges with commitment to implement AML/CFT legislative reform due to competing priorities, changes to New Zealand's legislation, and efforts to strengthen and deepen the practice of ML/TF risk management due to Niue's unique risk and context, the scarcity of resources and the high priority assigned to more pressing concerns.

44. Niue has structural elements in place to support AML/CFT measures, but many processes for LEAs, MLA, and asset freezing and confiscation have not been tested as there have been no ML/TF cases, in keeping with Niue's risk profile. The lack of ML and TF matters, and confiscation of criminal proceeds is consistent with Niue's risk and context, but there is scope to formalise some operational processes and procedures that would apply if a ML, TF or predicate offence arose.

Legal and Institutional Framework

45. Legislative power belongs to the Niue Assembly, which is based on the Westminster system. The 20 Members of the Assembly are elected for a three-year term by fourteen village constituencies and six national constituencies. The members elect a Prime Minister, and the Prime Minister selects three cabinet ministers. The Assembly is chaired by the Speaker who is not a member of the Assembly or of the Government. The last general election was held in April 2023.

46. The law-making process is elaborated in the Constitution and in the Standing Orders of the Assembly. The process follows the practice of three readings for each legislative proposal. A more extensive procedure is involved if the proposal is to affect land rights, the Public Service, or to change the Constitution. At a delegated level, regulations are made by Cabinet.

47. The *Interpretation Act 2004* sets out the hierarchy of laws in order of priority as follows: the Constitution; Acts of the Assembly; Regulations; Niuean custom; and the Common Law of Niue.

48. There is an independent judiciary in Niue. Judicial powers in Niue are exercised by the High Court, the Court of Appeal and the JCPC. The Constitution enables the powers of the High Court to be exercised by Commissioners or by Justices of the Peace.

49. Executive power is exercised in Niue by a Cabinet of four Ministers led by the Prime Minister. Implementation of government policy is assured by the public service, which is employed by an independent body, the Niue Public Service Commission. The Niue Public Service is constituted to assist the Cabinet in exercising the executive authority of Niue and perform such other functions or exercise such powers as may be prescribed by law. The Secretary to Government is the permanent head of the Niue Public Service and the chief administrative officer of the Government of Niue.

50. Government accounts are audited annually by the New Zealand Auditor General. There were previous multi-year delays with these audits, but they are now up to date. The Niue Public Service Commission oversees the integrity of the public service and has acted against several employees involved in instances of misconduct.

Niue's AML/CFT Agencies and Coordinating Bodies

51. The key elements of the public service and related entities that play a role in AML/CFT are set out in Table 1.1.

Table 1.1: Niue's competent authorities involved in AML/CFT

AUTHORITY	RESPONSIBILITY
Crown Law Office (CLO)	The CLO provides legal advice to the executive and all government agencies, and prosecution services.
Customs	The Customs Office is a division of the Treasury Department and consists of six officers. Customs' role in an ML investigation is to provide support to the FIU and to Police. Customs is responsible for enforcing a wide range of domestic laws that includes controlling the movements of crafts, cross-border movement of goods and revenue collection at the border.
Niue Financial Intelligence Unit (NFIU)	Established pursuant to the FTRA as an administrative FIU within the Office of the SOG. NFIU is also the AML/CFT supervisor under the FTRA.
Ministry of Social Services	Includes the Department of Justice, Lands and Community Services. This Department is responsible for the administration of the Niue High Court and Court of Appeal, and it manages the administration of the land titling process, is the repository of all births, deaths and marriage and genealogical information, and facilitates the conduct of all general elections and by-elections for the Niue Assembly and all village councils. The Department also registers incorporated societies, and facilitates the administration of all Government pensions, benefits and grants to non-

	Government community groups, organisations and village councils.
Niue Police	Responsible for investigating all offences and matters under the criminal code, the FTRA, and the POCA, including ML and TF financing offences. The police department has sixteen sworn officer positions, although seven positions were vacant at the time of the on-site visit. Skills and experience in investigating financial crime are limited within the police.
Niue Public Service Commission	The Niue Public Service Commission manages and administers the Niue Public Service. It is the sole employment agency for the Niue Government. It exercises independence from the Executive Government in terms of the appointment of persons to the Niue Public Service. It determines rates of remuneration for the public service and makes recommendations to the Niue Assembly on rates of remuneration for the Niue Assembly.
Niue Monetary Board	While the Niue Bank Act 1994 provides for the establishment of a central bank as regulator/supervisor of the domestic banking system, those provisions of the Niue Bank Act have not been operationalised. Niue Bank has not been established and there is no current plan to establish it. The Monetary Board, which is also established by the Niue Bank Act, is the Board of Directors of the Niue Bank, has also not been set up and there are no plans to do so.
Niue Tax Office	Located with the Ministry of Finance and Planning and responsible for administering taxation, business licensing and company incorporation laws. This includes ensuring compliance with tax obligations, managing business licenses (Business License Register) and company registration (Company Register) and administering the Niue Consumption Act
Office of the Secretary of Government (SOG)	The SOG (referred to in the Constitution as the Secretary to the Government, but in practice referred to as Secretary of Government) is the permanent head of the Niue Public Service and the Chief Administration officer of the Government of Niue. The SOG is responsible to the Cabinet for the general direction of the work of all departments and offices of the executive government as well as the Minister responsible for that department.

52. There are also standing or ad hoc committees or working groups of officials (including on a cross-agency or Ministry basis), and regular (usually weekly) engagement between officials and their respective Ministers, together with extensive informal interaction between officials and with Ministers. These structures and functional responsibilities and accountabilities, together with the size and nature of Niue's government and public service, mean that Ministers and heads of relevant agencies and ministries meet frequently and, if required, on an immediate or urgent basis.

53. As a small jurisdiction with low ML/TF risks, Niue has limited expertise in AML/CFT and limited staffing capacity available for AML/CFT work. This is offset to some extent by Niue's close relationship with New Zealand competent authorities and the ability to seek their assistance.

54. New Zealand Police delivers several development assistance programs to Niue Police to improve their capability and capacity to manage security and border security. The Transnational Crime Unit (TCU) Program is a joint program between New Zealand Police, Immigration, Customs and Corrections that provides capability development support to strengthen the PTCN and TCUs. Cyber Safety Pasifika (CSP) is a program where New Zealand Police provide an officer for the Australian Federal Police-led Cyber Security Support to the Pacific program. Activities include conducting a training needs assessment for Niue and delivering cyber awareness and investigations training. The Pacific Island Prevention Policing (PIPP) program provides fly-in fly-out mentoring and advisory support to Niue Police across the following outputs: development of core and specialist policing skills; supporting continuous learning and best policing practice; strengthening community and external partnerships; supporting intelligence, organisational systems and processes; and supporting staff and leadership development.

Financial sector, DNFBPs and VASPs

55. There are only two providers of financial services in Niue: Western Union, an MVTS agent, and the NDB. The NDB's function is to provide finance for Niue's economic development, and it only provides finance by way of small loans. NCEL hosts the MVTS agent (in addition to the agent for the New Zealand bank), and NCEL is based in the NDB. In practice, NDB staff provide the services associated with NDB, the MVTS agency and New Zealand bank agency. The MVTS agency is overseen by its offshore headquarters.

56. Niue has no insurance companies because of the cost associated with insuring assets on the island, and obtaining insurance from a foreign provider is difficult and very expensive. There are no casinos, dealers in precious metals and stones, investment advisors, or real estate agents as Niuean land cannot be bought or sold. There is no exchange for the trading in securities or assets, or the buying and selling of businesses. There are no logging or mining industries or known virtual asset service providers. There are no high value or luxury goods sold in Niue, as these are purchased offshore and imported. There is one sole practitioner providing legal services in Niue, but only some of the services covered by the FATF Standards and on a small scale.

Supervisory arrangements and preventive measures

57. Niue has a legislative framework for AML/CFT that applies to the two FIs and the DNFBP (reporting entities). However, there are gaps in the scope of the preventive measures and there has

been no AML/CFT supervision of reporting entities to enforce compliance with obligations. FIs have limited understanding of their specific obligations under the FTRA but generally implement some CDD measures based on requirements under New Zealand's AML/CFT legislation. The DNFBP is only captured under AML/CFT regulation for the TCSP services it provides and does not implement any AML/CFT measures in compliance with the FTRA.

58. The Head of Niue's Financial Intelligence Unit (NFIU) has recently also been appointed as the AML/CFT Supervisor and has the power to conduct offsite and on-site inspections. The Head of the FIU/AML/CFT Supervisor has commenced reaching out to reporting entities about domestic AML/CFT obligations. Niue is currently working on legislative reforms to strengthen the AML/CFT legal framework.

Legal persons and arrangements

59. The legal system of Niue recognises and creates several types of legal persons. These include: (a) public or private companies; (b) partnerships (including general, limited liability and special partnerships); and (c) incorporated societies. The different types, forms and basic features of legal persons in Niue are set out in the *Companies Act 2006* (Companies Act), the *Partnership Act 1994* (Partnership Act), and the *Incorporated Societies Act 1908* (Incorporated Societies Act).

60. All domestic and foreign companies carrying on business in Niue must have a business license. Any foreign enterprise carrying on business in Niue must be registered. While some basic information is collected on legal ownership as part of this process, there is no collection and verification of information on beneficial ownership. Trusts are permitted in Niue, but the authorities are only aware of three operating onshore: one foreign and two domestic trusts. There are likely to be family trusts operating in Niue.

61. There are two statutes governing the operation of trusts in Niue: the *Trusts Act 1994* (Trusts Act) which only applies to trusts created on or after 28 March 1994 and does not apply to trusts which provide benefits to Niueans or companies owned by Niueans (s 5(7)), and the *Trustee Act 1956* (Trustee Act) which does apply to Niueans, and companies owned by Niueans. Trusts can also be established under the common law. Niue has limited measures to ensure the transparency of legal persons and legal arrangements.

Table 1.2 Legal Persons and Arrangements in Niue as at November 2024

Legal Person/Arrangement	Number
Private companies	57
International business companies ¹²	2

¹² These are companies which existed under former International Business Companies Act and have been re-instated by order of the Court. The directors and shareholders are overseas. These companies are also referred to as "foreign companies".

Overseas companies¹³	2
Partnerships	27
Incorporated societies	46
Domestic trusts	2
Foreign trusts	1

International cooperation

62. Niue has a legal framework for mutual legal assistance (MLA) and extradition. The CLO is the central agency for coordinating MLA and extradition and the Solicitor-General is responsible for executing such requests. All requests by a foreign country for international assistance in a criminal matter may only be made to the Solicitor General or a person authorised by the Solicitor General to receive requests by foreign countries. Requests are transmitted to the Solicitor General through diplomatic channels. Niue has never received nor made any requests for MLA and extradition which appears reasonable considering its risks and context.

63. Niue is a member of the Egmont Group of FIUs, Oceania Customs Organisation (OCO), OECD Global Forum on Tax Transparency, Pacific Island Chiefs of Police (PICP), Pacific Island Law Officers Network (PILON), PTCN and Pacific Transnational Crime Coordination Centre (PTCCC) Pacific Islands Forum (PIF), Fisheries Forum Agency (FFA), Pacific Financial Intelligence Community (PFIC), Pacific Islands Tax Administration Association (PTAA), Pacific Immigration Development Community (PIDC), Pacific Prosecutors Association (PPA), World Health Organization (WHO) and the Pacific Plant Protection Organisation (PPO).

¹³ These are companies operating within Niue but with a parent company overseas. One is an importer of goods to Niue, the other is a university.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2

Key Findings and Recommended Actions

Key Findings

- a) Niue is a very low-risk jurisdiction for ML/TF, with no ML or TF activity detected in Niue and only two instances of predicate offending identified since the last MER. The two predicates relate to theft and fraud. The most common crimes are traffic offences, assaults and domestic disturbances.
- b) Niue has made good progress in increasing its understanding of ML/TF risks over the past seven years, with a national risk assessment (NRA) completed in 2017 and an update completed in 2024. There are limitations to the methodologies adopted for the NRAs and gaps in the scope of the NRAs. The NRAs do not provide Niue with an understanding of the extent of the cash economy, the misuse of legal persons, the TF risk posed by NPOs, and the vulnerabilities generated by a limited AML/CFT capability. While Niue has not shared the results of the 2024 NRA update with relevant stakeholders, the relevant stakeholders participated in the development of the update which was only finalised on the last day of the on-site visit.
- c) Competent authorities in Niue have a shared understanding of ML/TF risk, and the threats and vulnerabilities associated with ML/TF. While the findings of the 2024 NRA update have not yet been disseminated, competent authorities and the three reporting entities are aware of the findings based on their participation in the development of the NRA.
- d) LEAs generally rely on regional partners to inform them of new and emerging ML/TF risks, which is reasonable given Niue's risk and context.
- e) Cooperation and coordination between the competent authorities is strong. The NSC has responsibility for national coordination and cooperation on AML/CFT and in September 2024 established an AML/CFT Officials Committee to strengthen coordination of AML/CFT operational efforts. However, Niue has not developed a national AML/CFT policy or policies with objectives guided by identified risks and AML/CFT matters are addressed on a case-by-case basis.
- f) Niue has not applied the results of its risk assessment exercises to justify exemptions and support the application of simplified measures despite being a low-risk jurisdiction for ML/TF.
- g) While there is a coordinating mechanism for reactive operational responses to PF issues related to the shipping registry, led by the SOG, there is no formal mechanism for national coordination or cooperation on policies and activities to combat PF-related issues on a proactive basis.
- h) The two FIs and single DNFBP operating in Niue have a general understanding of Niue's ML/TF risk profile and commonly identify that unexplained wealth and unusual activity would be the main indicator of potential ML/TF activity on the island.

Recommended Actions

- a) Enhance understanding of risk by adopting a robust methodology for future risk assessments that considers deeper analysis of threats (i.e., TF and PF) and vulnerabilities (i.e., extent of cash economy, misuse of legal persons, and misuse of NPOs for TF) utilising available quantitative and qualitative data.
- b) Disseminate the findings of the 2024 NRA to all stakeholders, including domestic competent authorities and the private sector.
- c) Develop a national AML/CFT policy that addresses identified ML/TF risks and sets AML/CFT operational priorities for competent authorities to mitigate risks that is proportionate to Niue's risk and context.
- d) Use the result of a robust risk assessment to implement a legislative framework for the application of enhanced and simplified AML/CFT measures, as appropriate.
- e) Designate an authority or establish a mechanism that is formally responsible for proactive cooperation and coordination on policies and activities for combating PF and monitor the shipping registry's implementation of TFS.

64. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34 and elements of R.15.

Immediate Outcome 1 (Risk, Policy and Coordination)*Country's understanding of its ML/TF risks*

65. Niue has an extremely small financial sector comprising the NDB, a development bank that provides micro loans for economic development, and an MVTs agent acting for an international MVTs company. The DNFBP sector comprises one lawyer that mainly provides trust and company services and has a small client base. No ML or TF activity has been detected in Niue, and predicate offending is uncommon. Policing activity mostly relates to traffic offences, disorderly conduct and land disputes. No STRs have been submitted to the NFIU by reporting entities regulated under the FTRA.

66. Niue has made good progress in increasing its understanding of its ML/TF risks over the past seven years, completing its first national risk assessment (NRA) in 2017 and an update to the NRA (2024 NRA update) in December 2024 (at the time of the on-site visit). The 2024 NRA update is more limited in scope but focuses on several risks not examined in 2017. On this basis, the 2017 NRA remains the most recent overarching assessment of Niue's threats and vulnerabilities.

67. Relevant competent authorities were involved in the development of the NRAs. Niue Police, CLO, Taxation Office, Customs, NFIU, Immigration, and Treasury were involved in the development of the 2017 NRA, as well as New Zealand Police, New Zealand FIU, the Reserve Bank of New Zealand (RBNZ) and the United Nations Office on Drugs and Crime. For the 2024 NRA update, the Office of the

Secretary of Government, Niue Police, Crown Solicitor's Office, Taxation Office, Customs, NFIU, Immigration, Fisheries, Maritime, and Treasury were involved. The broad involvement of relevant domestic competent authorities in both NRAs has contributed to a good understanding of national ML/TF risks. Representatives from the two FIs and the Chamber of Commerce (as the largest NPO) were involved in the 2017 NRA and all three reporting entities were consulted as part of the 2024 NRA update. Interviews with these stakeholders were conducted by the NFIU and involved discussions about their respective roles and perceptions of ML/TF risks and mitigation. Regional foreign jurisdictions were not consulted during the development of the 2024 NRA update.

68. The 2017 NRA did not involve a full and comprehensive assessment of risk and is only intended to raise awareness about ML/TF among the public and private sector. The assessment team considers this is sufficient given the risk and context of Niue. The methodology for the 2017 NRA involved gathering qualitative information by interviewing government and private sector entities to identify ML/TF threats and vulnerabilities. Annual statistics on offending compiled by Niue Police (annual crime statistics) and Customs data (trade, BCR reports and small vessel movement) also informed the NRA process. The NRA considers threats and vulnerabilities to some extent, while the nature, sources, likelihood and consequences of the risk were not assessed. The NRA is not supported by case studies or typologies because there has been no known ML/TF activity and very limited predicate offending. New Zealand stakeholders were consulted during the preparation of the 2017 NRA, but not for the 2024 NRA update. On this basis, conclusions in the NRAs are largely perception based.

69. The 2017 NRA identifies maritime security, misappropriation of donor funding related to environmental challenges, and global warming as moderate threats. Drug trafficking, human trafficking, and proliferation of small arms are all assessed as a lower to moderate threat. The vulnerability of banks, and remittance for ML/TF were assessed as moderate, while EFTPOS-terminals, accountants, lawyers, trustee companies, and charities are assessed as lower to moderate. Potential vulnerabilities for FIs in Niue identified in the NRA include the cash economy, new banking services and products, new technologies and weaknesses in the supervisory framework. The 2017 NRA provides an overall risk rating for both ML and TF as low. The findings in the 2017 NRA are standardised and are not tailored to reflect Niue's context.

70. The 2024 NRA update improves the methodology for assessing risk and takes a more context specific approach to Niue. It is based on available statistics (police data) and information on offending and the views and experiences of key agencies and focuses on outlining potential threats and vulnerabilities that may be on the horizon for Niue. The 2024 NRA update notes the occurrence of two predicate offences since 2017 for theft and obtaining money by false pretences which did not involve the laundering of any proceeds of crime. In both cases, the money stolen was repaid by the offender. The nature, sources, likelihood and consequences of risk were not assessed in the 2024 NRA update.

71. The 2024 NRA update assessed the threats of illicit drugs, fraud, tax offences, IUU fishing, gangs and organised crime, while the vulnerabilities considered are the use of cash, company formation, shipping registry, purchase of high value assets, high value goods, new technologies, unregistered financial services and foreign investment. The overall risk rating for each of these threats and vulnerabilities, and ML generally, is low.

72. The 2024 NRA update assesses that the TF risk remains low solely on the basis that there have been no prosecutions or convictions for TF. Similarly, the 2024 NRA update assesses the PF risk overall as low based on the lack of PF prosecutions or convictions, noting the medium threat posed by the shipping registry in terms of potential evasion or non-implementation of TFS for PF.

73. The 2017 NRA and 2024 NRA update did not include an assessment of a broad range of offences such as kidnapping, extortion, piracy, murder, goods and migrant smuggling, sexual exploitation, including exploitation of children, illicit arm trafficking, illicit trafficking in stolen goods, counterfeiting, and forgery. The risk of cyber-related crimes was not fully assessed, though some issues related to online scams were assessed under fraud. The assessment of the vulnerability of legal persons focused on company formation and did not consider the risks associated with the types of legal persons operating in Niue.

74. The NRA 2017 noted that, at the time, Niue Customs was receiving good quality BCRs and only a small number were referred to the NFIU each year.¹⁴ Niue Customs also utilizes ASYCUDA World, which includes post-audit clearance, and maintains continued cooperation with other customs authorities in the region. All incoming and outgoing passenger luggage is screened at the airport. The NRA concludes that Niue's exposure as a transit country for money mules was low. Niue's 2024 NRA update noted concerns that some Niuean businesses may carry cash takings out of the jurisdiction to evade tax, indicating to Niuean authorities that the BCR threshold may need to be lowered. The identified vulnerability for removing cash from Niue in a structured manner to avoid tax obligations requires substantiation through investigation and data collection by Customs.

75. The ML/TF risks associated with the FI and DNFBP sectors were not specifically assessed in the 2024 NRA update. The vulnerabilities related to the impact of systemic issues such as the capacity and capability of competent authorities, and deficiencies within the legal and regulatory framework for AML/CFT measures, were also not considered in the 2017 NRA or the 2024 NRA update. While the 2017 NRA assessed the TF risk in Niue as low, it did not specifically examine the nature of threats posed by terrorist entities to NPOs likely to be at risk of TF abuse, as well as how terrorist actors abuse those NPOs (see R.8).

76. Competent authorities are aware of the findings of the 2017 NRA and were involved in the development of the 2017 NRA and the 2024 NRA update through interviews conducted by the NFIU on their respective roles and perceptions of ML/TF risks and mitigation. All competent authorities interviewed during the on-site visit indicated that the most significant risk indicator for ML/TF activity in Niue would be unexplained wealth or unusual financial activity, as everyone tends to know everyone. There is broad agreement among competent authorities at the on-site visit that scams/cybercrime are a threat. Competent authorities are also cognisant of the increasing use of the Pacific to produce illicit drugs and as a trafficking destination for illicit drugs and are highly motivated to prevent Niue from becoming a transit point for illicit drugs. Only small amounts of cannabis have been detected on the island which is usually brought into Niue by tourists on visiting yachts or the occasional private or charter flight. One cannabis plant is suspected to have been cultivated on the island, with the seeds likely brought into Niue in luggage, but the plant was destroyed before police could act.

¹⁴ Note: NFIU was not operational during 2020 to 2024 to receive these reports.

77. While cash is still used widely in Niue, competent authorities all agreed that the size of the cash economy has decreased significantly with the introduction of online banking and EFTPOS facilities. Niue has no data on the extent to which cash is still used and would benefit from a deeper understanding of the extent of the cash economy and any associated threats, and vulnerabilities, such as cross-border cash smuggling. However, the banking agent repatriated to New Zealand around NZD 1,550,000 (USD 930,000) in 2023 and NZD 2,000,000 (USD 1,200,000) in 2024 (with the increase representing tourism levels returning to normal post the COVID-19 pandemic). A large amount of this cash is brought into Niue by tourists based on outdated travel advisories that recommend bringing in cash due to the lack of availability of EFTPOS facilities. Niueans returning to Niue also bring in cash for family and cultural events where cash is normally gifted or donated.

78. The lawyer is the only DNFBP operating in Niue. A limited range of gaming activities are permitted in Niue, but any gambling must be conducted pursuant to a permit secured from Niue Police under the Gambling Regulations 2024. The only gambling services that a permit can be applied for are raffles, housie/bingo, card games, and the gambling permit may be issued for a one-off gambling activity or as an annual permit for a maximum of five gambling activities in the relevant year. Permits are only issued where the applicant is conducting the gambling activity to raise funds for a community benefit and there are limits on the cash prize that can be offered for a single gambling activity (USD 119), the number of tickets that can be sold in a raffle, the maximum cost of a ticket, and on the maximum amount a participant can spend on an activity (USD 300). Niue Police indicated at the on-site that it is usually called on to draw raffle prizes. On this basis, the assessment team agrees with Niue authorities that there are no casinos operating in Niue and no gambling services provided that pose high ML/TF risk, and that the risks associated with the permitted gambling services are mitigated.

79. Competent authorities have limited visibility of the extent to which tax crimes may have been occurring in recent years. There is a four year back-log of tax returns to be processed, and a significant number of taxpayers have not filed their annual returns for several years. However, the assessment team agrees with the finding from the 2024 NRA update that the tax crime risk is likely to be low. Vulnerability to tax crime is mitigated by Niue's specific risk and context, including the size and nature of its economy, the proportion of the working population employed by the government (estimated at 25-26%), paying tax on a 'pay as you earn' basis¹⁵ and the quantum of the average income. Any businesses wishing to place cash in the financial system would need to either: deposit the cash with the agent of the New Zealand bank located in Niue, which is subject to monitoring under New Zealand AML/CFT law; or remit money offshore using the MVTs agent (which has a daily limit of USD 5,420) and is subject to monitoring by the offshore headquarters. Data for 2024 provided by the MVTs agent indicates that most remittances are below USD 300 and the maximum amount remitted during the year was USD 2,409. Any cash physically transported across the border to New Zealand to deposit in a bank account or otherwise use, is subject to border controls in Niue and New Zealand.

80. Competent authorities demonstrated a good understanding of cross-border risks at the on-site visit and engage in informal international cooperation with regional Pacific partners and stakeholders, including regional Transnational Crime Units (TCUs), Oceania Customs Organisation (OCO), Pacific Island Chiefs of Police (PICP), PTCN and Pacific Transnational Crime Coordination Centre (PTCCC), Pacific Financial Intelligence Community (PFIC), Pacific Immigration Development

¹⁵ As of 2023, 436 of Niue's 1,600 residents are employed in the Niue Public Service.

Community (PIDC). All these regional entities are engaged with by Niue authorities on a regular basis and where required. Key senior members of the NSC were aware of the PF risks associated with the shipping registry and oversaw an audit of the registry list in 2023. However, ongoing oversight of the operations of the shipping registry by Niue authorities remains inadequate and there is no monitoring or review of the annual reports submitted by the shipping registry or the due diligence conducted by the shipping registry.¹⁶ Niue does not review the reports submitted by its shipping registry agent.¹⁷ The responsibility for conducting CDD, as well as accepting or rejecting clients, rests entirely with the agent. Denied applicants, including those who potentially match targeted financial sanctions related to PF are not reported/requested by Niue for further action. In addition, regular audits to assess the agent's compliance with Niue's regulations are not undertaken, which may further indicate limitations in the jurisdiction's broader oversight framework.

81. While there are some gaps in the 2017 NRA which have only been partially addressed by the 2024 NRA update, the assessment team considers the findings of both assessments to be reasonable. Niue is a low crime jurisdiction and exposed to limited ML and TF threats because of its geographic isolation, and the small size of its population, financial sector, DNFBP sector and economy. The assessment team agrees that the domestic ML/TF risks in Niue are low and concluded that Niue is not an attractive destination to launder proceeds from foreign predicates, as there are exceptionally limited channels and opportunities to launder illicit funds without attracting attention. The assessment team found no evidence to suggest that undetected ML and TF activity is occurring in Niue.

National policies to address identified ML/TF risks

82. Niue's National Strategic Plan 2016-2026 outlines the broad strategic direction of the Niue government covering a 10-year period.¹⁸ The plan is a high-level roadmap, and includes a national security priority, which relates to the safety and protection of resident and visitors, property and the environment. The plan is not informed by identified ML/TF risks and does not include an AML/CFT-related action plan.¹⁹

83. The NSC is designated to coordinate government action and activities with respect to AML/CFT matters. The NSC was established by the Cabinet under its executive authority and sits under the Office of the SOG. Members of the NSC are the SOG (also representing External Affairs) (Chair), Solicitor-General (also representing CLO, Chief of Police (also representing port and civil aviation security, and disaster management)), Financial Secretary (representing as the Comptroller of Customs and Ministry of Finance), Director for the Department of Agriculture, Forestry and Fisheries

¹⁶ On 7 December 2024, the Government of Niue and the Niue Ship Registry Pte Limited agreed on the mechanisms to be implemented for monitoring the shipping registry. The on-site visit to Niue concluded on 5 December 2024.

¹⁷ On 7 December 2024, the GON and Niue Ship Registry Pte Limited agreed on the mechanisms to be implemented for monitoring the shipping registry.

¹⁸ In June 2025, a new National Security Strategy for the period 2025 to 2029 was released, which includes the development of Niue's Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) framework, along with the necessary legislation, policies, and processes, by the end of 2025.

¹⁹ In June 2025, a new National Security Strategy for the period 2025 to 2029 was released, which includes the development of Niue's Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) framework, along with the necessary legislation, policies, and processes, by the end of 2025. Niue is in the early phase of implementation of the National Security Strategy although some aspects of the strategy are already in progress. Niue envisages that there will be periodic reporting on the implementation going forward.

(representing the Head of Niue Biosecurity and the Head of Fisheries), Chief of Immigration, the Niue Immigration Department and the Director for Health. The specific role and actions to be undertaken by the National Security Council (NSC) in relation to AML/CFT have not been formally adopted, and there is no national AML/CFT coordination policy in place. Nonetheless, the NSC provides a strong mechanism for national coordination on emerging issues, including AML/CFT, if the need arises. This is consistent with Niue's whole of government response to emerging issues and risk and context.

84. Overall, Niue is still in the process of adjusting its strategic focus to allocate resources to strengthen the AML/CFT system and address vulnerabilities. From 2020-2024, the NFIU was inactive due to a reprioritisation of government resources in response to the COVID-19 pandemic. The recent appointment of a Head of FIU in September 2024 and the designation of the Head of the NFIU to also be the AML/CFT supervisor is a positive development. In September 2024, the NSC established the AMLOC comprising key competent authorities to strengthen coordination of AML/CFT efforts, which is a positive development.

Exemptions, enhanced and simplified measures

85. The results of Niue's NRA have not been used to inform or provide for a policy for the use of exemptions and requirements for enhanced and simplified measures.

86. Niue's legal framework does provide exemptions for CDD measures, but these are not solely based on an assessment of low risk and do not require reporting entities to take enhanced measures to manage and mitigate the risks where higher risks are identified. However, the MVTs agent indicated at the on-site visit that, in practice, some enhanced due diligence (EDD) may be applied to a customer where the transaction was outside of the typical transaction profile of a foreign worker sending small amounts of money home to family within the Pacific region. Where a transaction is outside of this profile, the MVTs agent indicated that it asks additional questions about the nature of the transaction. Sanctions screening for customers of the MVTs agent is undertaken by its foreign-based headquarters. NDB indicated at the on-site visit that it informally follows the global AML/CFT program of the New Zealand bank offering banking accounts to Niueans as foreign customers, as NDB staff also work for the agent for the New Zealand bank.

87. Niue does not explicitly allow NDB, the MVTs agent or the lawyer to take simplified measures in circumstances where lower risks are identified.

88. In view of Niue's low ML/TF risk, there are opportunities for Niue to use the results of risk assessment exercises to consider exemptions from AML/CFT obligations, based on risk and to support the use of simplified measures to reduce regulatory burden and promote financial inclusion. This could include simplified CDD for low-risk customers.

Objectives and activities of competent authorities

89. Niue did not demonstrate that the findings of the 2017 NRA or the 2024 NRA update inform either AML/CFT policy or planning. Competent authorities with AML/CFT responsibilities were closely involved in the development of both risk assessments, but do not have specific objectives related to national AML/CFT policies that inform their activities. There are instances of predicate offending

identified in the 2024 NRA, and some threats in the 2017 and 2024 NRA rated as moderate, which would benefit from the setting of national level objectives to mitigate the risk. Nonetheless, competent authorities can respond operationally on a reactive basis to manage emerging risks and threats case-by-case as they arise through strong national coordination and cooperation.

90. The roles of Head of NFIU and AML/CFT supervisor are performed by a single officer who is also serving as a senior customs official. There are no other officials employed by NFIU, which impacts on functions relating to STR analysis, strategic and other operational analysis, as warranted, public awareness/outreach responsibilities, and supervisory activity. While minimal attention to FIU and AML/CFT supervisory functions in some areas aligns with Niue's unique risk and context, the assessment team concluded that some additional resources for NFIU would enhance its ability to conduct financial analysis and AML/CFT supervisory tasks.

91. The absence of investigations or prosecutions of ML or TF in Niue is consistent with the very limited number of predicate offences and the lack of terrorism-related activity, as indicated by Niue Police's data on offending. However, Niue Police do not have the capability or resources to conduct ML or TF investigations or prosecutions and would reach out for support from regional partners such as New Zealand if a matter arose. The assessment team considers this approach is reasonable considering Niue's risk and context and Niue's special relationship with New Zealand, which is codified in the Niue Constitution Act 1974 (NZ). Nevertheless, the establishment of clear operational procedures remains essential to ensure consistent and effective implementation.

92. Niue Customs undertakes several activities at the border to mitigate ML/TF risks which include conducting preliminary enquiries in relation to failure/false declaration of cash/BNI, referring border violations to Niue Police. However, there are no formal investigations conducted on cross-border currency violations. Customs also monitors border security and disclosure matters at the airport and ports of entry. Niue TCU members seek and share information internationally in relation to yacht movements, including those illegally entering or exiting ports.

93. Overall, competent authorities manage AML/CFT responsibilities as part of 'business as usual' activities and deal with emerging risk and threats on a case-by-case basis. This is in line with Niue's whole of government approach to all domestic and international issues (discussed below). However, the assessment team considers that a national AML/CFT policy, informed by the findings of the risk assessments and proportionate to Niue's risk and context, would be beneficial to guide and prioritise the work of the NSC, AML/CFT working group and competent authorities.

National coordination and cooperation

94. The assessment team has noted Niue's unique risk and context in considering the effectiveness of mechanisms for national coordination and cooperation on AML/CFT, particularly the low ML/TF risk, the absence of known ML and TF activity and predicate offending, the small population and the size of the government.

95. The NSC supported by the AMLOC is responsible for formulating Niue's AML/CFT policies and national coordination and cooperation on AML/CFT. Niue adopts a whole-of-government approach to all domestic and international issues, and the structure and size of government enables effective

coordination. Operationally, AML/CFT matters, if they arise, are dealt with on a case-by-case basis by the NSC which meets weekly. The SOG chairs the NSC and the SOG meets with Cabinet twice a week, providing an opportunity to escalate matters to Ministers and ministries to address specific issues. The Niue authorities provided examples (COVID-19 pandemic and cyclones) of how a whole of government response is mobilised quickly in the event of emerging threats which would be used for emerging ML/TF threats. The NSC has not proactively formulated national AML/CFT policies that proportionately respond to the findings of the NRA. However, in recognition of the need to strengthen AML/CFT-specific responses, the NSC established AMLOC to coordinate on operational AML/CFT matters in September 2024 and provide advice to the NSC on AML/CFT matters.

96. The overlapping membership on most high-level policy and operational committees for government means that the structural frameworks for inter-agency cooperation on AML/CFT are in place and can be leveraged if there is a need and the political will to do so. In practice, the SOG, Financial Secretary, Chief of Police, Head of Customs and the Head of FIU maintain ongoing communication, meeting or discussing matters as needed - both formally and informally - because of the size of Niue. There are also standing or ad hoc committees and working groups of officials, including cross-agency or cross-ministry collaborations, and the TCU. This is complemented by regular interactions between officials, their respective ministers, and administrative teams. ML/TF issues are discussed as they arise but regular meetings of AMLOC to discuss ML/TF threats would be beneficial.

97. While the terms of reference for NSC do not explicitly include CPF, the remit of high-level policy responsibility for matters relating to national security is broad enough to cover AML/CFT and CPF. Domestic cooperation on CPF focuses on matters related to the shipping registry and sanctions breaches. The Secretary of Government is responsible for national coordination and cooperation on operational issues associated with countering PF (CPF) in consultation with the relevant NSC members (Chief of Police, Secretary of Transport). These arrangements are not formalised in any way but have been used effectively to respond to sanctions-evasion incidences associated with Niue's international shipping registry.

98. Overall, there is evidence of a strong framework for domestic cooperation for general matters of Government that can be leveraged for AML/CFT purposes. This framework has not yet been used to cooperate and coordinate the development and implementation of policies to combat ML/TF or PF. The CLO consults with all stakeholders including the departments and the Bills Committee. The establishment of the AML/CFT working group under the NSC to strengthen Niue's AML/CFT capabilities and the ability to identify and mitigate ML/TF threats if they should arise is a positive development. The assessment team considers that Niue's national cooperation and coordination framework would benefit from developing an AML/CFT strategy consistent with risk and context and specifically adding CPF to the remit of the AML/CFT working group.

Private sector's awareness of risks

99. Niue has an extremely small private sector with only two FIs and one DNFBP. The FIs were interviewed during the development of the 2017 NRA and the 2024 NRA update, the DNFBP was interviewed as part of the 2024 NRA update. The involvement of the reporting entities in the development of the NRAs has contributed to their understanding of ML/TF risk. While there is no mechanism to communicate the findings of the risk assessments to reporting entities, the newly

appointed Head of NFIU commenced reaching out to the reporting entities in September 2024 to discuss AML/CFT obligations. NFIU also indicated at the on-site visit that it plans to disseminate the findings of the 2024 NRA to the public and private sector once publicly released.

100. The reporting entities and competent authorities interviewed during the on-site visit demonstrated a shared understanding that Niue faces low ML/TF risks, and that the most likely indicators of criminal activity would be unexplained wealth or unusual activity given everyone knows everyone. The DNFBP also pointed to other key ML/TF risks such as not knowing the customer (individual and legal persons), or source of wealth or source of funds.

Overall conclusion on Immediate Outcome 1

101. Niue is to be commended for its work on the 2017 NRA and 2024 NRA update. Relevant competent authorities and reporting entities participated in the development of the NRAs, with some external stakeholders consulted for the 2017 NRA. The methodology for the NRAs relied heavily on the perceptions of competent authorities and available police and customs data. No case studies were relied on due to the lack of detected ML and TF activity in Niue. There are gaps in the scope of, and limitations to, the methodology used, for the NRAs. While the results of the 2024 NRA update have yet to be disseminated, there is a shared understanding of Niue's ML/TF risk profile across the public and private sector derived from their participation in the NRA process.

102. While Niue does not have a formalised national AML/CFT policy with objectives to mitigate identified ML/TF risks, the NSC provides a strong mechanism for national coordination and cooperation for AML/CFT at the operational level and enables rapid operational responses to emerging threats on a case-by-case basis. This approach is proportionate, effective, and aligned with Niue's risk and context in addressing emerging issues. However, the NSC has not been leveraged to proactively develop a national AML/CFT policy based on the findings of the NRAs. CFT cooperation and coordination are managed in practice by the SOG, in consultation with relevant NSC members, but this has only occurred so far in relation to sanctions-related threats posed by the shipping registry. While strategies are being developed to mitigate these sanctions-related risks posed by the shipping registry, Niue authorities are not yet monitoring the extent to which the shipping registry conducts appropriate due diligence and sanctions screening. There is no explicit requirement for conducting enhanced CDD measures, although the foreign head office of the MVTs agent is conducting some enhanced CDD on behalf of the MVTs. Niue has an opportunity to apply simplified measures in line with its low overall risk profile but has yet to do so.

103. **Niue has achieved a moderate level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a) NFIU was non-operational from 2020 to 2024 following a transfer of resources to Customs to support the control of cross-border movements during the COVID-19 pandemic. NFIU recommenced operations in September 2024 following a process of organisational planning, recruitment and appointment of a new Head of FIU. NFIU is insufficiently staffed and lacks the information technology resources to support the receipt, analysis and dissemination of reports and other data.
- b) The independence of NFIU is affected by information sharing limitations under the FTRA. NFIU can only disseminate information to Niue Police, LEAs, or foreign supervisory bodies if the Solicitor General considers it appropriate. There is also a requirement for the Minister for Finance to approve NFIU entering into agreements or arrangements with foreign agencies for the exchange of information.
- c) LEAs do not use financial intelligence to identify or investigate ML, associated predicate offences or TF, or to develop evidence and trace criminal proceeds relating to ML. This is consistent with Niue's risk and context.
- d) NFIU does not have direct access to revenue and taxation records or immigration records for the purpose of obtaining further intelligence on STRs but can request information from competent authorities using broad information gathering powers.
- e) NFIU has not received any STRs from the three reporting entities. While this is consistent with Niue's risk and context, deficiencies in Niue's AML/CFT reporting obligations (including a lack of outreach to reporting entities on these obligations), and gaps in its cross-border movement declaration requirements, may be impeding receipt of all relevant information by NFIU.
- f) NFIU and other competent authorities communicate and coordinate on an operational level. Consistent with Niue's risk and context, information exchanged does not relate to ML/TF or predicate offences.

Immediate Outcome 7

- a) Gaps in Niue's criminalisation of ML may undermine its effective prosecution of the widest range of ML, should the need arise.
- b) No ML offences have been identified, investigated or prosecuted in Niue and, consequently, no convictions have been secured for ML offences. This is consistent with Niue's risk and context.

- c) Niue Police receives training to undertake core policing operations and has demonstrated an ability to undertake investigations which have a financial aspect. However, it lacks the capability or experience to identify and investigate complex ML matters.
- d) If a complex ML matter arose, Niue Police would seek expert assistance from regional counterparts, an approach the assessment team considers to be reasonable in view of Niue's unique risk and context. However, Niue competent authorities do not have operational procedures or frameworks in place to facilitate the identification, request and application of such assistance in a timely way.
- e) Niue Police experiences challenges with recruiting police officers and managing competing priorities (including those relating to Niue Police's national disaster management responsibilities). These challenges may affect Niue's ability to identify, investigate and prosecute ML, should the need arise.
- f) Niue Police has powers to obtain information for the purposes of identifying and investigating ML; however, these powers have not been exercised in any ML investigations, consistent with Niue's risk and context. Niue Police lacks additional investigative powers relating to compulsory measures for witness statements and computer access.
- g) Niue Police works closely with Niue's regional counterparts on regional policing matters and has assisted foreign LEAs to investigate predicate offences and potential ML offences by providing information, including financial information, biometric data and information on travel movements.
- h) Available sanctions for natural and legal persons appear effective, proportionate and dissuasive, however in the absence of any ML prosecutions and convictions these sanctions have not been tested.

Immediate Outcome 8

- a) Niue has a reasonable legislative framework for the confiscation of domestic and foreign proceeds and instrumentalities of crime, but the effectiveness of this framework has not been tested as there has been no ML or TF activity detected in Niue, or predicate offending involving ML.
- b) There have also been no requests from foreign jurisdictions to seize and confiscate criminal proceeds. If a complex confiscation matter arose, Niue Police would seek assistance from New Zealand or another regional partner with the requisite specialised skills, which the assessment team considers is reasonable given Niue's risk and context.
- c) Niue is not pursuing the confiscation of criminal proceeds, instrumentalities and property of corresponding value as a policy objective as there has been no ML or TF activity detected in Niue and predicate offending is uncommon, consistent with Niue's risk and context.

- d) There is no comprehensive legal framework for managing, disposing of and repatriating or sharing seized or confiscated assets but the High Court has the power to direct how frozen and seized assets are managed.

Recommended actions

Immediate Outcome 6

- a) Niue should ensure NFIU's independence in disseminating information by removing the legal requirement permitting the NFIU to disseminate information to Niue Police, LEAs or foreign supervisory bodies only if the Solicitor General considers it appropriate. Niue should also remove the requirement for the Minister of Finance to approve NFIU entering into information sharing agreements with foreign counterparts.
- b) Niue should prioritise providing NFIU with additional resources proportionate to Niue's risk and context, including a dedicated part-time Head of FIU and part-time analyst to support operational analysis and disseminations, and information technology resources to support NFIU's receipt, analysis and dissemination of reports and other data.
- c) NFIU should provide education and outreach to reporting entities on their AML/CFT reporting obligations (including on obligations to report attempted suspicious transactions).
- d) Niue should ensure the availability to NFIU of all relevant cross-border movement information, including information relating to cross-border movements conducted by cargo or post.

Immediate Outcome 7

- a) Niue should strengthen the legislative framework for the criminalisation of ML consistent with FATF Recommendation 3, to ensure prosecution of the widest range of ML.
- b) Niue should prioritise the appointment of a successor to the Chief of Police position, the filling of all vacant Niue Police staffing positions and the delivery of training to support new Niue Police staff and succession planning.
- c) Niue Police should develop tailored internal training materials and participate in training programs on financial investigation techniques to improve its capability to identify and investigate ML matters, should the need arise.
- d) Niue Police should develop procedures relating to the identification, investigation and prosecution of ML and other offences, the management of conflicts of interest (should they arise) and the identification, request for, and application of, expert assistance from regional counterparts.
- e) Niue should amend relevant legislation to provide Niue Police with investigative powers consistent with FATF Recommendation 31, including the ability to coerce witness statements and access computer systems.

Immediate Outcome 8

- a) Niue should adopt an inter-agency strategic plan (encompassing the Department of Justice, Niue Police, Customs and NFIU) to prioritise pursuing the confiscation of proceeds of crime proportionate to Niue's risk and context, should predicate offending, or ML/TF offences be detected.
- b) Niue should develop standard operating procedures proportionate to Niue's risk and context for identifying, tracing, freezing and seizing proceeds and instrumentalities of crime.
- c) Niue should develop standard operating procedures proportionate to Niue's risk and context for managing and disposing of seized proceeds of crime and sharing the proceeds of such confiscated assets.
- d) Niue should enhance cooperation between Customs, the FIU and other LEAs (including the Tax Authority) to gather and share information to enable Customs to target and detect undeclared or falsely declared cross-border movement of cash and BNIs, and other suspicious activity.

104. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.1, R.3, R.4 & R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

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

105. NFIU is established under the FTRA and functions as an administrative FIU (operating within the structure of the Office of the SOG) responsible for receiving and analysing STRs and other information and disseminating information-based financial intelligence reports. NFIU was accepted as a member of the Egmont Group in May 2007.

106. Prior to 2020, NFIU operated within the CLO and the part-time position of Head of FIU was held by the Solicitor General, with FIU duties completed on an "as needed basis". The Solicitor General was supported in the role of Head of FIU by an analyst and an administrative worker on a part-time basis. NFIU's functions were suspended in 2020 during the COVID-19 pandemic, and its resources were temporarily transferred to Customs to support Niue's control of cross-border movements. NFIU operations recommenced in September 2024, following a process of organisational planning, recruitment and appointment of a new Head of FIU (separate to the Solicitor General) who also acts as the AML/CFT supervisor and a senior customs officer.

107. Niue received a small amount of financial intelligence information (including spontaneous disseminations from foreign competent authorities and CTRs) between 2020 and September 2024 which was managed on an ad hoc basis by CLO in the absence of formal NFIU operations, noting that, at that time, the head of NFIU was the Solicitor General. All information received by Niue during this time has been processed, leaving no residual operational work for the NFIU. The assessment team considers the temporary transfer of NFIU resources between 2020 and 2024 reasonable considering Niue's risk and context, particularly given its low crime risks, very small population and economy, and broader national priorities during the pandemic.

Use of financial intelligence and other information

108. LEAs do not access, use or develop financial intelligence or any other relevant information in investigations of ML, associated predicate offences, or TF as there has been no ML or TF activity detected in Niue, and only two instances of predicate offending since the 2012 MER. These predicate offences related to theft and fraud, and the ML component of these offences was only represented by possession of proceeds of crime and in one instance, subsequent self-laundering through purchase of travel and personal goods.

109. NFIU is responsible for developing financial intelligence in Niue. Since the 2012 MER, NFIU has disseminated two intelligence reports; one in 2013 in response to the receipt of an STR provided by the New Zealand bank providing Niueans with access to offshore bank accounts (which is not regulated under the FTRA); and one in 2018 relating to information provided by Foreign Affairs to Customs about a person of interest intending to travel to Niue. NFIU has wide powers to request information from other relevant competent authorities. All Niue competent authorities can request and share information under the provisions of the Constitution that allow them to assist the Cabinet in exercising the executive authority of Niue. This can occur relatively quickly (i.e. within days). The Head of the FIU also has direct access to Customs data holdings on the basis that they also hold the position of a senior customs officer.²⁰

110. NFIU has its own budget and reports to the Minister through the SOG. The SOG has no powers under the FTRA, and the appointment and termination of employment for the Head of NFIU is managed by the Niue Public Service Commission. NFIU is currently operating out of the Office of the SOG, but new premises for NFIU are being established within the CLO.²¹

111. NFIU's independence is affected by a requirement under the FTRA that NFIU can only disseminate an STR or financial intelligence to a domestic or foreign LEA or a foreign supervisory body if the 'Attorney-General' (Solicitor General)²² considers it appropriate. NFIU also requires the approval of the Minister for Finance to enter into an agreement or arrangement with foreign agencies for the exchange of information, which may place limits on NFIU's independence and autonomy. There are no legal provisions that expressly prohibit NFIU staff members or close family members from operating or being involved in providing business activities that are captured by the FTRA, however, Niue's Public Service Regulations, manual and Code of Conduct provide general provisions to mitigate conflict of interest risks.

112. Niue Police has demonstrated an ability to conduct investigations with a financial element, having investigated and successfully prosecuted one theft case. A second investigation into a theft/fraud case has been completed and charges filed. However, if ML activity or more wide-spread

²⁰ Niue indicates that it intends to separate the positions of Senior Customs Officer and Head of FIU from 1 July 2025. Following this separation, Niue has advised it will implement standard operating procedures to maintain NFIU information access.

²¹ Niue authorities indicate that secure storage for paper-based files and reports will be established, and measures will be implemented for the physical security of FIU electronic data when the FIU relocates to the CLO office.

²² The Attorney-General's position was repealed in 2006 by the *Correction of Errors and Minor Amendment Act 2006* which provides for 'Attorney-General' to be taken as the 'Solicitor General' in any legislation where the word 'Attorney-General' is used or mentioned.

predicate offending occurred, it is not clear that NFIU or LEAs could develop or use financial intelligence and other relevant information to support more complex investigations. There have been no disseminations of TF-related intelligence in Niue, which is consistent with risk and context.

113. NFIU and Niue Police indicated at the on-site visit that if specialist knowledge was required for a financial investigation (related to ML, TF or other matters), they would seek assistance from New Zealand or Australia. The assessment team considers this is reasonable in view of Niue's unique risk and context, and the close relationship Niue has with New Zealand in particular. However, Niue competent authorities do not have operational procedures or frameworks in place to facilitate the identification, request and application of such regional assistance in a timely way.

STRs received and requested by competent authorities

114. Consistent with Niue's risk and context, there have been no STRs reported to NFIU by the three reporting entities pursuant to their FTRA obligations during the assessment period.

115. Deficiencies in Niue's AML/CFT reporting obligations (see R.20) under the FTRA and a lack of effective outreach to the three reporting entities regarding these obligations (see IO.4) may result in NFIU not receiving all relevant information. For example, the MVTs agent indicated during the on-site visit that, where an attempted transaction is unusual, it declines to deal with the customer or complete the attempted transaction. In one instance, the MVTs agent declined to process a transaction because it suspected a customer was about to become a victim in an online scam, and no STR was submitted to NFIU.

116. Prior to 2020, NFIU had an arrangement with the New Zealand bank for NFIU to receive copies of STRs submitted by the bank to the New Zealand FIU relating to offshore bank accounts of Niuean residents. This agreement lapsed when NFIU temporarily ceased functioning in 2020 and has not been reinstated. Five STRs received by NFIU in the assessment period (in 2019) were provided pursuant to this arrangement.

117. NFIU also receives CTRs and BCRs. NFIU may also receive electronic funds transfer reports (EFTRs) but has not received any EFTRs in the assessment period. Niue has not received any EFTRs in the assessment period because the MVTs agent is the only FI sending or receiving electronic funds transfers, and has a daily limit of USD 5,420, which is below the reporting threshold for EFTRs under the FTRA. Due to the temporary closure of NFIU, Niue was unable to provide statistics regarding the receipt of CTRs between 2022 and November 2024.

Table 3.1 Reports received by NFIU in the assessment period (including STRs received from foreign partners)

Report type	Number of reports per year					
	2019	2020	2021	2022	2023	2024 (Jan-Nov)
STR	5 ²³	0	0	0	0	0
CTR	180	225	35	0	0	0
BCR	0	0	0	0	0	6
EFTR	0	0	0	0	0	0

118. NFIU has a SOP for receiving, analysing and disseminating STRs, and processing guidelines for STRs. NFIU's system for storing reports and data is rudimentary. Any reports submitted to the NFIU are manually entered and/or saved in paper or electronic files. This process is time consuming and may inhibit the ability of NFIU to ingest larger volumes of STRs and other information in a timely way.

119. NFIU receives spontaneous disclosures from foreign counterparts through the Egmont Secure Web (ESW). Across the assessment period, Niue received four spontaneous disclosures from New Zealand (two in 2021 and two in 2022). These spontaneous disclosures were received by the CLO pursuant to the ad hoc management process established in lieu of formal NFIU operations. NFIU has also conducted database checks to assist development of responses to requests from foreign counterparts for information, usually in relation to requests to Niue Customs about sea travellers who have passed through Niuean waters. Niue Customs received 13 of these requests across the assessment period, and the requests are generally dealt with promptly. The assessment team was provided with examples of these requests. The Head of NFIU has commenced reaching out to regional counterparts via the ESW to seek information on risk, which is a positive development. This includes seeking information on STRs relating to Niue residents received by New Zealand's FIU.

120. Niue Police indicated at the on-site visit that it has not received a dissemination from NFIU over the assessment period, which is consistent with Niue's risk and context.

Operational needs supported by FIU analysis and dissemination

121. NFIU's analysis and dissemination of financial intelligence has not resulted in the conduct of any financial investigations by LEAs. The two predicate offences committed since the last MER related to theft and theft/fraud, and were reported to, and investigated by, Niue Police. These matters are the only examples of financial investigations that have occurred in Niue. The assessment team considers

²³ Copies of STRs relating to Niuean residents provided to the New Zealand FIU, and received by NFIU in accordance with an arrangement between NFIU and the New Zealand bank providing offshore bank accounts to Niueans.

NFIU's general lack of financial analysis and generation of financial intelligence to support financial investigations to be consistent with Niue's risk and context.

122. There have been no proactive disseminations of STRs, CTRs or other reports or financial intelligence by NFIU to LEAs over the assessment period. NFIU has produced two intelligence reports (2013 and 2018) since the last MER. Neither of these reports were in response to a domestic STR. One was referred to Customs for its action on the arrival of the person of interest in Niue, and the other was determined by NFIU to require no further action. Information used to support the development of these reports was sourced from other competent authorities (including immigration authorities and the Tax Office) and foreign TCUs. NFIU has entered discussions with regional FIUs about enhancing information sharing and arrangements for spontaneous information sharing.

123. Reporting entities must submit reports manually, requiring NFIU to conduct its analysis manually. This may lead to inefficiencies and delays in NFIU's processing and analysis, including operational analysis if required. NFIU's STR processing guidelines provide for gathering more information about the transaction and parties to the transaction to determine whether the report is filed or whether further inquiry is needed. NFIU's two intelligence reports were produced consistent with these guidelines.

124. NFIU also receives hard copies of BCRs where the traveller has declared carrying an amount over NZD 10,000 (USD 6,000) in cash or bearer negotiable instrument (BNI). NFIU looks at the number of people on board and previous ports the yachts visited and seeks information via the ESW on whether any cash or BNI were declared at the previous ports. However, deficiencies in Niue's cross-border declaration system (see R.32) (including the lack of an offence for the provision of a false statement in a declaration, and a lack of power for authorised officers to request information on the origin and intended use of the currency or BNI upon discovery of a false declaration or seizure) may result in NFIU not receiving all relevant information. While BCRs usually originate from the captain of yachts stopping in Niue, Niue's declaration system does not cover cross-border transportation of currency or BNIs by cargo or mail.

125. NFIU does not have direct access to revenue and taxation records, or immigration records for the purpose of obtaining further intelligence on STRs, and other competent authorities do not have direct access to NFIU information holdings. However, information may be shared amongst all Niue competent authorities, including NFIU, based on written request. The assessment team was provided with an example of a request for information made by NFIU to Customs.

126. The Head of FIU is currently the only position in NFIU. Like most senior officials in Niue, the Head of the FIU performs other roles; AML/CFT supervisor (appointed in September 2024) and senior customs officer. Around 20% of the Head of FIU's time is allocated to performing FIU-related and AML/CFT supervisory functions. This limited resourcing may impede NFIU's ability to conduct operational analysis and dissemination.

127. As the AML/CFT supervisor was only designated in September 2024, NFIU information has not been used by the AML/CFT supervisor to support risk-based supervision. However, as the Head of FIU is also the AML/CFT supervisor, the AML/CFT supervisor has full access to NFIU information.²⁴

3 *Cooperation and exchange of information/financial intelligence*

128. NFIU has good working relationships with LEAs, and they cooperate informally on a relatively regular basis. While information is exchanged between these competent authorities at the operational level, the information does not relate to ML, TF or predicate offences. Niue provided the assessment team with case studies of completed requests for information relating to exchanges between NFIU and Customs, and Customs and Police. The assessment team was not provided with any examples of completed requests for information indicating the exchange of information between Niue Police and NFIU. The Tax Office has had limited engagement with NFIU and has not exchanged information with NFIU in the assessment period. Noting the lack of ML and TF activity, and the scarcity of predicate offending, the nature and frequency of these exchanges appear consistent with Niue's risk and context.

129. NFIU and Niue Police have executed an Agreement for the Exchange of Information for information relevant to ML, TF or other serious offences. There are no provisions under this agreement for the confidentiality of information exchanged, however public servants in Niue have a general duty of confidentiality under the Niue Public Service Regulations and Code of Conduct. An MOU also supports information exchange between all members of the NSC, including Customs, Immigration, Niue Police and NFIU for the purpose of border security, but all competent authorities can share information under the executive authority established under the Constitution. Requests for information must be approved by the department head and state the purpose for which the information is required. The MOU provides that any information received or obtained under the MOU must not be disclosed to a third party, except with the express written authorisation of the agency that provided the information, unless required by law. Where an agency is required to disclose the information to a third party subject to a requirement under the law, the agency must notify the other agency of the disclosure. More generally, public servants in Niue have a duty of confidentiality under the Niue Public Service regulations and Code of Conduct.

130. Where NFIU enters into an agreement for the exchange of information with domestic or foreign agencies, the FTRA requires that the agreement must restrict the use of any information to purposes relevant to a ML or TF offence, a serious offence or similar offences (ss22(3)). The agreement must also stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of NFIU or the relevant LEA or supervisory body outside Niue (ss22(4), FTRA). NFIU's request for information template specifies that NFIU shares information with other competent authorities on the basis that the information is intended for use by the recipient and is classified as restricted, and that the information should not be released or further disclosed without the permission of NFIU.

131. While there are no documented processes to monitor the confidentiality, use and maintenance of information shared between competent authorities, Niue authorities appear to understand that they

²⁴ Niue indicates that it intends to separate the position of AML/CFT supervisor and Head of FIU from 1 July 2025. Following this separation, Niue has advised it will implement standard operating procedures to maintain NFIU information access.

have a general duty to protect the confidentiality of information they receive and use as part of their obligations as employees of the Niue Public Service Commission.

132. NFIU effectively exchanges information and intelligence with its Pacific FIU counterparts through the TCU network (see IO.2) and using the ESW.

Overall conclusion on Immediate Outcome 6

133. NFIU rarely develops financial intelligence and has not specifically produced financial intelligence for LEAs to use in investigations of ML and associated predicate offences, TF or asset tracing. This is consistent with Niue's unique risk and context, as there has been no ML or TF activity detected in Niue, and predicate offending is uncommon. Of the two intelligence reports NFIU has produced since the 2012 MER (in 2013 and 2018), one was used for operational purposes by Customs and the other noted by NFIU as not requiring further action. NFIU has good working relationships with competent authorities and cooperates and exchanges information (but not financial intelligence) consistent with Niue's risk and context. NFIU and Niue competent authorities generally have measures in place to protect the confidentiality of information exchanged. However, deficiencies in Niue's AML/CFT reporting obligations and cross-border declaration system may mean NFIU is not receiving all relevant information.

134. NFIU's independence is affected by a requirement that it may only disseminate information it obtains to Niue Police, LEAs, or foreign supervisory bodies if the Solicitor General considers it appropriate. NFIU's independence is also constrained by the need to obtain approval from the Minister for Finance to enter into an agreement or arrangement with foreign agencies for the exchange of information. Following its re-establishment in September 2024, NFIU lacks sufficient human and information technology resourcing to support its operations, including operational analysis and disseminations (should the need arise). The assessment team heavily weighted NFIU's lack of operational independence and resourcing deficiencies in forming its overall conclusion for IO.6.

135. **Niue has achieved a low level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

136. Niue Police is the principal law enforcement agency in Niue and has primary responsibility for the investigation of ML and other criminal offences.

137. Niue Police has not investigated or prosecuted any ML matters and, consequently, has not secured any convictions for ML, which is consistent with Niue's risk and context. Most offences within Niue are related to disorderly conduct, assaults and domestic violence, and various traffic offences. Most of the policing activity relates to traffic offences and mediation of land disputes. In the past twenty years there has only been one conviction for manslaughter and one conviction for statutory rape. There have been no serious drug offences detected in Niue.

138. Niue Police has conducted two investigations of predicate offences; one resulted in a prosecution and conviction for theft. In the other investigation, charges have been laid for “obtaining money by false pretences” (which falls within the definition of theft) but prosecution is pending. These cases demonstrate that Niue Police can conduct investigations with a financial element.

Case study 3.1

A Niue village church reported to Niue Police that funds were missing from its bank account. Niue Police investigated and, following the voluntary sharing of account and transaction details with Niue Police by NCEL, Niue Police determined that an NCEL employee had been diverting funds from the church’s account into personal accounts to the value of NZD 40,000 (USD 24,000). Niue Police prosecuted the case in 2020. The defendant pled guilty and was sentenced to community service and to make restitution. The Court recorded a conviction against the defendant and made an order prohibiting the defendant from travelling outside Niue for two years. The defendant is re-paying the stolen funds by way of a payment plan managed by the Department of Justice.

139. There is an increasing vulnerability of Niuean residents falling victim to a cyber-scam; however, Niue Police note there have been no reported instances. Niue Police has been involved in drafting a Bill on cyber safety, delivering education for the public and hosting regional police training in relation to cyber threats (including in November 2024 during the onsite visit).

140. Niue Police has powers to obtain information for the purposes of investigating ML, including search and seizure, production orders, property tracking documents, inspection orders, and taking (voluntary) witness statements. These powers have not been exercised in any ML investigations, nor in any criminal case across the assessment period. Niue Police does not have the power to coerce witness statements, conduct controlled deliveries, intercept communications, or access computer systems (other than by obtaining monitoring orders under section 54 of the POCA which relate to provision of information from FIs about transactions occurring on accounts in real time). Niue Police also does not have the power to conduct undercover operations; however, these are impractical to use in Niue due to its very small population.

141. LEAs have general investigative capability, but do not have the capability or experience (including receipt of specialised financial investigation training) to identify and investigate the financial element of a complex proceeds-generating case if one was to arise. Most intelligence received by Niue Police comes from foreign agencies or INTERPOL alerts, or through the TCU. Niue Police would seek expert advice from regional counterparts for a complex financial investigation, particularly New Zealand given it provides economic and administrative assistance to Niue, and assistance with foreign affairs, defence and security if requested (in accordance with the Niue Constitution Act 1974 (New Zealand)). The Australian Federal Police also has an agreement with Niue to assist in technical cyber investigations and the training of police staff. However, Niue competent authorities do not have operational procedures or frameworks in place to facilitate the identification, request and application of such regional assistance to support Niue’s identification, investigation and prosecution of ML, should the need arise.

142. Niue Police has 16 positions (Chief of Police, one Inspector, three sergeants and 11 constables). Seven of these positions were vacant at the time of the on-site visit, and the Chief of Police position became vacant on the last day of the on-site visit. Recruiting constables is a challenge due to the pay structure (comparative to other public service positions) and the small population size, as police must mediate disputes, and enforce the law against family members and people generally known to them. Niue Police's resources are also impacted by its responsibilities as the National Disaster Management Office. These human resourcing deficiencies may affect Niue Police's ability to identify, investigate and prosecute ML, should the need arise.

143. The Chief of Police is the Chief Prosecutor, supported by one prosecution sergeant, and is responsible for the prosecution of minor offences. One constable is also being mentored to become a prosecutor. The CLO is the prosecuting agency for serious offences, including ML offences. However, where conflicts of interest arise, procedurally the matter is dealt with by the Chief of Police or an appropriate delegate, which includes assuming responsibility for prosecutions. Despite Niue Police's low staffing numbers, the assessment team considers Niue's Public Service regulations, manual and Code of Conduct (and other conduct frameworks, including those applicable to members of Niue's Legislative Assembly) provide general provisions to mitigate conflict of interest risks.

144. Niue Police has a dedicated Records Management System, and all LEAs (including Niue Police) can access information from all Government agencies without any privacy or secrecy obstacles. Niue Police can execute search warrants on the sole banking agent when it requires financial information (principally to assist with overseas investigations), and on persons or companies for other information, such as business records. No such search warrants have been issued or executed, however in practice, where a search warrant is provided to the banking agent, the agent would refer the search warrant to the headquarters of the bank in New Zealand for action. Niue Police has not requested access to any STRs or financial records relating to Niuean customers from New Zealand Police (nor has it received any such requests). While LEAs have not made any formal MLA requests, LEAs do use informal channels to obtain financial information or documents to facilitate an investigation and provided the assessment team with several examples.

145. Niue Police has not received any reports of alleged corruption or bribery. The United Nations Convention Against Corruption entered into force in Niue in November 2017. While the UNCAC identified numerous challenges in fully implementing the convention, perceptions of government corruption in Niue are relatively low.²⁵

146. Niue Police has assisted foreign LEAs to investigate predicate offences and potential ML offences by providing information, including financial information, biometric data and travel movements (see IO.2).

147. Customs works with Niue Police in relation to control of the airport and seaport, and cross-border offences. Despite this, Customs does not have a significant investigative role with respect to ML due to the limited number of air and sea transportation crossing Niue's border. In practice, any

²⁵ Transparency International - "Perceptions of Corruption in seven small Pacific Island Countries" 2022.

investigation by Customs that may develop into a ML or a serious offence other than the normal customs cases would be referred to Niue Police for further investigation.

148. Niue Police and Customs have a cooperative presence at the one airport in Niue (Hannan Airport) to screen all incoming passengers on the limited flights per week to and from New Zealand. Niue Police and Customs are cognisant of the increasing use of illicit drugs in neighbouring jurisdictions and indicated at the on-site visit that they are focused on ensuring that Niue does not become a transit jurisdiction for illicit drugs. Niue has demonstrated effective screening of all incoming and outgoing baggage and freight, and it is not a viable market for the wide-spread purchase of illicit drugs based on the size of its population, economy and GDP per capita. Illicit drug use within Niue is likely to be detected early due to Niue's very small population. Niue Customs detected one case of illicit cannabis importation (a few grams) in 2008 during inspection of an inward-bound yacht; this case was handed to Niue Police for investigation.

149. No cash smuggling has been detected via the air or seaport, and no associated ML cases have been identified or investigated. This is consistent with Niue's risk and context. Niue Police also assist Customs at the one seaport (Sir Robert's Wharf) to screen the sole incoming/outgoing freight vessel which ports once per month. Niue Police and Customs identified that the main border control transgressions involve smuggling of tobacco or ammunition for personal consumption and use (hunting). Niuean authorities acknowledge there is some possible duty/tax evasion at the seaport for personal goods, such as under reporting the value of a motor vehicle.

150. Niue Police and Customs rely on reports from previous ports of any potential suspicious activity involving incoming freight. Niuean waters are also monitored by the United States Coastguard, New Zealand Maritime, the Cook Islands, Tonga and other regional partners.

Case study 3.2

New Zealand Customs alerted Niuean authorities to a case of possible arms and ammunition smuggling through the seaport. Niue Customs searched the containers on arrival. A firearm was located but no ammunition. Customs advised that firearms and ammunition are used for local hunting activity to supplement residents' food supply and control pests, but the cost of ammunition is high on the island.

Case study 3.3

Niue provided an example of a situation in which it responded to an international request from a regional partner for assistance, when a vessel ran aground on Beveridge reef, 200 kilometres southeast of Niue and within its EEZ. Niue Police made preliminary enquiries into the matter as a potential IUU fishing incident, given the reef is known as a shark haven. The vessel was destroyed by fire after crashing into the reef. Information was obtained by Niue, including satellite tracking from the Forum Fisheries Agency and the regional partner but there was insufficient evidence to pursue a predicate offence investigation.

151. Sailing yachts, from countries to the east of Niue follow the trade winds during the dry season and arrive at Niue's seaport. There is no other place where they can safely moor and access Niue due to

the coral reef and limestone cliffs circling the island. Niue Police and Customs, Biosecurity, Immigration, and Health authorities meet all yachts, check their paperwork, and liaise with the previous port of call and the intended next port of call to track all vessels. Customs advised that approximately one in five vessels are randomly searched. These actions have not identified any cash or drug smuggling activity, consistent with Niue's risk and context.

152. Customs makes preliminary enquiries in relation to failure to declare cash/BNI or false declarations for cash/BNI at the airport and refers any border violations to Niue Police, however no formal investigations for cross-border currency transgressions have been required or commenced (and, as noted in IO.6, deficiencies in Niue's cross-border declaration system include the lack of an offence for the provision of a false statement in a declaration). In one instance, Customs made enquiries into an advance declaration (passenger email notification) to bring cash to the island for a PEP but found nothing suspicious in relation to the transaction and no further action was taken.

153. The Niue Tax Office is also empowered to undertake investigations into ML related to tax evasion; however, no such investigations have occurred. While a four year back-log of tax returns may limit Niue authorities' visibility of such offences (see IO.1), the assessment team considers the lack of investigations consistent with Niue's low tax crime risk (as outlined in Niue's 2024 NRA and discussed in IO.1), the small size of Niue's economy, the average income and the proportion of the workforce paying tax on a 'pay as you earn' basis.

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

154. Niue's legal framework for investigating and prosecuting ML has deficiencies. There are gaps in the criminalisation of certain designated categories of predicate offences, there are no ancillary offences for ML, and there is lack of clarity in the scope of property covered.

155. The assessment team finds the scarcity of predicate offending and the absence of ML investigations and prosecutions consistent with Niue's risk and context. Niue Police publishes statistics and data about its operations in its annual reports. These reports reflect the lack of serious crime occurring within Niue, including ML and associated predicate offences. For example, of the 474 police reports logged in 2022-2023, 25% related to traffic offences, 21% to aviation and port security, 13% to officiating at raffle draws and 11% to incidents at events.²⁶

156. At the time of the on-site visit Niue's draft National Security Strategy had not received Cabinet approval. As such, the assessment team was unable to confirm how investigations more generally (noting the absence of ML offending specifically) were consistent with national AML/CFT policies.

Types of ML cases pursued

157. There have been no cases of ML investigated or prosecuted in Niue, which is consistent with risk and context. The proceeds from the single predicate offence that has been prosecuted since the last MER were transferred by the offender from the victim's New Zealand bank account to the offender's

²⁶ Niue Police Annual Report 2022-2023

New Zealand bank account and the offender travelled to Australia and spent the proceeds on travel, goods and services in Australia. Niue did not charge or prosecute the offender for ML due to the complexities introduced by the transnational nature of the offence, and competent authorities' resourcing and capacity constraints. The assessment team considers Niue's approach to this offence consistent with its risk and context, particularly given the scale of the offending, and the sanctions imposed upon conviction (community service, travel ban and restitution).

Effectiveness, proportionality and dissuasiveness of sanctions

158. Section 64 of POCA provides a maximum penalty of no more than 20 years imprisonment and a fine of no more than NZD 120,000 (USD 72,000) for a natural person, and a fine of no more than NZD 1,000,000 (USD 600,000) for a body corporate.

159. The available sanctions for both natural and legal persons appear proportionate and dissuasive, but in the absence of any ML prosecutions and convictions the effectiveness, proportionality and dissuasiveness of these sanctions has not been tested.

Use of alternative measures

160. Under Niue's current laws, ML is punishable by criminal penalties including imprisonment or fines, and the proceeds or instruments of crime may only be confiscated upon conviction.

161. In the absence of any ML investigations or prosecutions, the ability of Niue to employ alternative criminal justice measures where it is not possible, for justifiable reasons, to secure a ML conviction has not been tested. However, Niue authorities can use measures such as cancelling or suspending business licences, revoking company registrations, refusing entry of suspected criminals into Niue, and deporting criminal suspects. The latter two measures have been applied, but not within the context of a ML offence.

162. Niue authorities may use their regional partnerships to pursue alternative measures via informal or formal cooperation, including in cases where ML or associated predicate offences cannot be pursued locally. The use of these alternative measures has not been demonstrated in practice, which the assessment team considers consistent with Niue's risk and context. However, as noted above, there are no operational procedures or frameworks in place to facilitate the identification, request and application of such regional assistance in a timely way (should the need arise).

Overall conclusion on Immediate Outcome 7

163. Niue has not identified, investigated or prosecuted any ML cases (and, consequently, not secured any ML convictions) which is consistent with its low ML risk and unique context. Niue Police has demonstrated it can investigate lower-level predicate offending crimes with a financial aspect (such as theft and fraud) in accordance with general policing techniques and respond to requests for assistance in relation to financial crime from other jurisdictions. However, Niue Police does not have the capability or experience to identify and investigate the financial element of more complex ML cases (should they arise). Niue's competent authorities have strong relationships with regional partners and are highly motivated to leverage these to assist the investigation of more complex ML cases, but a lack

of operational procedures or frameworks to facilitate the identification, request and application of such assistance may impede the ability for it to be provided in a timely way.

164. Niue Police experiences challenges recruiting police officers and lacks certain investigative powers. There are also deficiencies in Niue's legal framework for investigating and prosecuting ML. These factors may impede Niue's capacity to identify and investigate ML cases should they arise (notwithstanding any assistance provided by foreign counterparts). While the seaport may pose a vulnerability for smuggled goods, the threat appears very low as there is limited capacity for consumption given Niue's small population and economic status. The existing controls at the airport are sufficient to monitor any risks of cross-border movements, which again are circumscribed by the inability to exploit the local economy and population to conceal or generate proceeds of, or instruments of, crime.

165. **Niue has achieved a moderate level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

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

166. The FTRA, POCA and TSTCA establish the legal framework for Niue's conviction-based confiscation regime. This legal framework generally enables Niue to detect, restrain and confiscate domestic and foreign proceeds of crime. The Income Tax Act 1961 provides for imposing penal taxes for the recovery of unpaid taxes and duties.

167. The 2017 NRA recommended legislative amendments to strengthen the confiscation regime including for terrorism, noting Niue's maritime-related ML/TF vulnerabilities. Legislative amendments to implement these policy objectives had not been passed at the time of the on-site visit.

168. Niue does not have any policy or operational objectives for pursuing the confiscation of criminal proceeds, instrumentalities and property of equivalent value. The 2024 NRA update notes concerns that some Niuean businesses may carry cash takings out of the jurisdiction to avoid tax obligations. These are likely to be small amounts, consistent with Niue's risk and context, that are below the BCR threshold. The 2024 NRA update notes the BCR threshold may need to be lowered, but this is not addressed in any policy or operational plan. There have been no criminal assets frozen or seized in Niue, which is consistent with the absence of ML or TF activity in Niue, and low level of predicate offending. There have only been two cases of predicate offending since the 2012 MER. One case has been successfully prosecuted but no ML case was pursued. The offender fraudulently transferred funds from one New Zealand bank account (a church bank account) to another (the offender's bank account) and subsequently travelled to Australia and spent the proceeds in Australia on goods and services (see paragraph 157 under IO.7). The other matter has yet to proceed to prosecution.

169. The High Court has used injunctive powers to restrain assets to be sold by the Department of Justice to satisfy an unpaid debt. An urgent injunction can be heard relatively quickly in Niue by a Commissioner or Justice of the Peace or referred to the Chief Justice who is based in New Zealand. Such matters are tracked in the court data base, which the Chief Justice can access. The Court also has

inherent powers to apply remedies such as restitution and manages re-payment plans through procedures with the Department of Justice (see case study 3.1 under IO.7).

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

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170. While Niue has a reasonable legislative framework for the confiscation of the proceeds and instrumentalities of crime, the effectiveness of this framework has not been tested as there has been no ML or TF activity in Niue during the reporting period and only two predicate offences committed. Niue has also not received any requests from foreign jurisdictions to seize and confiscate criminal proceeds. The assessment team considers that the lack of confiscation of proceeds and instrumentalities of crime within Niue is consistent with Niue's risk and context.

171. If a complex confiscation matter arose, Niue Police advised the assessment team during the on-site visit that it would seek assistance from New Zealand or another regional jurisdiction with specialised skills in confiscation and management of assets. The assessment team considers this is reasonable given Niue's risk and context. While the High Court Registrar is empowered to take custody and control of terrorist property, there are no standard operating procedures in place for freezing, seizing, confiscating and managing the proceeds and instrumentalities of crime in any relevant agency. The assessment team considers that some basic and proportionate SOPs are required to ensure Niue's preparedness to coordinate and manage the process if criminal proceeds or instruments are detected on the island.

172. While Niue has no SOPs for managing, disposing of and repatriating or sharing seized or confiscated assets, the High Court has the power to make directions regarding the management of seized or confiscated assets. Niue provided a case study from 2014 where a foreign national who travelled with his child to Niue on his yacht was discovered by locals to be a wanted fugitive by a foreign law enforcement agency however no application was made to the Court, and the vessel has been stored at the owner's risk.

Case study 3.4

In 2014 a foreign national who travelled with his child to Niue on his yacht was discovered by locals to be a wanted fugitive by a foreign law enforcement agency.

Niue law enforcement apprehended the fugitive; the foreign national was deported and placed in the custody of relevant foreign authorities. The foreign authorities were then able to facilitate the return of the foreign national to the jurisdiction seeking extraction.

The yacht was placed in storage by the owner but has not been formally seized or restrained. Niue authorities did not apply to confiscate the yacht as an instrument of crime, notwithstanding the offender was prosecuted and convicted and the yacht was used in the commission of his crime. The yacht has been stored out in the open with no action taken to prevent wear and tear for the past decade - at the owner's own risk. The yacht is likely to be retrieved by the owner.²⁷ The foreign authorities also never sought to confiscate the yacht.

²⁷ The Niue Government approved his return to Niue to restore and retrieve the yacht in 2025.

173. Customs indicated during the on-site visit that it has seized cargo incoming through the port in circumstances where the duty payable appears incorrect or unpaid, and returns the goods if duty is paid and otherwise uses its powers to confiscate the goods.²⁸ However, Customs was unable to provide any data on such seizures or case studies. Most seized goods are undeclared alcohol (a controlled import), and these are duty assessed. Payment of duty is required before release of seized goods.

174. Niue does not appear to be systematically recovering tax on undeclared income and unpaid duty. There is a four-year backlog in tax returns to be processed, and a significant number of taxpayers are not filing their annual returns for several years. However, the quantum of any unpaid tax liabilities is likely to be small in view of the significant percentage of the workforce that is employed by the government and paying tax on a 'pay as you earn' basis. All employers are also required make tax deductions from every payment of salary and wages. The Tax Office also implements default arrangements if returns are not lodged. The default amount charged is usually higher than an actual assessment. The failure to lodge a tax return only incurs an administrative sanction and is not a predicate offence. Niue was unable to provide statistics on the number of default notices issued over the past five years.

175. Niue was awaiting delivery of four scanning machines for the seaport at the time of the assessment which should enhance Customs ability to detect the importation of illicit goods, and customs duty evasion.

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

176. The NRA 2017 noted that, at the time, Niue Customs was receiving good quality BCRs and only a small number were referred to the NFIU each year²⁹ and concluded that Niue's exposure as a transit country for money mules was low. Niue's 2024 NRA update has noted concerns that some Niuean businesses may carry cash takings out of the jurisdiction to evade tax indicating to Niuean authorities that the BCR threshold may need to be lowered.

177. Niue has a written declaration system for incoming and outgoing cross-border transportation of currency (of or above NZD 10,000/USD 6,000) and BNIs which only applies to cash or BNI on the person or in their luggage. There is no requirement to declare the import or export of cash over the relevant threshold if the cash is transported via mail or cargo.

178. Niue Customs has five full-time staff and one part-time staff member. Customs receive specialist training from Oceania Customs Organisation (OCO), Pacer Plus Implementation Unit (PPIU), United States Patent and Trademark Office (USPTO). Customs indicated during the on-site visit that it collects little data on its operations and there is a need to improve data entry and collation.

179. Niue has one international airport, and one authorised seaport that anyone travelling by boat may disembark from. Based on the 2024 NRA update, Niue receives no more than 200 small vessels (pleasure craft and yachts) per annum and yachts are only permitted to stay moored for a maximum of 24 hours at the port or boat ramp. Niue also has two small boat ramps that provide access to the island

²⁸ These are generally goods for personal consumption such as tobacco and alcohol, or ammunition for hunting.

²⁹ Note: The NFIU has not been operational during 2020 to 2024 to receive these reports.

which are not declared ports of entry and are only accessible by small craft at appropriate tides. The reef that surrounds the island and limestone cliffs make access by boat challenging, particularly on the west coast.

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180. All international flights to Niue come from Auckland, New Zealand mitigating some of the risk of cash smuggling and importation of illicit goods. There is scanning equipment at the Niue international airport, which is used to support the detection of illicit goods or undeclared cash. Customs indicated that no undeclared cash has been detected over the past five years.

181. Customs also indicated that there have been six declarations made for cross-border movements of cash above the relevant threshold of NZD 10,000 (USD 6,000) (but not more than NZD 20,000/USD 12,000) since 2015 and adequate explanations were given in each instance. In one instance, a declaration was made to Niue Customs in advance of travel, which led Customs to make a referral to New Zealand Police and New Zealand Customs, and the Niue TCU. However, no suspicious activity was identified and the person making the declaration ultimately did not bring the cash into Niue. There have been no BCRs submitted relating to BNIs.

182. In 2023 Niue Customs successfully moved its business processes from manual based to fully automated using a UN system known as ASYCUDA World, this includes Post Clearance Audit and continues to implement latest enhancement modules. The department also take part in the Oceania Customs Organisation regional operation on undervaluation and information sharing.

183. It is not clear whether the lack of detection of cash smuggling is consistent with Niue's risk and context. Niue authorities were unable to quantify the size of Niue's cash economy but commonly reported during the on-site visit that the size of the cash economy has decreased in recent years due to the introduction of internet banking.

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

184. Niue has not achieved any confiscation results, which is consistent with Niue's low ML/TF risk and context as a small jurisdiction with a small and limited economy that does close scanning of people and goods moving across the border and experiences low crime levels that typically do not include proceeds generating offences.

185. However, the lack of national policy objectives to prioritise confiscation impacts upon competent authorities' awareness of available mechanisms and the ability to respond to opportunities if they arise.

Overall conclusion on Immediate Outcome 8

186. Niue has a legal framework for the confiscation of proceeds and instrumentalities of crime but has no policies for prioritisation of confiscation, or operational procedures for identifying, tracing, freezing and seizing, managing and disposing of assets, nor for sharing or repatriating proceeds of confiscated assets where appropriate. Noting that there have been no relevant investigations, prosecutions or seizures in Niue, the absence of prioritisation and operational procedures is not significantly weighted. Niue has identified potential tax evasion via the structuring of outward-bound

cash via passenger traffic through the airport (under the BCR threshold of NZD 10,000/USD 6,000) but has not yet undertaken any investigation into this possibility. Noting Niue's micro economy and population and the fact that all outward-bound passengers are also screened on arrival in New Zealand, this vulnerability is similarly not given any significant weight.

187. **Niue has achieved a low level of effectiveness for IO.8.**

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CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) There are gaps in Niue's criminalisation of TF which may undermine effective prosecution of the widest range of TF, should the need arise.
- b) Consistent with Niue's low TF risk profile, there has been no identification, investigation, prosecution or conviction of TF in Niue, and Niue has not received any foreign requests regarding possible TF.
- c) Competent authorities have not received specialised training for the identification, investigation or prosecution of TF, their knowledge of TF risk and vulnerabilities is limited, and Niue does not have an operational framework in place for investigating and prosecuting TF if a suspicion of TF arose.
- d) Niue would address TF matters as they arise on a case-by-case basis (consistent with its whole of government approach to dealing with emerging threats) and would rely on regional partners to assist with TF investigation and prosecution. However, Niue competent authorities do not have operational procedures or frameworks in place to facilitate the identification, request and application of such assistance in a timely way.
- e) The NSC has responsibility for CFT and has coordinated nationally to develop the draft National Security Strategy, which outlines AML/CFT as a key national security consideration. However, at the time of the on-site visit the draft strategy had not received Cabinet approval, and as such the assessment team was unable to confirm the extent to which it provides for integrated and coordinated responses to terrorism and TF.
- f) In the absence of any TF prosecutions or convictions, the effectiveness and dissuasiveness of sanctions for natural persons has not been tested. It is unclear if sanctions are available for legal persons.

Immediate Outcome 10

- a) The limited legal framework to implement TFS related to UNSCR 1267 has major deficiencies and has not been implemented.
- b) Niue lacks a legal framework and mechanisms to implement UNSCR 1373.

- c) Niue is aware of its very small NPO sector which largely comprises community-based sporting, and religious groups and of the very low TF risks the sector poses. However, it has not conducted an assessment to identify whether there is a subset of NPOs vulnerable to misuse for TF and the competent authorities are unaware of the extent of any unregistered NPOs. There are also no focused and proportionate measures being applied to any NPOs that may be part of such a subset in line with the risk-based approach.

Immediate Outcome 11

- a) Niue does not have a legal framework to implement TFS without delay to comply with UNSCRs related to the proliferation of weapons of mass destruction (WMD) and its financing.
- b) Niue has a mechanism that provides for a reactive operational response to emerging national security issues and this mechanism has been used to respond to sanctions related threats arising from Niue's shipping registry.
- c) Niue has no links or trade with DPRK. No designated entities have been identified operating in, or moving funds/assets in or through, Niue. The key vulnerability for Niue in relation to TFS related to PF is Niue's shipping registry.
- d) Reporting entities are not conducting screening for PF-related TFS, although the MVTs agent relies on its foreign parent entity to conduct screening of its Niue customers. There has not been any PF-related outreach provided to reporting entities.
- e) Niue does not monitor or ensure reporting entities' compliance with PF-related TFS obligations.

Recommended Actions

Immediate Outcome 9

- a) Niue should strengthen the legislative framework for the criminalisation of TF and implement proportionate and dissuasive TF-related sanctions for legal persons, consistent with FATF Recommendation 5.
- b) Niue should develop a TF standard operating procedure, comprising procedures to facilitate CFT domestic coordination and cooperation with foreign partners, and TF identification, investigation and prosecution.
- c) Niue should enhance its capacity to identify and investigate TF, should it occur, by monitoring TF threats and typologies in the Pacific region and by enhancing LEAs capacity to conduct financial investigations.

Immediate Outcome 10

- a) Establish a comprehensive legal framework for TFS for TF to implement UNSCR 1267 and 1373 and introduce the necessary procedures and measures to implement and enforce TFS for TF obligations effectively.
- b) Identify those NPOs, if any, at potential risk of TF abuse and apply appropriately focused and proportionate measures to any such NPOs in line with the risk-based approach.

Immediate Outcome 11

- a) Establish a legal and operational framework for implementing TFS without delay to comply with UNSCRs that relate to the proliferation of weapons of mass destruction and its financing in line with the requirements of the FATF Standards, including for Niue's shipping registry.
- b) Monitor the shipping register's application of screening measures during shipping registration and renewal processes, including checks against relevant UN sanctions lists.
- c) Provide education and outreach to the public and private sectors on PF-related TFS and establish a formal process for making updated sanctions lists available.
- d) Conduct monitoring to ensure reporting entities' compliance with PF-related TFS.
- e) Enhance national coordination and cooperation mechanism to address PF vulnerabilities and exposure beyond threats posed by the shipping registry.

188. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The recommendations relevant for the assessment of effectiveness under this section are R.1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

Immediate Outcome 9 (TF investigation and prosecution)

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

189. Niue's legal framework for investigating and prosecuting TF has moderate deficiencies, as the criminalisation of providing funds or assets to a terrorist organisation is likely to be ineffectual, providing or collecting funds for an individual terrorist is not criminalised, and there are limited ancillary offences available for TF (see R.5).

190. Niue has not investigated, prosecuted or secured convictions for TF and has not received any requests for international assistance relating to TF, which is consistent with Niue's low TF risk profile. The vulnerability for TF is very low noting Niue's very small population and economy, level of social cohesion, very limited financial and DNFBP sectors, and geographic isolation. Unusual or suspicious activity stands out in Niue, and the extremely limited access to financial services and its geographic isolation make Niue an unfavourable transit point for funds related to terrorism or for terrorists. Were a TF offence to be prosecuted in Niue, the CLO would lead the prosecution as the agency responsible for

the prosecution of serious offences. However, there are no procedures in place setting out how such a prosecution would be coordinated and conducted, which may impede Niue's ability to effectively prosecute TF, if it arose.

TF identification and investigation

191. Niue has not identified an instance of TF or conducted any investigation into TF. NFIU has never received a terrorism or TF-related STR, nor has any TF-related information been received by Niue from the international intelligence community. This is consistent with Niue's risk and context. There is only one provider of financial services vulnerable to misuse for TF, the MVTs agent. The typical customer profile for the MVTs agent is a foreign worker remitting wages to family residing in Pacific Island nations, the Philippines, New Zealand or Australia. The MVTs agent indicated that transactions outside of this profile would immediately raise suspicion. However, deficiencies in Niue's AML/CFT reporting obligations (see R.20) and a lack of effective outreach to reporting entities regarding these obligations (see IO.4) may affect the MVTs agent's ability to report potential TF.

192. If suspicion of TF arose, Niue Police would be responsible for opening an investigation. However, Niue Police has not received training on identifying and investigating TF or financial crimes more broadly (see IO.7). There are no procedures in place that would facilitate the detection of TF through intelligence collection or analysis, or in linking TF with existing investigations. There are also no procedures in place setting out how a TF investigation would be coordinated and conducted. These factors may impede Niue's ability to effectively identify, investigate and prosecute TF if it arose.

193. Niue Police is cognisant that it does not have the capacity or expertise to investigate TF and indicated at the ME on-site visit that it would immediately seek expert advice from a regional partner, such as New Zealand, to support the investigation. Niue has a close relationship with New Zealand and under constitutional arrangements may request New Zealand's assistance with foreign affairs, defence, and national security. The assessment team finds the reliance on regional partners to support TF investigations to be reasonable given the very small size of Niue's population and economy, and Niue's TF risk profile. However, Niue competent authorities do not have operational procedures or frameworks in place to facilitate the identification, request and application of such assistance in a timely way.

194. Niue Police is equipped to apply core policing investigation techniques to the investigation of TF, including bringing urgent applications for search warrants and orders for the freezing of assets before local Commissioners, Judges or the Chief Justice of the Niue High Court, who is based in New Zealand (in the latter case, by papers or via an online video meeting).

195. The main way in which Niue is likely to detect TF is in response to information or intelligence received from a foreign partner. Niue does not have an intelligence agency other than the NFIU and relies heavily on its international cooperation network to provide intelligence to assist with identifying TF activities. This includes using the ESW, the Interpol platform 24/7 and TCU networks, as well as other formal and informal networks with regional partners (see IO.2).

TF investigation integrated with -and supportive of- national strategies

196. The National Strategic Plan 2016-2026 provides a high-level roadmap setting out the Niue Government's priorities and broadly captures national security through the objective of ensuring residents and visitors live in a safe and secure environment. The terms of reference for the NSC indicated that it has a broad national security remit under the plan that includes responsibility for responding to any terrorism threat if one occurred and implementing a whole of government response as is done for other matters of national significance. The NSC specifically has responsibility for measures to counter TF.

197. The NSC has developed a National Security Strategy, which outlines AML/CFT as a key consideration for national security in Niue. At the time of the on-site visit Niue's draft National Security Strategy had not received Cabinet approval so the assessment team was unable to confirm the extent to which it provides for integrated and coordinated responses to terrorism and TF.

Effectiveness, proportionality and dissuasiveness of sanctions

198. The TSTCA prescribes sanctions for TF, provision of property or services to terrorists and for dealing with terrorist property, including terms of imprisonment up to 14 years (s6-8, TSTCA). Niue has measures attracting proportionate sanctions for TF against natural persons (see R.5), but as the only available sanction is imprisonment, there are no appropriate sanctions available for legal persons.

199. In the absence of any TF prosecutions or convictions, the effectiveness and dissuasiveness of the sanctions has not been tested.

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

200. The TSTCA permits the Solicitor-General to make an application to take custody and control of property reasonably believed to be terrorist property without first obtaining a conviction as a disruption measure (s12, TSTCA).

201. The opportunity to consider and apply alternative criminal justice measures has not arisen in the context of TF for Niue. However, Niue Police has demonstrated capacity to deport criminal suspects as an alternative to extradition, to prohibit entry of suspicious persons and to use alternative criminal offences to seek appropriate orders from the Courts.

Overall conclusion on Immediate Outcome 9

202. Niue has not identified, investigated or prosecuted any TF cases (and, consequently, not secured any TF convictions), consistent with its low TF risk and unique context. Competent authorities do not have the capacity or capability to identify and investigate TF and rely heavily on regional counterparts to provide intelligence on any terrorist or TF threats pertaining to Niue, and advice and support for TF investigations. Niue's reliance on regional expertise for TF investigation and prosecution is reasonable given its low TF risk, and unique context. However, a lack of operational procedures or frameworks to facilitate the identification, request and application of such assistance may impede the ability for it to be provided in a timely way. Niue does not have procedures for identifying, investigating

and prosecuting TF, and technical shortcomings in Niue's TF offences limit the scope of potential TF cases to be investigated and prosecuted. There are also no sanctions under the TF offence for legal persons. The assessment team heavily weighted the lack of relevant frameworks and procedures, and deficiencies in Niue's TF offences and sanctions, in forming its overall conclusion for IO.9.

203. Niue has achieved a low level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

204. Niue's legal and regulatory framework for implementing TFS is established by the United Nations Act 1946 (UNA), United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulation 2004 (UN Sanctions Regulation) and TSTCA.

205. The UNA gives the Niue Government broad power to make regulations necessary to enable Niue to effectively apply UNSC resolutions. A regulation has been made under the UNA, the United Sanctions Regulation, which addresses UNSCR 1267 to some extent (see R.6). The UN Sanctions Regulation sets out a *de facto* freezing obligation by forbidding dealing with property or funds of entities designated under UNSCR 1267 and successor resolutions (see R.6). Dealing with property of "specified entities" (including every Al-Qaida entity, the Taliban, and every Taliban Entity) is prohibited without lawful justification or reasonable excuse. The definition of "specified entities" does not appear to cover Islamic State and its affiliates. The regulation does not require the Minister to gazette updated lists of designated entities. The offence provisions under the UNA that apply to breaches of the UN Sanctions Regulation impose a *de facto* obligation to freeze without delay because they prohibit dealing with, or facilitating the use of, the asset. Prosecutions for an offence against the regulation may be instituted in any court but only with the consent of the Minister of Foreign Affairs.

206. The parallel asset freezing regime for UNSCR 1267 in the TSTCA is inoperative as it requires the Minister to publish UN lists of terrorist entities (as specified entities) in the Gazette, but this has never occurred. Powers that enable the Solicitor General to apply to the court for a freezing order to take control of terrorist property under the TSTCA are also contingent on the property being owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.

207. Niue does not have a legal or procedural framework to implement UNSCR 1373 and as such does not have its own designation system, does not recognise other jurisdictions' designations, and has not established a competent authority responsible for designating persons or entities pursuant to any UNSCRs. There are no mechanisms or procedures for identifying targets for designation, gazetting, or listing sanctioned individuals, or coordinating with other agencies on designations. In practice, if TF-related sanctions issue arose, the NSC would be required to manage the issue. However, in the absence of a legal or procedural framework, it is unclear how the NSC would be able to effectively respond and do so on a consistent basis.

208. There have been no reported freezing, prohibition and suspicious transactions reports related to sanctioned persons and entities on the part of private sector, which aligns with Niue's risk and context.

209. There has been no supervision of the implementation of TFS by the three reporting entities and no guidance for compliance with TFS (see IO.3).

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

210. Niue's NPO sector is very small, commensurate with the size of Niue's population and economy. The sector is predominantly domestically focused, but some NPOs will occasionally raise money to send offshore for charitable purposes, such as to make donations where emergency relief is required within the Pacific due to a natural disaster, the last one being the volcanic eruption in Tonga.

211. The Incorporated Societies Act 1908 (ISA) governs the incorporation of NPOs, regulating societies comprising 15 persons or more that are associated for any lawful purpose but not for pecuniary gain. NPOs can register with the Registrar of Incorporated Societies within the Department of Justice but registration is not compulsory. Where an entity registers, a range of information is required to be provided to the Registrar as part of submitting the rules of the society, but this does not include information on beneficial ownership. Registered NPOs are required to submit annual returns setting out financial statements. There are NPOs that do not submit reports, but no sanctions have been imposed for failure to submit a report.

212. Niue currently has 46 registered NPOs. The 2017 NRA identified that there were three internationally registered NPOs present in Niue and providing aid during natural disasters. However, at the time of the on-site visit Niue authorities confirmed that there none were operating in Niue. The Trade and Statistics Division of the Ministry of Finance and Planning was, at the time of the on-site, conducting a survey to identify how many NPOs are currently operating in Niue. Most NPOs in Niue appear to be mainly small family, sporting, community, specific interest (e.g., organic farming, fisherman, computers, climate change etc.) or religion-based organisations. The Department of Justice was considering steps to digitalise its records of NPOs. Resourcing the functions of the registry is a challenge.

213. Niue has not conducted an assessment to determine which subset of NPOs fall under the FATF definition or identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse. The 2017 NRA assessed the TF risk in Niue as low but did not specifically examine the nature of threats posed by terrorist entities to NPOs likely to be at risk of TF abuse, as well as how terrorist actors abuse those NPOs. The 2024 NRA update confirmed the low TF risk solely based on a lack of TF investigations and prosecutions.

214. The Niue Government's visibility of the NPO sector has some limitations, based on existing information collected by the Government through various legislative regimes. This information is not up to date as the Department of Justice lacks information on how many registered NPOs are no longer operating, or the quantum of unregistered NPOs operating in Niue.

215. Niue authorities indicate that they do not consider the NPOs on island are vulnerable to misuse for TF purposes. Unusual fundraising outside of small established community groups and clubs would attract attention and any domestic NPO would need to apply to the New Zealand bank to gain access to a bank account. The opening and operation of such accounts would be subject to New Zealand AML/CFT regulation. Funds usually are raised within Niue and not sent offshore; however, funds can be raised offshore to support NPOs in Niue. This is usually in New Zealand through community ties, but sporting clubs can get development funding from the relevant international sporting body. The assessment team agrees that NPOs operating in Niue face a low risk of abuse for TF based on Niue's risk and context, as well as the absence of any international NPOs operating in Niue.

216. No guidance or outreach is provided to NPOs on their vulnerabilities to misuse for TF. The only monitoring of NPOs occurs as part of the requirement for NPOs that have voluntarily registered under the ISA to submit annual returns, but this obligation is not enforced.

217. The assessment team considers that Niue's whole of government approach to emerging issues could be leveraged to address any NPO-related threats, if they arose. Based on the interviews at on-site, there has not been targeted coordination and cooperation with NPOs, but the assessment team considers this is consistent with the risk profile. The assessment team interviewed the largest domestic NPO (Chamber of Commerce) in Niue during the on-site visit and concluded that the NPO appears to have robust governance arrangements and approval processes for grants. This NPO provides annual statements to the Department of Justice each year for auditing.

Deprivation of TF assets and instrumentalities

218. The TSTCA and the POCA provides the legislative framework for the forfeiture and confiscation of terrorist property, and the TSTCA allows for the prohibition of dealing and freezing of assets of designated properties. This legislative framework has major shortcomings and has not been implemented in practice to enable TFS to be implemented without delay (see R.6).

219. There is no evidence of TF activities in Niue and there has been no confiscation of proceeds or assets and instrumentalities involving any terrorists, terrorist organisations or terrorist financiers, which aligns with Niue's low TF risks.

Consistency of measures with overall TF risk profile

220. Niue has reasonably found, through the 2017 NRA and the views of Niue's competent authorities, that Niue's TF risk profile is low. However, Niue has no measures to implement TFS relating to terrorism.

Overall conclusion on Immediate Outcome 10

221. Niue has a small domestic NPO sector that predominantly progresses community-based interests. While Niue is generally aware of the scope and nature of the sector, it has not assessed whether there are any NPOs that are vulnerable to TF abuse. Niue is also not applying controls, outreach and monitoring to those NPOs. The assessment team has given less weighting to these NPO-related deficiencies due to Niue's low TF risk and the size and nature of domestic NPOs. Niue's legal framework

for TF-related TFS has major technical deficiencies that impact on Niue's ability to effectively implement TFS for TF. The responsible Minister has not gazetted a list persons and entities designated under the relevant UNSCRs as 'specified entities', which undermines a basis for TFS implementation. The assessment team concludes that Niue does not have any measures in place to respond swiftly if a match with the UNSC Consolidated List occurred.

4 222. Niue has achieved a low level of effectiveness for IO.10.

Immediate Outcome 11 (PF financial sanctions)

223. Niue has not implemented TFS without delay to comply with UNSCRs related to the proliferation of WMD and its financing. This major deficiency impacts Niue's ability to effectively implement TFS related to PF.

Implementation of targeted financial sanctions related to proliferation financing without delay

224. Niue has no legal framework for implementing PF-related TFS if funds flowed into Niue that are owned or controlled by a designated person or designated entity. The NSC has a broad national security remit that would, in practice, cover dealing with emerging PF threats. These threats would be dealt with on a case-by-case basis, but there is no operational framework specifically for implementing PF-related TFS. This includes the absence of a publicly available procedure for unfreezing funds or other assets of persons or entities with the same or similar name as a designated entity (false positives), and no measures to permit the addition of interest or other earnings accrued under a contract entered into prior to designation (see R.7). There has been no outreach or guidance provided to the three reporting entities on TFS relating to PF.

225. There is no competent authority in Niue responsible for the implementation and enforcement of PF-related TFS. During the on-site visit, competent authorities demonstrated a limited awareness of how TFS measures should be implemented in practice, such as asset freezing or preventing transactions involving sanctioned parties. This limited awareness impedes effective implementation of TFS and weakens Niue's overall preventive framework for PF.

226. The 2024 NRA update rated Niue's overall PF risk rating as low and separately acknowledged medium level PF risks associated with Niue's international shipping registry due to the potential for misuse by sanctioned actors or flag-hopping activities. Outside of the shipping registry there have been no sanctioned entities identified as operating in or moving funds or assets through Niue and no funds have been frozen in connection with TFS related to PF. This is consistent with Niue's risk and context. No trade or financial links have been reported with jurisdictions of concern, such as DPRK, and the two FIs operating in Niue do not have any direct trade links with such jurisdictions.

Niue's shipping registry

227. Niue faces specific threats related to its open, international shipping registry, which was established in 2012. High volumes of international trade, financial and shipping services have been shown to provide proliferators with legitimate and formal financing and commercial channels to hide proliferation activities. Flag-state registration can be abused by UN designated persons and entities to

conceal the identity and nationality of the persons or entities that own or control the maritime vessel. Once the identity and nationality of the owner is concealed, the maritime vessel can be used for storing and moving materials that can spread and/or support WMD/WMD programs. Some jurisdictions, including the DPRK, have been found to also falsify documents, reflag vessels, and switch off automatic identification systems to avoid discovery when illicitly transferring goods.

228. Niue has operated the shipping registry since 2012, with the registry generating over NZD 4 million (approximately USD 2.48 million). There were approximately 126 active vessels registered under the Niue flag at the time of the on-site visit. The registry serves as a source of government revenue, but it also presents potential vulnerabilities to misuse, particularly in relation to PF, given its accessibility to foreign owned vessels and limited local oversight capacity.

229. Niue's shipping registry is administered by a private business operating in Singapore with minimal oversight by Niue authorities. The processes for registration of vessels includes applying TFS screening tools to the vessels, the owners of the vessels and the managers of the vessel. Beneficial owners are screened down to two layers of ownership. If there are beneficial owners of the vessel down to a third level or beyond, the shipping registry will reject the registration application. However, this is not formalised policy. Tools such as Maritime Domain Awareness (MDA) systems and the Tokyo MOU database are used informally, but no SOPs exist for escalating identified issues or handling potential sanctions matches.

230. The Niue shipping registry has been subject of review by the UNSC in relation to two vessels suspected of using Niue's flag to circumvent DPRK-related TFS in 2022. Neither the vessels, the owners of the vessels or the managers of the vessels were designated entities or designated individuals. The typology for the misuse of the two vessels (An Hai 6 and Anni) was similar. An Hai 6 and Anni were previously China-flagged ships sailing coastal routes that were sold to entities registered in the Marshall Islands. This sale occurred a few months before the ships were flagged by Niue for single-delivery voyages to putative purchasers in Japan, with a stopover at Busan for a crew change. Both vessels instead sailed a very different route and arrived in DPRK. Once Niue was notified by the UN about one of the vessels, the shipping registry identified the risks associated with the second vessel and cancelled that vessel's registration in advance of UN notification. As a matter of policy, the shipping registry no longer registers single delivery voyages where the owner of the vessel does not reside or is not domiciled in the destination jurisdiction. A third vessel registered in 2022 was sold to an Indonesian purchaser following a sale by auction pursuant to a Chinese court order for a single delivery voyage from China to Indonesia. The registry was aware that the vessel had been subject to TFS before the sale but had assumed that the auction by Court order had nullified the TFS status.

231. Operating responses to emerging PF-related threats arising from the shipping registry are managed by the SOG in consultation with the relevant members of the NSC. This mechanism was used to respond to the above shipping registry incidents in 2022 and subsequent UN review. The UN review exposed weaknesses in both the initial registration process and the ongoing monitoring mechanisms. In 2023, Niue commissioned an independent audit of registered vessels to determine if the presence of any other vessels had a link to DPRK. The audit reviewed 126 vessels and identified five as having either a name or part of a name similar to the naming conventions applied to vessels with known risks in relation to DPRK sanctions.

232. Niue is engaging with the shipping registry to improve the administration of the registry, specifically the processes for identifying the beneficial owners of vessels and the implementation of screening measures during and after registration. During the week of the on-site visit, the SOG commenced an exchange of letters with the Niue shipping registry setting out the Government of Niue's expectations for the registry in terms of: complying with PF-related TFS; taking action where there is a suspicion of involvement in PF or the evasion of TFS; gathering evidence of the legal and beneficial ownership of registered vessels; and reporting to the Government of Niue any de-registrations or denial of registrations, as well as vessels that could present a significant risk of TFS or PF related TFS evasion. Niue's letter of exchange also provides for a six-monthly meetings between Niue and the registry to discuss any issues relevant to the registry from an AML/CFT and PF perspective. Confirmation of the registry's agreement to these requirements occurred shortly after the on-site visit. While this is a positive development, there was no formalised system to ensure the shipping registry's immediate compliance with UNSCRs in place prior to the end of the on-site visit and the impact of the exchange of letters has yet to be demonstrated.

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

233. Niue has not identified any funds or assets belonging to individuals or entities designated by the UNSC in relation to PF. There have been no instances where reporting entities in Niue have identified assets or funds linked to designated persons or entities.

234. Competent authorities in Niue have a limited understanding of PF requirements and lack specific operational procedures or response mechanisms to address inquiries related to potential evasion, noting there are no freezing measures in place in Niue. The absence of these mechanisms restricts Niue's ability to take timely and appropriate action, should such situations arise, and increase the overall vulnerability of Niue to PF-related threats.

FIs, DNFBPs and VASPs' understanding of and compliance with obligations

235. The three reporting entities regulated under the FTRA do not have explicit legal obligations to implement without delay TFS related to PF.

236. The MVTS agent operating in Niue demonstrated basic awareness of TFS obligations during the on-site visit and relies on its foreign headquarters in another jurisdiction to conduct TFS screening of customers on its behalf. The MVTS agent indicated that, in practice, additional CDD would be conducted if a customer was seeking to remit money in a manner inconsistent with typical remittance behaviour, such as sending funds to jurisdictions flagged by its foreign headquarters as higher risk. However, these measures are part of internal policy rather than a legal obligation under Niue law.

237. In the absence of any legal obligations under the FTRA or related frameworks, the NDB does not conduct TFS screening for PF. However, loan applications are generally made by Niuean residents who are well-known to NDB staff. For foreign applicants, loan approvals require Cabinet authorisation. While checks are conducted as part of the visa application process, these checks do not include screening for TFS or consideration of PF-related risks.

Competent authorities ensuring and monitoring compliance

238. Niue does not monitor and ensure compliance by the three reporting entities with TFS obligations relating to financing of proliferation, noting there is no legal framework for PF-related TFS. Competent authorities also have not issued guidance to reporting entities on PF-related TFS.

Overall conclusion on Immediate Outcome 11

239. Niue lacks a specific legal and procedural framework for implementing PF-related TFS, which impacts the ability of Niue to effectively implement TFS for PF without delay. Operational responses to emerging PF threats are managed by the SOG in consultation with relevant members of the NSC. While this approach is not formalised, it is effective because of the size of Niue. There are specific PF vulnerabilities posed by the Niue shipping registry but there is insufficient oversight of the offshore registry to ensure that sufficient screening and due diligence is occurring as part of the registration process. The Niue Government is in the early stages of taking steps to address these vulnerabilities, but the effectiveness of these steps is yet to be demonstrated. There is no guidance provided to reporting entities on PF risks and PF-related TFS, no mechanism to communicate designations to reporting entities, and no monitoring of compliance with TFS for PF. Competent authorities do not have adequate skills or resources to identify funds or other assets of designated persons and entities and are likely to leverage expertise from regional partners if a matter was identified. However, there are no standards or procedures to guide how the process would be managed.

240. **Niue has achieved a low level of effectiveness for IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) The FTRA regulates entities operating in Niue which fall within the FATF definition of FIs and DNFBPs. The financial sector is very small, comprising two FIs, the MVTS agent and the NDB that provide a limited range of financial services involving a relatively low value of funds. There is one DNFBP, a sole legal practitioner, who provides some trust and company formation services but does not operate a trust account or hold funds on behalf of clients. Niue authorities have concluded that there are no VASPs in Niue.
- b) The three reporting entities demonstrated a reasonable understanding of Niue's low ML/TF risks, consistent with the findings of the NRA. However, reporting entities have some gaps in their understanding of the ML/TF vulnerabilities of the services they provide.
- c) NCEL staff who also work for the MVTS agent, the NDB and the New Zealand banking agent have received AML/CFT training provided by the MVTS agent and banking agent's offshore headquarters. This training covers the more comprehensive AML/CFT controls of the home supervisor but is not tailored to obligations under the FTRA or to Niue's specific risk and context.
- d) There are moderate deficiencies in the legal framework for preventive measures under the FTRA. The two FIs do not comply with obligations under the FTRA but do conduct basic CDD requirements consistent with the AML/CFT laws of New Zealand, which are more robust than the requirements under the FTRA. The MVTS agent also complies with the global AML/CFT program of its foreign headquarters. The DNFBP is only applying basic CDD to clients as part of usual business processes rather than AML/CFT requirements.
- e) There is no supervision in Niue of the two FIs and DNFBP to demonstrate effective implementation of CDD measures.
- f) The two FIs are not specifically implementing risk-based measures noting Niue's risk profile, although the foreign headquarters of the MVTS agent conducts transaction monitoring and screening on behalf of the MVTS agent.
- g) Reporting entities in Niue have never filed a STR with NFIU. The assessment team considers the lack of STR reporting to be consistent with Niue's risk and context but notes that reporting entities do not appear to be reporting suspected scams to NFIU.
- h) The MVTS agent applies internal controls and procedures by following the global, group compliance AML/CFT program of its foreign headquarters. The NDB conducts basic screening when hiring employees using character references and all employees do annual compliance training required by the foreign headquarters of the MVTS agent and the banking agent. The DNFBP does not have any internal controls or procedures to ensure compliance with AML/CFT obligations.

Recommended Actions

- a) Strengthen the legislative framework for preventive measures under the FTRA in line with the FATF Standards.
- b) Provide guidance and enhance outreach to reporting entities to raise awareness of ML/TF vulnerabilities, and enhance understanding of CDD and suspicious activity reporting obligations.

241. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

Immediate Outcome 4 (Preventive Measures)

242. Niue has three reporting entities regulated for AML/CFT purposes under the FTRA - two FIs (NDB and the MVTS agent) and one DNFBP (a lawyer). Currency exchange offices, insurance companies, securities dealers, trust and company service providers, insurance companies, credit unions, payroll service providers, cash-in-transit service providers, dealers in traveller's cheques, real estate agents, accountants, dealers in precious stones or metals, casinos and providers of safe deposit box services are also regulated under the FTRA, but none of these are in operation in Niue. The Niue authorities indicate there are no VASPs operating in Niue.

243. A New Zealand bank is the only bank providing transactional banking services to Niueans as foreign customers. The New Zealand bank has an agent operating in Niue, and the agent and the New Zealand bank are subject to New Zealand's AML/CFT regulatory framework.

244. The assessment team notes the number of reporting entities and scale of their operations in assessing IO.4, as well as Niue's risk and context. Implementation issues have been weighed most heavily for the MVTS agent and the lawyer while noting the overall low ML/TF risk rating for Niue.

245. The same staff within NCEL deliver services associated with the MVTS agent, NDB and the banking agent, with staff generally following CDD requirements under New Zealand's AML/CFT legislation, rather than the requirements under the FTRA. This contributes to some ML/TF risk mitigation and a level of effectiveness for Niue's AML/CFT preventive measures, as CDD requirements under New Zealand's AML/CFT legislation are more robust than Niue's.

Understanding of ML/TF risks and AML/CFT obligations

246. The FTRA provides the legal and regulatory framework for preventive measures and has moderate deficiencies across most requirements (see R.10, 12-16, 18, and 19-20, 22-23). However, the two FIs (NDB and the MVTS agent) conduct CDD based on requirements under New Zealand AML/CFT legislation, which is more robust than the FTRA. The MVTS agent also operates under the global AML/CFT program of the MVTS' foreign headquarters. All NDB customers are required to have a bank account with the New Zealand bank for debiting loan payments. Most draw-downs are paid directly by NDB to the provider of the goods or services under the loan contract.

247. Understanding of ML/TF risks and AML/CFT obligations under the FTRA varies across the three reporting entities. The updated 2024 NRA was completed on 4 December 2024 and has yet to be disseminated to the private sector, but reporting entities have some understanding of the key ML/TF vulnerabilities and risks based on participation in the development of the NRA.³⁰

248. The MVTs agent demonstrated a sound understanding of ML/TF risks during the on-site visit, identifying that Niue's ML/TF risks are low and the main risk indicators for ML/TF specific to Niue would be unexplained wealth and unusual spending activity. Most customers of the MVTs agent are foreign workers (around 400) who remit wages back to families in the Pacific Islands, the Philippines, New Zealand and Australia. Remittances outside of this customer profile would immediately raise suspicions, as would unexplained wealth. The MVTs agent was also able to discuss at interview the risks associated with dealing with high-risk jurisdictions and PEPs as customers and with foreign workers remitting funds offshore. Incoming remittances are generally sent to Niuean residents from family members residing in New Zealand, Australia and the US.

249. While the assessment team agrees with the MVTs agent's assessment that it faces low ML/TF risks, the assessment team notes that the MVTs agent did not appear to understand specific vulnerabilities associated with remitting funds offshore where the recipient may not be the BO of the funds. The MVTs agent considers that none of its transactions involve BOs, as all the customers that send and receive funds are individuals. It is not clear whether the MVTs takes steps to determine whether the customer is sending or receiving funds on behalf of another person. A potential vulnerability is the risk associated with foreign workers remitting funds to jurisdictions where there are NPOs that are vulnerable to misuse for TF. However, the assessment team notes the very minimal value and volume of remittances and the profile of its customers and that all MVTs customers are treated as occasional customers and have their identity verified each time they remit money overseas. Customers are also asked for each transaction the purpose of the transfer of funds and about the destination of the funds.

250. The MVTs agent did not demonstrate an understanding of AML/CFT obligations under the FTRA, but did demonstrate an understanding of AML/CFT obligations under New Zealand's AML/CFT law and the global AML/CFT program of its foreign headquarters, adding to the effectiveness of CDD measures.

251. The NDB is a government owned bank that provides loans for economic development. A total of NZD 14 million (USD 8.4 million) is available for the loans which is funded by the Niue Government. Loans are generally less than NZD 5,000 (USD 3,000) and largely provided to support businesses, purchase vehicles, or renovate/build homes. Employees of NDB also act as the agent for the New Zealand bank providing bank accounts to Niuean residents and the MVTs agent, and the onboarding processes for customers seeking NDB loans follow the CDD requirements of New Zealand legislation rather than the FTRA.

252. The lawyer operating in Niue has a small customer base (usually about 10 clients) and provides some trust and company formation services but none of the legal services set out in R.22. The lawyer demonstrated during the on-site visit an understanding of Niue's low ML/TF risks, and

³⁰ The new AML/CFT supervisor is planning outreach to the private sector on the outcomes of the 2024 NRA.

identified that unexplained wealth, an unclear source of funds, and any unknown customer posed increased risks, which is consistent with the responses from the two other reporting entities and competent authorities. The lawyer did not demonstrate a more nuanced understanding of the ML/TF vulnerabilities posed by the services they provide, but did indicate they occasionally receive some enquires from people located offshore about company formation. These are usually generated by legacy information on the Internet about Niue's offshore financial centre, which was dismantled in 2006. On this basis the lawyer does not accept these people as clients, as there is no legislation to achieve the outcome sought. Other prospective clients have been refused based on the suspicious nature of their enquiries. This does not happen very often but when it did occur no STR was submitted. The lawyer indicated during the on-site visit that CDD is not required for clients, as everyone knows everyone in Niue, which undermines risk understanding and mitigation, but some standard CDD information is recorded as part of standard business processes.

Application of risk mitigating measures

253. The FTRA does not require reporting entities to identify, assess and understand their ML/TF risks and only requires reporting entities to apply minimal risk-based measures. Higher risk scenarios other than PEPs are unusual given Niue's risk and context.

254. NDB's processes and procedures centre on gathering information on the character and financial circumstances of the customer, and the purpose of the loan, to determine the ability of the customer to repay the loan. However, there are other contextual circumstances and operational requirements that mitigate ML/TF risks. The total value of funds available for NDB loans is modest (NZD 14 million/USD 8.4 million) and the average amount loaned small (NZD 5,000/USD 3,000). NDB generally directly disburses the loan funds to the provider of the goods or services sought by the customer (for example, if the customer is seeking a loan to buy a car, NDB will pay the loan money directly to the seller of the vehicle). All loan recipients are also required to have an account with the New Zealand bank for direct debit repayments. The assessment team concludes that, in practice, NDB applies measures that mitigate key ML/TF risks.

255. The foreign headquarters of the MVTS agent conducts ongoing due diligence and sanctions screening of the MVTS agent's customers but the ongoing due diligence is not tailored to Niue's risk and context. The MVTS agent applies a list of higher risk jurisdictions as part of its global AML/CFT program and generally does not remit money on behalf of domestic PEPs. The MVTS agent imposes limits on transactions which aim to mitigate risks, with a daily limit of NZD 9,000 (USD 5,400) for transfers and most transfers are under NZD 500 (USD 300). The annual amount of incoming and outgoing remittances is low, with NZD 133,000 (USD 80,000) remitted out and NZD 100,000 (USD 60,000) remitted in during 2023-2024. The MVTS agent also indicated that structuring of remittances to avoid CTR reporting in Niue would be difficult because two staff members are responsible for all remittances. However, the MVTS agent at interview recognised the need to be aware of vulnerabilities. The assessment team considers that the risk mitigating measures applied by the MVTS agent are likely to mitigate most ML/TF risks.

256. The DNFBP legal practitioner does not consider that the legal services provided pose any ML/TF risks and is not applying any risk mitigating measures in compliance with the FTRA. The legal practitioner collects some CDD information for operational rather than AML/CFT purposes but does

not verify information on the basis that everyone knows everyone in Niue. While the assessment team agrees that the DNFBP faces low ML/TF risks, the assessment team considers that the legal practitioner's lack of compliance with preventive measures poses a ML/TF vulnerability given the nature of some of the services offered. However, some of the legal practitioner's ML/TF risks are mitigated by the fact that they do not operate a trust account and do not hold funds on behalf of clients.

Application of CDD and record keeping requirements

5 257. There are moderate deficiencies in the CDD requirements under the FTRA, including the lack of a requirement to conduct CDD measures for occasional transactions when there are doubts on the veracity of information for existing customers, and no requirements to identify the BO, conduct ongoing CDD, to terminate the business relationship or to consider submitting an STR if CDD is incomplete (see R.10). There are minor deficiencies with the FTRA's record keeping requirements (see R.11).

258. The two FIs indicated at interview during the on-site visit that they conduct CDD when establishing a business relationship with a customer or conducting a transaction with a customer, but do not specifically follow the requirements of the FTRA.

259. The MVTs agent collects customer identification information and verifies this information against reliable and independent identification documents. This CDD is done in accordance with the requirements under the global AML/CFT program of the MVTs agent's foreign parent entity. Every customer is treated as an occasional customer, so CDD is conducted every time a customer is remitting or receiving a transfer of funds. The MVTs agent relies on its headquarters in a foreign jurisdiction to conduct ongoing due diligence, including transaction monitoring. The MVTs agent considers that all its customers are natural persons and did not demonstrate any awareness that a customer could be acting on behalf of a beneficial owner or as an agent on behalf of a third party. On this basis, no CDD related to BOs is conducted by the MVTs agent. The MVTs agent also discussed with the assessment team during the on-site visit instances where it refused to conduct a transaction due to suspicion that the transaction involved a scam.

260. The NDB is conducting basic customer identification and verification adopted from the CDD requirements requirement to be conducted by the agent of the New Zealand bank in accordance with New Zealand's AML/CFT legislation. The ongoing monitoring of customers applied by the New Zealand bank to its customers is also applied to NDB customers, as NDB loan recipients must have a bank account for the repayment of loans.

261. Both FIs have record keeping procedures and records are maintained for six years.

262. The DNFBP is applying and maintaining basic customer identification for operational purposes, but risk-based CDD, including conduct of ongoing due diligence, was not demonstrated. However, there was an instance when the DNFBP refused to facilitate the inquiries of foreign individuals because the inquiries were suspicious in nature.

263. Niue has not conducted any AML/CFT supervision of FIs or DNFBPs so the three reporting entities' compliance with FTRA or the effective implementation of any other CDD measures is not demonstrated. Although the MVTs agent is subject to an online audit by their foreign parent entity every

four years under the global AML/CFT program, with the most recent audit occurring in 2022, the extent to which the MVTs is complying with the global program is not clear, as the outcome of the audit is not shared with NFIU. However, the assessment team notes that the customer, and their circumstances, will usually be known to the service provider because of the size of Niue's population.

Application of EDD measures

264. There are some important technical compliance deficiencies in the obligations for EDD measures (see R.10-19). There is no requirement to perform EDD where the ML/TF risks are higher or to identify and verify BO. The ongoing due diligence obligation is limited to monitoring transactions by paying special attention to transactions that have no apparent or visible economic or lawful purpose. There are also deficiencies for specific measures for PEPs, correspondent banking, new technologies, wire transfers, targeted financial sanctions, and higher-risk countries jurisdictions identified by the FATF. However, the assessment team notes that FIs generally view customers as low risk, which the assessment team considers overall to be consistent with Niue's risk and context.

Politically exposed persons

265. There are moderate shortcomings with the EDD measures that apply to PEPs under the FTRA (see R.12). The FTRA also waives the requirement to comply with the specific measures that apply to PEPs in certain circumstances (see R.1).

266. There are a relatively large number of domestic PEPs in Niue because of the size of the Niue Public Service relative to the population size and extensive family ties within the community. NCEL, using the New Zealand bank's PEP list, is maintaining a PEP database in line with New Zealand's AML/CFT legislation. This is reviewed annually, with the New Zealand bank regularly asking NCEL for further information on the PEPs and their transactions, and seeking verification that payments were made for purposes such as travel.

267. The MVTs agent indicated that no inward or outward remittances had been conducted on behalf of a domestic PEP, as most PEPs choose to use internet banking services using an App provided by the New Zealand bank, which is regulated under New Zealand legislation. The MVTs agent relies on its offshore headquarters to screen for foreign PEPs.

Correspondent banking

268. The FTRA does not impose any special measures for correspondent banking in line with the FATF Standards but there are no FIs operating in Niue that have correspondent banking relationships.

New technologies

270. The FTRA does not impose any requirements for special measures for identifying and mitigating the risks of new technologies. Reporting entities are not implementing any controls for identifying and mitigating the risks of new technologies, noting that the use of new technologies in Niue is very limited. The FTRA does not impose any requirements for special measures for identifying and mitigating the risks of new technologies. Reporting entities are not implementing any controls for identifying and

mitigating the risks of new technologies. However, this is considered proportionate to Niue's current risk and context, as new technologies have not yet been adopted.

Wire transfer rules

269. There are major shortcomings with the requirements for wire transfers under the FTRA (see R.16).

270. Only one FI in Niue, the MVTs agent, conducts cross-border wire transfers. In practice, the MVTs agent indicated during the on-site visit that information on the amount of the transfer, destination, identity of the customer, recipient of the transfer, and transaction number travels with the transfer.

271. The MVTs agent does not apply any *de minimis* threshold to cross-border wire transfers.

Targeted financial sanctions (TFS)

272. The MVTs agent relies on its foreign headquarters to conduct sanctions screening for its customers which adds an important degree of coverage for TFS. However, in the absence of implementation of the designation framework, freezing without delay cannot be enforced in Niue. The NDB and the DNFBP are not conducting sanctions screening, but as the NDB requires loan recipients to have a bank account with the New Zealand bank, sanctions screening is carried out on NDB customers by the New Zealand bank.

High risk jurisdictions

273. The FTRA does not impose any requirements to implement measures with respect to higher-risk countries identified by the FATF. The MVTs agent maintains a list of higher risk jurisdictions, which is provided to them from its offshore headquarters. This is done based on the requirements of the AML/CFT law applying to the foreign headquarters. This approach, while driven by offshore compliance requirements, appears effective and consistent with Niue's low-risk context and the minimal exposure of its financial sector to higher-risk jurisdictions.

Reporting obligations and tipping off

274. FIs and DNFBPs have obligations under the FTRA to report STRs to NFIU and are prohibited from tipping off.

275. No STRs related to ML or TF have ever been filed by FIs or DNFBPs with NFIU. The assessment team considers that the lack of STR reporting is generally consistent with Niue's risk and context but notes that FIs have occasionally rejected transactions due to suspicious circumstances, such as potential scams. This non-reporting may be attributed to inadequate systems for identifying suspicious transactions or not understanding what 'red flags' they should be looking out for. There has also been no effective outreach conducted on AML/CFT reporting obligations to reporting entities, including STR obligations.

276. The extent to which reporting entities understand how to apply measures to prevent tipping off from occurring has not been tested given the absence of STR reporting.

Internal controls and legal/regulatory requirements impeding implementation

277. The MVTS agent's internal controls and procedures are based on the MVTS' global, group wide compliance program, rather than the FTRA, so they do not respond to Niue's specific risk and context but are more robust than the requirements under the FTRA. The MVTS agent is required to submit self-certification to its foreign headquarters regarding its compliance with the global AML/CFT program. As noted above, the MVTS agent is subject to an online audit for compliance with this program by their foreign parent entity every four years. Any NCEL employee that does not complete the annual online compliance training under the MVTS' global AML/CFT program is locked out of MVTS-related computer systems.

278. The NDB is checking a customer's credit history and financial circumstances, training programs, and operational reconciliation. There are no other internal measures in place such as compliance and audit arrangements. However, this is considered proportionate given NDB's business model, which primarily offers small value loans and requires documentation supporting the purpose of loan transactions.

279. NDB and the MVTS agent have processes in place for screening employees that are based on character references, as applicants will generally be known to the employer and everyone in Niue knows who has a criminal record. Criminal record checks are not conducted on foreign workers as this is done as part of the visa application process.

280. The DNFBP has no internal AML/CFT controls and procedures.

281. No issues were identified with legal or legislative requirements that impede implementation of FATF requirements.

Overall conclusion on Immediate Outcome 4

282. There are moderate deficiencies in Niue's legal framework for AML/CFT preventive measures under the FTRA. The two FIs have a general understanding of ML/TF risks and appear to be implementing CDD measures based on requirements prescribed under foreign legislation, which is of a higher standard than the FTRA. The MVTS agent implements some risk-based measures and internal controls supported by the foreign headquarters under its global AML/CFT program that the assessment team are likely to reasonably mitigate ML/TF risks. NDB does not implement mitigating measures commensurate with their ML/TF risks, or apply ECDD or internal controls and procedures, noting that all NDB customers are also customers of a New Zealand bank regulated for AML/CFT purposes under New Zealand law. However, in the absence of domestic AML/CFT supervision, the extent to the two FIs are effectively implementing preventive measures and mitigating risks is difficult to determine. The sole DNFBP collects basic CDD information for operational purposes but does not implement any risk-based measures or other preventive measures. While the absence of STR reporting under the FTRA is generally consistent with Niue's risk and context, the lack of guidance and outreach on STR obligations,

and the lack of a requirement to report attempted suspicious transactions, may hamper some STR reporting.

283. **Niue has achieved a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- a) Niue does not have a formalised licensing or registration framework to prevent criminals from controlling the two FIs. Niue has an annual business licensing process which applies to FIs and DNFBPs. This process enables the Licensor to refuse to grant, or to renew a licence, if they are reasonably of the opinion that the applicant is not a fit and proper person to hold such a licence. However, this test does not more broadly prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a financial institution. NFIU can prevent any person who is unsuitable from controlling or participating, directly or indirectly, in the directorship, management, or operation of a FI or DNFBP, but there are no established processes associated with this power.
- b) Niue first appointed an AML/CFT supervisor in September 2024 (two months prior to the on-site visit) so there has been no risk-based supervision of the three reporting entities. No AML/CFT supervisory tools, procedures, or manuals have been developed to date. The AML/CFT supervisor is also the head of the FIU and a senior customs officer and does not have any staffing allocation to support the supervisory function. This level of resourcing does not support effective AML/CFT supervision.
- c) The three reporting entities are not supervised for the implementation of TFS requirements and have not been provided with any guidance or outreach on TFS.
- d) The dissuasiveness and effectiveness of sanctions under the FTRA for non-compliance with AML/CFT obligations remain untested due to the absence of supervision of reporting entities.

Recommended Actions

- a) Provide NFIU with adequate human and IT resources to implement risk-based supervision for reporting entities appropriate to risk and context and develop a strategy for education, outreach, and enforcement.
- b) Require licensing or registration for all reporting entities to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in financial institutions or DNFBPs.
- c) Provide updated guidance and feedback to reporting entities to promote their level of understanding of ML/TF risk and AML/CFT obligations that is informed by the results of supervisory activity and develop basic supervisory manuals and AML/CFT guidance materials for staff.
- d) Provide clear guidance and conduct outreach to the public and private sectors regarding TFS for TF.

284. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28 & R.34 & 35 and elements of R.1 and 40.

Immediate Outcome 3 (Supervision)

285. In September 2024, the head of NFIU was formally designated as the AML/CFT supervisor (referred to as the 'Banking Supervisor' in the FTRA) for reporting entities regulated under the FTRA. Prior to September 2024, there was no supervision of reporting entities for compliance with AML/CFT obligations under the FTRA. NFIU has one staff member who serves as head of NFIU, AML/CFT supervisor and a senior customs officer.

286. Niue has two FIs and one DNFBP regulated as reporting entities under the FTRA. The FIs are not core principles institutions: one is a MVTs agent for an international remittance company based in a foreign jurisdiction and the other is NDB. A New Zealand bank provides all transactional banking services to Niueans as foreign customers through an agent based in Niue. The agent of the bank is not operating as a FI in Niue and any services provided to Niueans by the New Zealand bank are regulated under New Zealand AML/CFT legislation. There are no VASPs operating in Niue. The sole DNFBP in Niue is a lawyer offering a limited range of services, some of which fall under the FATF Standards.

287. When assessing the effectiveness of AML/CFT supervision, the assessment team gave the most importance to the MVTs provider, as the only FI conducting cross-border transactions. Some weight was given to the sole DNFBP, a lawyer, however less importance was given to the NDB.

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

288. Niue does not have robust licensing or registration controls to prevent criminals or their associates from holding or controlling FIs, DNFBPs or VASPs (see R.26). The NFIU has the power to prevent any person who is unsuitable from controlling or participating, directly or indirectly, in the directorship, management, or operation of a FI or DNFBP, but there are no processes or procedures in place for exercising this power.

289. Niue has an annual business licensing process that applies to FIs and DNFBPs that enables the Licensors to refuse to grant, or to renew a license if they are reasonably of the opinion that the applicant is not a fit and proper person to hold such a license. Niue Treasury advised the assessment team at the on-site visit that staff will liaise with Niue Police if the applicant has a criminal record, noting that Niueans with criminal records are generally well known to everyone, and that applications have been refused on character grounds. However, Niue has not provided the assessment team with any further details on how the fit and proper person test is conducted or any statistics on registration refusals on the grounds of a failed fit and proper person test. There are no processes to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a FI or DNFBP as part of this process. However, the risk of criminal infiltration of reporting entities more generally in Niue is mitigated to some extent by the low crime rates, low ML/TF risks and limited scope of financial and DNFBP services available in Niue.

290. NDB is a government owned bank operating under its own legislation and is not separately licensed or registered in Niue. The general manager and the nine other employees are employed under the provisions of the Niue Development Bank Act 1983. The Board of the NDB can employ a suitably qualified general manager and employees on such terms and conditions as it may determine. While no fit and proper person checks are conducted, Board members would generally be aware if any employees had a criminal history because of the size of the population. This process does not meet the FATF Standards but allows for some level of scrutiny. Character references are obtained for Niuean workers. The NDB has the authority to dismiss employees on the grounds of misconduct or neglect of duty.

291. The MVTs agent operates a remittance terminal in the premises of NDB, with NCEL staff delivering the services. The MVTs agent, NCEL and NDB hold a business license. Fit-and-proper person considerations are taken into account as part of renewing business licenses annually, but these focus on whether the applicant is known to have a criminal history or not, and do not include any broader controls particularly to prevent associates of criminals from holding or controlling the businesses.

292. There are no professional licensing requirements for the sole DNFBP in Niue, a lawyer, but the DNFBP is required to obtain an annual business licence. The lawyer is a registered company in Niue, but there is no requirement for the company registry to obtain information on beneficial ownership for the company and no professional standards regulating the conduct of the lawyer. The legislated requirements and entitlements for lawyers to represent a party before the High Court infer some responsibility for the professional standards of lawyers (s80, Niue Act 1966). The CLO advised at the on-site visit that, in practice, the CLO would report misconduct on the part of the lawyer to the court to determine whether the lawyer is a fit and proper person to appear before the court and whether the lawyer should continue to have leave to appear before the court.

293. There are no other DNFBPs operating in Niue. A limited range of gaming activities are permitted in Niue, but any gambling must be conducted pursuant to a permit secured from Niue Police under the Gambling Regulations 2024. The only gambling services that a permit can be applied for are raffles, housie/bingo, and card games and the gambling permit may be issued only for a one-off gambling activity or as an annual permit for a maximum of five gambling activities in the relevant year. No permits have been issued for card games to date. Permits are only issued where the applicant is conducting the gambling activity to raise funds for a community benefit and there are limits on the cash prize that can be offered for a single gambling activity (USD 119), the number of tickets that can be sold in a raffle and the maximum cost of a ticket, and on the maximum amount a participant can spend on an activity (USD 300). The Niue Police indicated at the on-site that it is usually called on to draw raffle prizes. On this basis, the assessment team agrees with Niue authorities that there are no casinos operating in Niue and no gambling services provided that pose high ML/TF risk, and that the risks associated with the gambling services permitted are mitigated. Niue Police has never conducted an investigation related to a breach of the Gambling Regulation.

294. There are no accountants, trust and company service providers (other than the lawyer) or dealers in precious stones or precious metals operating in Niue.

Supervisors' understanding and identification of ML/TF risks

295. Niue's supervision of reporting entities commenced two months before the on-site visit with the appointment of the head of NFIU as the AML/CFT supervisor in September 2024.

296. While the head of NFIU actively contributed to the development of the 2024 update to the NRA and demonstrated familiarity with key ML/TF risks at the on-site, they did not demonstrate an understanding of inherent and residual risks associated with the three reporting entities operating in Niue, perceiving that the three reporting entities do not represent any significant ML/TF vulnerabilities. However, the head of NFIU (as the AML/CFT supervisor) plans to conduct a risk assessment of reporting entities to support the development of a supervision strategy.

297. NFIU has commenced engagement with the two FIs to raise awareness of their AML/CFT obligations. However, active engagement with the sole DNFBP in Niue has not yet commenced.

Risk-based supervision of compliance with AML/CFT requirements

298. Niue has not implemented risk-based supervision to monitor compliance with AML/CFT requirements for the two FIs and sole DNFBP regulated under the FTRA. The AML/CFT supervisor has only recently been appointed and is still in the process of developing the necessary institutional capacity and procedures. There are no supervisory tools or a framework for risk-based supervision and no supervisory manuals, sector risk assessments, or inspection protocols are in place. No supervisory activity has been conducted relating to compliance with AML/CFT obligations under the FTRA.

299. The NDB is subject to Board oversight and annual audits by the Auditor General of New Zealand. NDB is subject to the FTRA but does not comply with obligations under the FTRA. NDB generally follows the CDD requirements under New Zealand's AML/CFT law, as NCEL staff delivering the services of NDB and MVTs agent complete employee training conducted in accordance with New Zealand's AML/CFT legislation. However, the AML/CFT supervisor has no visibility of the robustness of any CDD conducted by the two FIs or the extent to which the CDD is mitigating ML/TF risks.

300. The AML/CFT supervisor is aware that the MVTs agent operates under the global AML/CFT compliance program of its foreign headquarters. However, the AML/CFT supervisor does not know the extent to which the MVTs agent complies with that program, or with the FTRA. The locally employed staff of the MVTs agent participate in annual compliance training as part of the foreign parent company's global program. If this training is not completed, staff are locked out of the MVTs computer systems. The MVTs agent is audited for compliance with the global AML/CFT program by the foreign headquarters online every four years. The MVTs agent has not conducted a localised risk assessment tailored to its Niue operations.

301. There has been no supervision, outreach or guidance provided to the three reporting entities on the issue of TFS relating to TF. The MVTs agent relies on its foreign headquarters to conduct TFS screening. The DNFBP and NDB did not demonstrate at the on-site visit an awareness of TFS, and they are not conducting TFS screening.

302. There has been no supervision of the lawyer's compliance with AML/CFT obligations under the FTRA.

Remedial actions and effective, proportionate, and dissuasive sanctions

303. While the FTRA provides for proportionate sanctions for non-compliance with AML/CFT obligations, Niue has not yet implemented supervision to ensure compliance, leaving the effectiveness and dissuasiveness of these sanctions untested. In addition, as noted in R.35, the sanctions in the FTRA apply to legal entities (bodies corporate), but there is no provision for sanctions against directors or senior management.

Impact of supervisory actions on compliance

304. Niue has not conducted any supervision of reporting entities for compliance with AML/CFT obligations under the FTRA. On this basis, Niue has not demonstrated that supervisory actions by NFIU have significantly influenced reporting entities' compliance with the FTRA. In 2023, the Reserve Bank of New Zealand conducted an AML/CFT on-site inspection of the agent of the New Zealand bank operating in Niue and did not identify any AML/CFT compliance concerns in terms of the agency relationship with the Niue Government.

305. The AML/CFT supervisor's efforts since their appointment in September 2024 have focused on preliminary engagement with the three reporting entities to raise awareness of their AML/CFT obligations. While substantive, risk-based supervision tailored to Niue's context has not yet commenced, these early steps are encouraging.

306. The AML/CFT supervisor is a part-time role with no additional staff to support the supervisory functions. The assessment team considers that additional staffing, proportionate to Niue's risk and context, are required to establish Niue's AML/CFT supervisory function and effectively implement risk-based supervision.

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

307. NFIU has initiated engagement with the two FIs regulated under the FTRA to raise awareness of domestic AML/CFT obligations and ML/TF risks. However, engagement with the sole DNFBP in Niue remains pending. There is guidance (a frequently asked questions factsheet) available on STR and CTR reporting covering the 'what, when, why and how' of STR and CTR reporting which was developed in 2009. However, the guidance is not available on the Government of Niue website and the three reporting entities indicated at the on-site visit that they were not aware of the documents.

308. The three reporting entities were interviewed during the development of the 2024 NRA update. During the ME on-site, the MVTs agent demonstrated a reasonable understanding of ML/TF risks, particularly in relation to high-risk jurisdictions and PEPs and CDD obligations under New Zealand's AML/CFT legislation rather than the FTRA. The MVTs agent is supported by a global AML/CFT compliance program administered by its foreign-based parent company and applies to customers CDD requirements consistent with New Zealand's AML/CFT legislation. Staff receive annual compliance training based on AML/CFT requirements under New Zealand law and are subject to access

restrictions in the system if training is incomplete. However, the MVTs agent has not conducted a Niue-specific risk assessment and has not submitted any STRs to the NFIU in the past ten years, despite suspicions of possible scams. The MVTs agent's reliance on global training that lacks Niue-specific content is likely to generate vulnerabilities.

309. The NDB does not have a dedicated AML/CFT compliance function and has not been subject to risk-based supervision. Staff collect identification and financial documents from loan applicants consistent with the CDD performed on the customers of the MVTs agent and banking agent, but these checks are primarily to assess credit risk. There is no specific screening or transaction monitoring occurring from an AML/CFT perspective. However, all customers must have a bank account with the New Zealand bank and all loan funds are paid directly into the New Zealand bank account. Repayments of the loan are also deducted directly from the New Zealand bank account. The opening and operation of these accounts, and the transactions related to the loan, are subject to CDD, screening and monitoring requirements under New Zealand's AML/CFT legislation, mitigating some of the ML/TF risks posed by NDB's non-compliance with the FTRA.

310. The sole DNFBP is a legal practitioner who provides limited legal services, some of which fall under the FATF Standards. The lawyer demonstrated minimal awareness of AML/CFT obligations under the FTRA or of the specific ML/TF threats associated with legal services.

Overall conclusion on Immediate Outcome 3

311. Niue does not have strong market entry controls for FIs and DNFBPs to prevent criminals and their associates from infiltrating the sectors. The annual business licensing process mitigates this vulnerability to some extent, and NCEL, the MVTs agent and NDB require a business license. However, the fit and proper person test applied under this process focuses on criminal history of the applicant and does not include broader controls to prevent associates of criminals from holding or controlling the business. Niue has not conducted any risk-based supervision of reporting entities and the AML/CFT supervisor has only just commenced engagement with the two FIs to raise awareness of AML/CFT obligations. No supervisory actions, such as on-site or offsite inspections or risk-based assessments to understand the inherent and residual risks of reporting entities, have been conducted. The AML/CFT supervisor has no visibility of the extent to which the three reporting entities are implementing preventive measures commensurate with their risks. The NFIU does not have sufficient staffing resources to establish a supervisory function and implement risk-based supervision of compliance with AML/CFT requirements.

312. **Niue has achieved a low level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Niue has not assessed the ML/TF risks associated with all forms of legal persons or arrangements. The vulnerability of legal persons and legal arrangements to misuse is not well understood by competent authorities, with some competent authorities conflating legal ownership and beneficial ownership.
- b) Information about the creation and types of legal persons in Niue is available in part from the Companies Office and elsewhere online.
- c) The Companies Office collects basic information on legal persons for the company register, which is publicly available, but does not check or verify filed information. There is no legal or other system for collecting information on beneficial ownership for legal persons or legal arrangements. This impacts on the ability of domestic competent authorities to obtain timely access to accurate and up to date information on beneficial ownership, and the ability of domestic competent authorities to share information on beneficial ownership with foreign counterparts.
- d) Niue has no visibility of the nature or activities, and their nexus with Niue, of the two international business companies re-instated by the Court, following the repeal of relevant offshore financial centre legislation in 2006.
- e) There are no mechanisms to ensure that bearer share warrants and nominee director arrangements cannot be misused for ML/TF purposes.

Recommended Actions

- a) Identify risks posed by all types of legal persons able to be created and operating in Niue and build awareness amongst key stakeholders of the vulnerabilities and risks associated with misuse of legal persons.
- b) Require legal persons and trustees of legal arrangements to maintain adequate and accurate beneficial ownership information and enhance the capability of the Companies Office to verify basic and beneficial ownership information and carry out enforcement action for non-compliance.
- c) Ensure the Companies Office implements and maintain effective frameworks for monitoring and enforcing compliance with obligations to maintain and report accurate and up to date basic and beneficial ownership information.

- d) Strengthen the legislative framework for trusts to mitigate the risk of exploitation by foreigners for tax evasion purposes and implement reforms to ensure the transparency of legal arrangements and provision for timely access to adequate, accurate and current basic and beneficial ownership information by competent authorities.
- e) Identify the ownership and nature of the activities of the two international business companies re-instated by the Court (post 2006 legislation repeals) and mitigate any associated ML/TF risks.
- f) Implement measures to mitigate the ML/TF risk associated with the misuse of nominee directors by applying one or more of the mechanisms set out in paragraph 13 of the Interpretive Note to Recommendation 24 of the FATF Standards.

313. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The recommendations relevant for the assessment of effectiveness under this section are R.24 & 25, and elements of R.1, 10, 37 and 40.

Immediate Outcome 5 (Legal Persons and Arrangements)

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

314. Legal persons in Niue consist of: (a) public or private domestic companies; (b) foreign companies (overseas companies under Part 11 of the Companies Act 2006 and international business companies which were repealed under s349 but have been restored under ss276 of the Companies Act 2006); (c) partnerships (including general, limited liability and special partnerships); and (d) incorporated societies. The different types, forms and basis features of legal persons in Niue are set out in the Companies Act 2006 (Companies Act), the Partnership Application Act 1994 (Partnership Act), and the Incorporated Societies Act 1908 (Incorporated Societies Act). The legislation to create these legal persons is publicly available on the government website.³¹ Two international business companies are companies that were deregistered when Niue repealed legislation relating to the offshore financial centre in 2006. These two companies were restored by Court order to the Register under the Companies Act, after 2006, to enable them to deal with assets pending dissolution.

315. The Companies Office of Niue, which is part of the Treasury Department (Treasury), is responsible for managing the registration of domestic and foreign (overseas and international business) companies. The Registrar of Companies receives all applications for incorporation of companies and is required to maintain a company register. Niue authorities have arrangements in place for the New Zealand Ministry of Business and Innovation to maintain this register. The registration of companies is performed manually in Niue at the Companies Office and the documents are then scanned and sent to New Zealand by email.

316. Information on the creation and types of legal persons, including companies (local and foreign) is also available to the public from the Companies Office. The company register can be partly

³¹ <https://www.gov.nu/information>

viewed on the Companies Office website. The website also includes information about forming a company.

317. At the time of the on-site visit there were 61 companies incorporated in Niue, including: 57 registered domestic companies and four foreign companies (two overseas companies and two restored international business companies). There are 46 registered incorporated societies. There are no mechanisms in place to check or verify the information filed with the Companies Office and legal persons are not required to collect and hold up-to-date information on beneficial ownership beyond the direct shareholder/s.

318. Companies must first be registered as a company with the Companies Registrar before they can seek a business licence. The assessment team was advised at the on-site that there are 260 registered businesses in Niue with most being sole traders or small family businesses with minimal turnover. The business licensing process is managed by the Taxation Division of Treasury and the Business Licensor is also the Companies Registrar. Business licences are processed for companies (local or foreign), partnerships and sole traders through the Niue Trade Portal.

319. Incorporated societies may register voluntarily with the High Court of Niue, which maintains the Incorporated Societies Register.

320. Information about the creation and types of trusts is set out in the Trusts Act 1994 and the Trustee Act 1956, and the Trustee Companies Act 1994, which are publicly available on the government website.³² Common law trusts can also be established in Niue.

321. Niue authorities are aware of three trusts operating in Niue:

- a. The Niue Ocean Wide Trust (NOW trust): This is a foreign trust set up under the Charitable Trusts 1957 of New Zealand for the purpose of raising donations for the environmental protection of Niue's oceanic waters and is not required to be registered in Niue.
- b. The Matavai Property Trust: The owners of the Matavai Resort are resident in New Zealand; however, this trust is registered with the Registrar of the Niue High Court.
- c. The Niue Government Ekalesia Kirisiano Niue Charitable Trust: This is a Government trust under the Trusts Act 1994 which took over a charitable purpose (church/missionaries) and is registered with the Registrar of the Niue High Court.

322. Apart from these three trusts, Niue authorities are unaware of how many domestic or foreign trusts are in existence in Niue. The lawyer providing legal services does assist with the establishment of trusts (usually small family trusts), but trusts can be established under the common law or under the trust-related legislation without legal assistance. Competent authorities would be able to access any records held by the lawyer exercising their information gathering powers (see R.31). Domestic trusts can register voluntarily with the High Court, but only two have done so. Tax authorities are also unaware of any trusts, but the lawyer operating in Niue indicated they have assisted with the creation

³² <https://www.gov.nu/information>

of family trusts. There are no legislative requirements or measures in place to require transparency of beneficial ownership in relation to trusts.

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

323. The level of understanding of the ML/TF risks posed by the different types of legal persons that can be established in Niue varied across competent authorities, with some competent authorities conflating legal ownership with beneficial ownership and demonstrating little understanding of the vulnerability of legal persons and arrangements to misuse for criminal purposes. The NRA 2017 did not assess the ML/TF risks associated with domestic legal persons, only rating the number of predicted future cases.

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324. The 2024 NRA update assessed the overall ML risk for “company formation” was low, but does not discuss the threats, mitigation, and vulnerability of legal persons. There is also no discussion in the 2024 NRA of the risks posed by a lack of transparency in beneficial ownership. However, the assessment team agrees that the risk of misuse of legal persons is likely to be low within the context of Niue because of the size of the economy, limited investment options, limited options for conducting cross-border transactions, inability to access a bank account in Niue (and therefore subject to more stringent CDD as a foreign customer of a New Zealand bank) and low ML/TF risk profile, including the extremely low number of proceeds generating offences.

325. Niue established an International Business Companies Registry in 1994, which allowed for offshore companies in Niue. By 2006, the enabling legislation had been repealed and all licences under the scheme were revoked, effectively dissolving all registered international business companies. The assessment team found no evidence of any issues associated with the closure of the registry that pose ML/TF risks for Niue. However, Treasury has no visibility of the activities of the two international business companies deregistered in 2006 and subsequently restored as foreign companies in Niue. The ML/TF risks posed by these international business companies are unclear, but there are limited opportunities for foreign investment in Niue because of the size of the economy and limited investment options, including the inability to purchase real estate.

Mitigating measures to prevent the misuse of legal persons and arrangements

Legal persons

326. Niue has implemented some measures to mitigate the risks of ML/TF for legal persons but there remain areas of vulnerability.

327. Niue’s Companies Office is the central registry for company registration where documents are manually submitted and information about the name, registered address, financial status and basic ownership of the proposed company are captured during the registration process. All applications for registration are reviewed by the Financial Secretary and once approved, the registration is recorded in the registry. There are, however, no mechanisms in place to check or verify the information filed with the Companies Office.

328. No information on the beneficial ownership of legal persons is collected except for the name of the direct shareholder, and no beneficial ownership information is verified by the registry.

329. The only publicly searchable fields on the website are the names of the company and the company directors.

330. Companies are required to file annual returns which should include accurate and current basic information. Annual returns do not include information on beneficial ownership. The New Zealand website provider does provide a list to the Niue Companies Office of all companies who have failed to file their annual returns.

331. All businesses operating in Niue must be licensed by Treasury's Taxation Division. All businesses seeking registration must have a physical address in Niue and provide information on their funds and assets. Application forms must be certified by a lawyer or Justice of the Peace which encompasses verifying the identity of the person making the application. Foreign applicants need to fulfil visa and immigration requirements before they operate, which include criminal history checks. Applications are approved by the Financial Secretary and sometimes reviewed by Customs. The business application process is a public one, so objections can be made. Some businesses have been rejected because of the number of similar businesses already operating in Niue or on character grounds. Records relating to the business registration process are kept for seven years. However, the extent to which Treasury would collect and verify information about the legal and beneficial ownership of legal persons is unclear. As at 5 December 2024, there were 208 business licences issued in Niue.

332. Legal persons operating in Niue seeking access to a bank account in Niue only have the option of applying to the New Zealand bank for an account as a foreign customer and are subject to CDD in accordance with obligations under New Zealand's AML/CFT legislation. The transactions conducted using these accounts are subject to monitoring by the New Zealand bank (see IO.4). Information collected by the Niue-based agent of the New Zealand bank on such customers is maintained on a secure Citrix platform shared with the New Zealand bank, in the same manner as a branch office in New Zealand collects and records information and accesses information to serve its customers. Competent authorities may exercise relevant powers to seek information (production orders, search warrants) collected by NCEL, but such requests would be dealt with by the New Zealand bank as the principal in this agency arrangement.

333. Bearer shares are not permitted in Niue as companies are required to identify shareholders, their address details and number and class of shareholdings, and treat the entry of the name of a person in the share register as holder of a share as evidence that legal title to the share vests in that person. This means that the registered holder of a share is the only person entitled to exercise the right to vote attaching to the share, receive notices, receive a distribution in respect of the share; and exercise the other rights and powers attaching to the share. These arrangements also partially mitigate the risks associated with bearer share warrants and nominee shareholders. Niue has not provided information to demonstrate that there are any mechanisms in place to prevent the misuse of nominee directors. While the overall risk of misuse of legal persons in Niue is considered low, and the Companies Act 2006 (s73) makes provision for the liability of 'shadow' directors, there are vulnerabilities generated by the lack of mechanisms to prevent the misuse of nominee directors in

circumstances where information filed with the Companies Office is not verified and in the absence of collection of any beneficial ownership information.

Legal arrangements

334. The authorities in Niue are unaware of how many domestic or foreign trusts have been established under Niuean law, other than the three trusts identified under core issue 5.1, and little understanding of their vulnerability to misuse. Authorities are unaware of how many foreign trusts have been settled in Niue, or are managed from, Niue.

335. Domestic trusts can be established under the Trustee Act 1956 (Trustee Act) or under the common law. The Trustee Act only imposes measures for the management of the trust, including general powers, indemnities, the appointment and discharge of trustees and powers of the court to deal with trusts and trustees. Domestic trusts can be formed under the common law, but this is unusual.

336. Niue does not have measures in place to mitigate ML/TF risks for domestic trusts. There is no legal or other system for collecting information on beneficial ownership and control of trusts, and beneficial ownership is not required to be obtained by a party so it can be made available to authorities as needed. However, any trustee of a domestic trust in Niue would need to apply for a bank account with the New Zealand bank to operate the trust, and the onboarding of the trustee and operation of the bank account would be subject to New Zealand's AML/CFT laws, mitigating some of the risks associated with domestic trusts. Any trust operating a business would need to secure a business license, but the extent to which Treasury would collect and verify information on the trustee and beneficiaries of trusts is unclear. The assessment team also considers that, in view of the size of Niue's population and economy, competent authorities and reporting entities would be aware if domestic trusts were widely operating in Niue and that any domestic trusts in existence are likely to be small family trusts.

337. Niue's legislative framework for trusts established by foreign settlors (referred to here as "foreign trusts") poses ML vulnerabilities for Niue, as it enables Niue to be potentially used by foreigners to avoid tax in their home jurisdictions. The Trusts Act provides for the establishment of domestic trusts which do not provide benefits to Niuean residents or Niuean owned companies and entities. Section 65 of the Trusts Act provides that Niuean trustees are exempt from filing tax returns if the settlor is not resident in Niue during the tax year, none of the beneficiaries are resident in Niue during the tax year, and the trust property does not include any land situated in Niue.

338. The confidentiality provisions that apply to trustees of domestic and foreign trusts impede the transparency of trusts and the ability of competent authorities to access information on basic and beneficial ownership (see below).

339. The Government of Niue has established the NOW Trust under the Charitable Trust Act of New Zealand. The decision to register the NOW Trust under New Zealand law was made to provide more certainty to those wishing to contribute to the objectives/purposes of the NOW Trust, being preservation of Niue's marine environment.

340. At the time of the on-site visit, Niue was considering reforms to the legislation providing for the creation and operation of trusts in Niue.

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

341. Information collected as part of the registration process for domestic and foreign companies is included on the company register. This includes: the name of the company; the full names and residential addresses and postal addresses of the directors at the date of the application; the full address of the place or principal place of business in Niue; postal address in Niue; evidence of incorporation; and the full name of one or more persons resident or incorporated in Niue who are authorised to accept service in Niue of documents on behalf of the foreign company, and the postal address and residential or business address of each those persons. Partnerships can register on a voluntary basis and any application for registration must include the deed or written agreement of the partnership as prescribed by section 5 of the Partnership Act.

342. Societies are required to provide the information on basic regulating powers, and the signature and address of each subscriber to the society as part of registration (s7, Incorporation Societies Act). The register of Incorporated Societies includes the name of the society, its registration number, date of incorporation and name of its contact person. Some information on legal persons is also collected as part of the business licensing process, including: full name and address; information on whether the business is a sole operator, partnership, family business or incorporated company; and information on the nature of the business. This Registrar of Incorporated Societies does not verify the information provided as applicants are known members of the community.

343. No information on beneficial ownership is collected as part of forming and registering legal persons.

344. Foreign enterprises are permitted to register as an overseas company once approved by Cabinet. A range of information is collected as part of this registration process, including: name of the enterprise; address of its registered office and principal place of business; proposed activities; names and addresses of its shareholders, or partners, directors, executive officers, secretary, accountant and auditor; the legal and beneficial ownership of authorised, issued and paid-up capital, and the number, class, nominal and paid-up shares held by each shareholder. None of this information is verified.

345. In Niue, the competent authorities are legally able to obtain and have access to the data held by the Companies Office under provisions in the POCA, TSTCA and the FTRA and the Companies Act. They are also empowered to obtain information directly from companies using investigation powers such as search warrants and production orders.

346. Currently the Companies Office does not have any MOUs or SOPs for the sharing of information with LEAs in Niue. Based on the assessment team's meeting with the Department of Treasury and the Companies Registrar, LEAs would need provide a search warrant or court order before information would be released by the Companies Office (other than for information that is available publicly).

347. The ability of competent authorities to access beneficial ownership information in a timely manner is constrained by the absence of any requirement for legal persons to record this information or for reporting entities to identify and verify the beneficial owners of legal persons under the FTRA.

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

348. There are minimal mechanisms for collecting basic or beneficial information on domestic and foreign trusts that can be established or operate in Niue. Reporting entities do not have obligations under the FTRA to collect information on beneficial ownership when establishing business relationships or conducting a transaction with a customer that is a trustee/trust. There is a general obligation for trustees to keep accurate accounts and records of their trusteeship under the Trusts Act. In respect of domestic trusts under the Trustees Act there are no specific provisions for the collection, maintenance or disclosure of basic or beneficial ownership information and the applicable principles would be derived from common law jurisprudence in relation to fiduciary obligations.

349. Where a trust registers with the High Court, the Register will include the name of the trust, the name of the settlor and the name of the beneficiary (or the purpose for which the trust is established), but registration is voluntary and not mandated at all for domestic trusts under the Trustees Act. To date only two trusts have been registered.

350. The limited availability of information on beneficial ownership of legal arrangements means it cannot be accessed by competent authorities in a timely manner. Furthermore, the confidentiality provisions of the Trusts Act in relation to foreign trusts could potentially be used to obstruct the ability of competent authorities to access the information that is collected on the trust by trustees. These provisions generally only require the trustee to disclose information in response to a written request if the request is considered reasonable by the trustee. The trustee is also only obliged to disclose information subject to the terms of the trust. Outside of the terms of the trust, a trustee is required to keep all trust information confidential and is not obliged to disclose documents that reveal the nature of the dealings of the trust.

351. Disclosure of information in relation to domestic trusts would only be available through a Court approved process such as a search warrant or production order.

Effectiveness, proportionality and dissuasiveness of sanctions

352. Sanctions against persons who do not comply with the information requirements under the Companies Act range from fines of NZD 5,000 (USD 3,000) to NZD 100,000 (USD 60,000) or seven years imprisonment. These appear generally proportionate. As these sanctions have not been applied, their effectiveness and dissuasiveness have not been demonstrated.

353. However, the Companies Office advised the assessment team during the on-site visit that the main breach observed is the failure of companies to file annual returns. Where this occurs, the Companies Office issues three written notifications (initial, follow-up and final) to the company in breach, before de-registering it. The Companies Office indicated that it has dealt with the failure to

comply with the requirement to file annual returns by deregistering the entities but was unable to provide statistics on the number of times this has occurred.

354. Niue's Company registry has not applied sanctions against legal persons which do not comply with information requirements.

355. Trustees are not required to disclose information about trusts unless by Court order therefore any breach would be subject to sanction by the Court. Niue is not aware of any sanctions applied by Niuean courts for breaches of orders in relation to disclosure of trust information.

Overall conclusion on Immediate Outcome 5

356. Niue has not assessed the ML/TF risks associated with all forms of legal persons. Basic information is collected by the Companies Office on legal ownership but not information on beneficial ownership. The basic information collected is not verified. There are no enforceable obligations on FIs, DNFBPs, companies or trustees to collect beneficial ownership information. There is a lack of supervision for compliance with basic record keeping obligations and therefore no enforcement of the obligations. All legal persons and legal arrangements operating a business in Niue must be licensed but it is not clear if information on beneficial ownership is collected and verified as part of this process. Some of the risks associated with the types of legal persons and legal arrangements operating in Niue are mitigated to some extent by Niue's small economy, the predominance of small sole traders or family-owned enterprises, the limited investment opportunities, the limited options for cross-border transactions and the need to establish a transactional bank account with a New Zealand banking entity in Niue that is subject to New Zealand's AML/CFT regime. While the number of trusts operating in Niue is unknown, the assessment team considers that it is likely to be a very small number and would predominantly comprise family trusts. However, the assessment team considers that Niue's Trusts Act represents a vulnerability that could be exploited by foreigners for tax evasion purposes. This has been heavily weighted by the assessment team.

357. **Niue has achieved a low level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- a) Niue has not made or received any requests for MLA, including extradition, which is consistent with Niue's risk and context. While there are no standard procedures or processes in place to support the prioritisation and execution of an MLA or extradition request to ensure requests are dealt with in a timely manner, there are formal and informal options and requests could be dealt with effectively on a case-by-case basis and are likely to be addressed promptly in view of Niue's ability to draw on whole of government resources for emerging issues (see IO.1).
- b) The Solicitor General has a broad discretion to refuse MLAs which is untested. This broad discretion may impact the ability of Niue to provide the widest possible international cooperation.
- c) Niue Police, NFIU and Customs regularly engage in forums for international cooperation in the Pacific, and Niue Police and Customs regularly exchange information with foreign counterparts under MOUs or as part of the executive authority of the Government. Information exchanged predominantly relates to customs and immigrations matters, which is consistent with Niue's risk and context.
- d) NFIU, as the newly appointed AML/CFT supervisor, has not yet proactively sought international cooperation from its foreign counterparts in the jurisdictions hosting the foreign headquarters for the MVTs agent or the New Zealand bank offering bank accounts to Niueans as foreign customers.
- e) Niue has not made or received a request for international cooperation to exchange information on beneficial ownership, which is consistent with Niue's risk and context, noting that Niue authorities do not collect information on the beneficial ownership of legal persons or legal arrangements.
- f) The legislative framework for MLA and extradition as well as for the criminalisation of ML and TF, has some deficiencies which may impact the ability of Niue to provide MLA for these processes and offences. The extradition of Niuean and other nationals is permitted to any country with which Niue agrees to undertake to surrender the persons. In addition, Niue uses its immigration laws to deport foreign nationals alleged to have committed serious crimes in other jurisdictions.

Recommended Actions

- a) Strengthen the legislative framework for MLA and extradition by addressing gaps in the criminalisation of ML and TF, extending the scope of predicate offences for ML impact and enabling extradition to the broadest range of jurisdictions (refer R.38).
- b) Clarify the scope of the Solicitor General's discretion to refuse MLAs (refer R.37).

- c) Document the existing operating procedures for MLA and extradition proportionate to Niue's risk and context (refer R.38 and R.39).
- d) Enhance international cooperation by the NFIU in its supervisory capacity, including by proactively seeking information from its foreign counterparts in jurisdictions hosting the parent company of the MVTs agent and the offshore bank providing services to Niueans as foreign customers (refer R.38) and by developing guidelines for the sharing of information internationally, including beneficial ownership information from the shipping registry.

358. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

359. Niue has not made or received any requests for MLA, including extradition, or to identify, seize, confiscate, share and provide information about assets or provide information related to ML or associated predicate offences, or TF. This is consistent with Niue's risk and context and feedback provided by neighbouring jurisdictions that indicates that Niue has not featured as a risk from a national organised crime perspective.

360. The Department of Foreign Affairs is responsible for receiving all MLA requests, but information on this responsibility is not publicly available. MLA requests reach Niue using diplomatic channels through New Zealand (under New Zealand's Niue Constitution Act, New Zealand has a continuing responsibility to support Niue in external affairs). The central authority responsible for managing and coordinating MLA and extradition requests is the CLO. Niue's legislative framework for MLA and extradition comprises the Mutual Assistance in Criminal Matters Act 1998, Extradition Act 2007 and the Niue Act 1966 (Part 8). The executive authority of the Government, exercisable by Cabinet under the Constitution, also underpins measures for international cooperation, including the ability to exchange information without entering a treaty, agreement or MOU. The effectiveness of this framework has not been tested, as Niue has never made or received a request for MLA.

361. Niue's legal framework for extradition permits extradition of Niuean and other nationals to New Zealand and any country with which Niue agrees to undertake to surrender the persons wanted by the authorities of that country (s.2, Extradition Act 2007). If Niue agrees to surrender the persons, following an approach by that country and before the extradition request is received, no extradition treaty is then required. Niue advises that an approach to Niue regarding extradition would initially be handled by Foreign Affairs, advised by CLO. The case would then involve discussion between Niue, the extradition country and (if the extradition country is not New Zealand, but the extradition is through New Zealand), New Zealand. However, if the person subject to extradition is a New Zealand citizen (all Niueans are New Zealand citizens) and there is no extradition treaty between Niue and the extradition country or between New Zealand and the extradition country, which provides for the extradition of New Zealand citizens from Niue, then the Court may refuse the request (s.11(1)(iv), Extradition Act).

362. While there are no clear processes for the execution of MLA and extradition requests, Niue advises that these would be dealt with on a case-by-case basis and dealt with quickly given the size of Niue. At the on-site visit Niue authorities indicated that, in practice, an incoming MLA request would be referred by Foreign Affairs to the CLO. The CLO would review the request, and the applicable legislation, and determine a response (which may include seeking advice from New Zealand). Niue authorities indicated that the timeliness of the execution of an MLA request would depend on the complexity of the request. The timeliness of the process for executing urgent MLA requests to freeze assets or extradition applications made to the court is unclear, as no MLA or extradition request has ever been made or received, however the High Court meets regularly in Niue and urgent matters can be dealt with by video link with Judges or the Chief Justice of the Niue High Court who is based in New Zealand.

363. For extradition requests, Niue authorities indicate that, in practice, they would deport a foreign national who might otherwise be subject to an extradition request to New Zealand, under immigration law. Niue provided the assessment team with a case study (see case study 3.4) demonstrating how Niue authorities successfully deported a person to New Zealand to facilitate repatriation of the alleged offender to the United States. The matter was managed by CLO which provided advice to Cabinet. Within 48 hours Cabinet declared the foreign national a prohibited immigrant enabling deportation. This approach to extradition is preferred by Niue on the basis that they do not have the facilities and resources to detain a foreign alleged offender for lengthy periods of time while formal extradition proceedings run their course.

364. The Solicitor General has a broad discretion to refuse MLA on the basis that the request might prejudice the national, essential or public interest of Niue, result in unfairness or a denial of human rights, or as otherwise appropriate. MLA provided to a foreign country may also be subject to any conditions the Solicitor General determines. This broad discretion of the Solicitor General is untested as Niue has not received any MLA requests.

365. Niue has a reasonable legislative basis to seek or provide MLA and notwithstanding the absence, at the time of the on-site visit, of processes or procedures to support execution of MLA in a timely manner, Niue's ability to deal with MLA on a case-by-case basis coordinated by the CLO, the Solicitor-General and the Cabinet appears sufficient in Niue's context.³³

Seeking other forms of international cooperation for AML/CFT purposes

366. Relevant competent authorities, particularly the Niue Police, NFIU and Customs, regularly use other forms of international cooperation to exchange information with foreign counterparts. This international cooperation is occurring under the executive authority of Cabinet under the Constitution, as well as under MOUs. Niue has open lines of communication with both New Zealand and Australian LEA counterparts, which enables Niue to easily reach out for support and expert advice if required. Two jurisdictions that responded to the request for feedback on Niue's international cooperation indicated that they had exchanged information with Niue on a few occasions, but neither jurisdiction indicated that the information related to ML, a predicate offence or TF which is consistent with Niue's risk and context. None of the jurisdictions that responded indicated that they had requested information from Niue.

367. Niue has a Transnational Crime Unit (TCU) comprising police, customs, immigration, FIU, biosecurity officials and fisheries officials which meets quarterly, as well as on an 'as-needed'

³³ Niue adopted a SOP in June 2025 for CLO to follow when it receives a request to extradite a foreign national or a Niuean national from Niue.

basis. The TCU is part of the PTCN that is coordinated through the Pacific Transnational Crime Coordination Centre in Apia, Samoa. The TCU's use of the PTCN allows for the quick exchange of information with foreign counterparts.

368. Niue's TCU members periodically seek information usually relating to the movement of yachts, such as where a yacht attempted to illegally enter one port in one jurisdiction and may be moving to attempt to enter another port in another jurisdiction. During the COVID-19 pandemic, the TCU sent and received information about the movement of yachts around the Pacific to determine quarantine requirements once the yachts reached the next port.

369. Niue Police has established mechanisms for the informal sharing of information with foreign counterparts, especially New Zealand, Australia and other regional counterparts. Niue's Chief of Police is a member of the Pacific Island Chiefs of Police which meets regularly to discuss regional issues. The Chief of Police also indicated at the on-site visit that there is relatively regular informal engagement (telephone and email) with regional counterparts, particularly New Zealand Police. Niue relies on New Zealand Police for access to INTERPOL information. Exchanges of information and cooperation with New Zealand occur regularly and principally relate to general law enforcement enquiries/investigations where a Niuean or New Zealand citizen is involved, predominantly to do with sexual offence and fraud enquiries. There have been no enquiries relating to ML/TF and situations where cooperation and exchange of information are required in relation to ML/TF are rare.

370. NFIU is a member of the Egmont Group and has made two outgoing requests for information. One of these requests was made to New Zealand in 2024 through the ESW. This was a general request for any information of suspected cases of suspicious transactions relating to Niue citizens. A similar general request was also made to Cook Islands' FIU in 2018. NFIU used to receive from the New Zealand bank, copies of STRs submitted to the New Zealand FIU and relating to Niuean residents with New Zealand bank accounts, but this practice stopped in 2021 and has not recommenced. Five STRs received by NFIU in the assessment period (in 2019) were received pursuant to this arrangement. These STRs have all been reviewed and actioned as required.

371. NFIU has not, to date, engaged in other forms of international cooperation as the AML/CFT supervisor, but there are no restrictions on such cooperation. NFIU has an MOU with the New Zealand Reserve Bank.

372. Customs officials and Niue Police liaise with counterparts in New Zealand on border security and disclosure matters both at the airport and the port of entry. Freight entering Niue is handled by one company based in New Zealand. All flights into Niue come from New Zealand and all flights out of Niue go to New Zealand. Information shared can relate to issues such as the criminal history of travellers, or a traveller's membership of an illicit gang. Niue Customs has requested and received information from New Zealand Customs Service more than 20 times in the past five years.

373. International cooperation is occurring informally, outside of the MLA framework, largely consistent with Niue's risk and context, but not relating to supervision. This deficiency has not been given significant weighting in light of the presence in Niue of an agent of New Zealand bank and an MVTs agent of an international MVTs company.

Providing other forms of international cooperation for AML/CFT purposes

374. Niue relies heavily on foreign counterparts to provide information on external threats. These usually relate to customs or immigration matters. However, competent authorities do provide information to foreign counterparts in response to requests, making use of regional cooperation platforms (e.g., OCO, PIDC, PICP, PFIC, PTCCC, FFA, and PILON). Niue provided the assessment team with an example where information on a traveller who had passed through Niue's port was rapidly provided to a foreign counterpart upon request.

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

375. Basic information on legal persons collected as part of the company registration process is publicly available on the Niue Government's website for foreign counterparts to access. Although there is no express power for the Registrar of Companies to share information with foreign counterparts, the Companies Act 2006 does provide for information obtained in the course of an inspection, or a report relating to the inspection, to be shared for the purpose of detecting or investigating offences against any Act, or in exercising powers conferred by the Companies Act (s.316). It also provides for the documents, information or reports to be disclosed during criminal proceedings or for detecting offences against any Act (s.318).

376. Information on beneficial ownership is not collected by Niue authorities as part of company or NPO formation processes. The two FIs and the DNFBP are also not collecting and verifying beneficial ownership information as part of conducting CDD. On this basis, it not clear what procedure or process competent authorities would follow if they needed to send or request beneficial ownership information. Beneficial ownership information would need to be collected either on a voluntary basis or by the exercise of information gathering powers by competent authorities in response to an international request, which may impact the timeliness of any response. Beneficial ownership information collected as part of the registration of vessels on the Niue shipping registry is held by the registry in Singapore. It is not clear how Niue competent authorities would access and share that information internationally.

377. Niue has not received or made any international requests for basic or beneficial ownership information of legal persons or arrangements, which appears reasonable considering Niue's risk and context and the fact that Niue is not a financial or company formation centre regionally. While Niue authorities do not have visibility of domestic trusts operating in Niue, most trusts are likely to be small family trusts. As with companies and NPOs operating in Niue, any trustees wishing to access a bank account would need to apply for an account with the New Zealand banking agent in Niue and would be regulated under New Zealand's AML/CFT legislation. This is likely to largely mitigate risks associated with Niue not collecting such information.

Overall conclusion on Immediate Outcome 2

378. Niue has a legal framework for MLA and extradition but has not made or received any MLA or extradition requests. This is consistent with Niue's risk and context. While there are no clear procedures or processes for the execution of MLA requests, or a mechanism for case management, Niue's whole of government approach in responding to emerging issues as they arise, and its membership and active participation in international forums and groupings, is adequate to enable Niue to effectively engage in international cooperation. Niue has demonstrated the timely use of deportation to facilitate repatriation of persons rather than using

an extradition process. Competent authorities regularly engage in informal cooperation with regional counterparts consistent with Niue's risk profile. Niue's close relationship with New Zealand, Australia and other Pacific Island nations enables cooperation and assistance to occur between foreign counterparts. Niue does not cooperate with foreign supervisory counterparts, but this has not been heavily weighted in light of Niue's risk and context. Niue has not received or made any requests for international exchange of beneficial ownership information of legal persons and arrangements, which is consistent with risk and context, but is unlikely to be able to respond to an incoming request for such information on the basis that information on beneficial ownership is not available.

379. **Niue has achieved a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the member's situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2012. This report is available from www.apgml.org.

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

3. R.1 is a new requirement that was not assessed as part of Niue's 2012 MER.

4. *Criterion 1.1* - Niue conducted its first national risk assessment (NRA) on ML/TF in 2017 and adopted a supplementary update to the NRA in December 2024 at the time of the on-site visit. The 2017 NRA and 2024 NRA update were developed in consultation with the public and private sectors.

5. The 2017 NRA assesses the ML risk as low based on the size of Niue's economy and population, the small size and scope of the FI and DNFBP sectors, the lack of availability of assets in Niue in or through which proceeds of crime could be laundered, and the very limited financial services provided in Niue. This rating is reaffirmed in the 2024 NRA update. There has been no ML or TF activity detected in Niue, and only two instances of predicate offending prosecuted (theft and obtaining money by false pretences) since the last MER in 2012. The 2024 NRA update references these two cases, the second of which is still being prosecuted. The first case involved the theft of NZD 40,000 (USD 24,000) from a society bank account. The money was fraudulently transferred by an employee of the agent of the New Zealand bank from a society bank account to the employee's bank account. The offender travelled offshore and accessed and spent the proceeds in Australia. The offender was convicted and received a community service order and was ordered to repay the funds (repayments still in progress).

6. The 2017 NRA did not involve a full and comprehensive assessment of risk and was intended to raise awareness about ML/TF among the public and private sector. The methodology did not examine the nature, sources, likelihood and consequences of the risk, and there are gaps in the coverage of risks assessed, with vulnerabilities in company formation, beneficial ownership transparency, remittance systems, and foreign trusts not assessed. Risks in the FI and DNFBP sectors, and systemic issues like regulatory gaps were not assessed. Drug trafficking, human trafficking, and proliferation of small arms are all assessed as a lower to moderate threat. The vulnerability of banks, and remittance for ML/TF were assessed as moderate, while EFTPOS-terminals, lawyers, trustee companies, and charities are assessed as low to moderate.

7. The 2024 NRA update addressed some of gaps in the 2017 NRA, considering a range of broader threats, rating illicit drugs, fraud, tax offences, illegal, unreported and unregulated (IUU) fishing, gangs and organised crime as low risk. In terms of vulnerabilities, the use of cash, company formation, purchase of high value assets, high value goods, new technologies unregistered financial services and foreign investment were all rated low risk. Environmental crimes, kidnapping, smuggling, sexual exploitation, arms trafficking, counterfeiting, and cybercrime (except online scams) have not been assessed. There were no case studies or

typologies to support the development of the NRAs because of Niue's low ML/TF risks and absence of STR reporting. On this basis, the NRAs are chiefly based on the views and experiences of key agencies and stakeholders, but some police and customs data was used.

8. TF risk is also rated as low in both assessments with no reported or suspected cases of TF and no evidence of terrorist-related activity in Niue. TF risk through the extremely small NPO sector was not specifically assessed. The 2024 NRA goes further and assesses element of PF risk which it rates as low. The use of shipping registry was included in the analysis with a medium risk assessment.

9. While there are some gaps in the methodology for the 2017 NRA and 2024 NRA update, the assessment team finds that the overall assessment of ML/TF risks in the NRA as low is reasonable and concludes that there are very limited channels and opportunities to launder illicit funds in Niue without attracting attention and even more limited opportunities to engage in cross-border transactions.

10. *Criterion 1.2* - Niue designates the NSC as the authority to coordinate government action and activities with respect to AML/CFT, although the terms of reference for NSC only includes policymaking, considering policies, procedures and legislative requirements relating to national security prior to Cabinet approval, and information sharing. The NSC is composed of key public sector stakeholders designated to coordinate government action and activities with respect to AML/CFT matters. The NSC meets monthly, or as required, and includes the SOG (also representing Foreign Affairs) (Chair), Solicitor-General (also representing CLO, Chief of Police (also representing port and civil aviation security, and disaster management), Financial Secretary (representing as the Comptroller of Customs and Ministry of Finance), Director for the Department of Agriculture, Forestry and Fisheries (representing the Head of Niue Biosecurity and the Head of Fisheries), Chief of Immigration, the Niue Immigration Department and the Director for Health. In September 2024, the NSC established the AMLOC as an operational working group to support the NSC on AML/CFT matters.

11. *Criterion 1.3* - Niue completed an NRA in 2017 and has updated the NRA in 2024. There are some gaps in the 2017 NRA which were not addressed in the 2024 NRA update.

12. *Criterion 1.4* - There is no existing mechanism to provide the results of risk assessments to all relevant competent authorities involved in, or with responsibilities for, combating ML/TF. The 2017 NRA results were not published or disseminated. However, electronic copies were distributed to reporting entities in July 2024 and to relevant authorities. While relevant authorities and private sector entities were involved in preparing the risk assessment no awareness raising sessions were conducted to communicate the results of the NRA. However, the NFIU has commenced reaching out to reporting entities on their AML/CFT obligations following the appointment of the head of the FIU as the AML/CFT supervisor. This included providing reporting entities with a copy of the NRA. Since the 2024 NRA was completed during the on-site visit, the results had not yet been communicated to the three reporting entities, but these entities participated in the development of the assessment.

13. *Criterion 1.5* - Overall, the risk-based allocation of resources to mitigate ML/TF risks is heavily influenced by Niue's unique risk and context. As a micro-state with low ML/TF risk, Niue shares resources across key competent authorities on a government-wide basis. Funding resources are allocated to each government agency as part of the annual budget /appropriation process. This process is managed by agency heads of department, Treasury and the Financial

Secretary before being reviewed and approved by Cabinet for submission to, and appropriation by, the Assembly. The estimate of resources to be allocated is based on various factors, including experience, anticipated needs and unanticipated or urgent events.

14. Niue has indicated that risk is one of the factors influencing the allocation of resources and, if an unanticipated or urgent event arose relating to AML/CFT, the normal case by case process for allocating funding to an unanticipated or urgent event would apply. Under this process, resources and appropriate funding would be allocated to address the unanticipated or urgent event or emergency funding would be sought. Niue also indicated that the size of Niue's government allows senior officials and Ministers to meet continuously (Cabinet meets twice a week), including at very short notice, to address significant unanticipated or urgent situations, including situations where ML/TF risks materialise. While Niue has not provided any examples of where resources have been allocated based on ML/TF risk, Niue did provide the assessment team with information on the national response to the COVID-19 pandemic to demonstrate how an emerging threat is dealt with under this framework.

15. However, this mechanism for national coordination and cooperation is reactive, and is not used for the proactive development of AML/CFT policies and activities based on the findings of the NRAs. While Niue has action plans to respond to the results of the 2017 NRA, there is no timeline for the implementation of these plans and most actions are still pending. The scarcity of resources in Niue, the high priority assigned to more pressing concerns and the low ML/TF risks present challenges in terms of prioritising the implementation of AML/CFT legislative reform and efforts to strengthen and deepen the practice of ML/TF risk management. There are also no specific action plans yet to address risks identified in the 2024 NRA.

16. *Criterion 1.6* - The FTRA exempts FIs and DNFBPs from conducting CDD in certain circumstances. This includes where: the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity; or, depending on the transaction profile, where the transaction is a low risk bulk and regular transaction of institutions like utilities, pension funds and Treasury, unless the FI has reason to suspect that the transaction is suspicious or unusual; or if the FI has reason to doubt the accuracy or veracity of previously obtained information about the identity of the person (ss15(6), FTRA). An exemption also applies where a transaction is an occasional transaction not exceeding 1,000 penalty units (NZD 100,000/USD 60,000) or its equivalent in foreign currency or any other amount that may be prescribed, unless the FI has reason to suspect that the transaction is suspicious or unusual. However, there is no general requirement only permitting these exemptions where there is a low risk, allowing the exemptions to be applied in some higher risk scenarios, including where the customer is a PEP (ss15(6), FTRA).³⁴

17. *Criterion 1.7(a)* - There is no requirement for the three reporting entities regulated under the FTRA to take enhanced measures to manage and mitigate any higher risk identified.

18. *Criterion 1.7(b)* - There is no requirement for the three reporting entities regulated under the FTRA to incorporate information on higher risks in their risk assessments.

19. *Criterion 1.8* - Niue does not permit simplified due diligence in low-risk scenarios.

³⁴ Banking transactions and associated EFTPOS transactions conducted by the agent for the offshore bank for Niue customers are regulated by New Zealand AML/CFT legislation, and any exemptions provided from CDD have not been considered by the assessment team.

20. *Criterion 1.9* - The head of NFIU is newly appointed as the AML/CFT supervisor and has yet to commence supervisory processes to ensure that the two FIs and DNFBP regulated under the FTRA are implementing their obligations to take a risk-based approach under R.1.

21. *Criterion 1.10* - There are no requirements for the three reporting entities regulated under the FTRA to identify, assess, and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). Likewise, there is no requirement for FIs and DNFBPs to: (a) document their risk assessment; (b) consider all relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied; (c) keep these assessments up to date; and (d) have appropriate mechanisms to provide risk assessment information to competent authorities.

22. *Criterion 1.11* - There are no requirements for the three reporting entities regulated under the FTRA to: (a) have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified (either by the country or by the financial institution or DNFBP); (b) monitor the implementation of those controls and to enhance them if necessary; and (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

23. *Criterion 1.12* - Niue does not permit simplified due diligence.

Weighting and Conclusion

24. Niue completed its first NRA in 2017 and updated the NRA in 2024 which is a positive development. There are some shortcomings in the methodology for both NRA reports and some important gaps in the range of threats and vulnerabilities considered, but the assessment team agrees with the finding of low ML/TF risk for both assessments. Competent authorities and reporting entities were involved in the development of the NRAs and understand the key ML/TF risks, noting that the results of the 2017 were not disseminated to the private sector until July 2024 and the 2024 NRA update was finalised on the last day of the on-site visit. Niue's unique risk and context makes it challenging for Niue to take a risk-based approach to the allocation of resources for AML/CFT, as there is no apparent ML and TF activity, very little predicate offending and limited resources. Supervisors are not empowered to ensure FIs and DNFBP's compliance with R.1. FIs and DNFBPs regulated under the FTRA are not required to take EDD on identified higher risk, conduct their own risk assessment, adopt measures to mitigate any risk, and apply simplified measures to identified lower risk areas.

25. **Recommendation 1 is rated partially compliant.**

Recommendation 2 – National Cooperation and Coordination

26. This is a new Recommendation, which was not assessed in Niue's 2012 MER.

27. *Criterion 2.1* - Niue's National Strategic Plan 2016-2026 outlines the broad strategic direction of the Niue government covering a 10-year period. The plan is a high-level roadmap, and prioritises national security, and only refers generally to the safety and protection of residents and visitors, property and the environment. The plan is not informed by ML/TF vulnerabilities or risks identified in the NRAs.

28. Niue indicates that the National Strategic Plan has resulted in the establishment of the NSC and the development of a draft National Security Strategy, which was not made available to the assessment team prior to the end of the on-site pending approval by Cabinet.³⁵

29. Niue does not have a national AML/CFT policy based on identified ML/TF risks.

30. *Criterion 2.2* - The NSC is responsible for determining and coordinating national AML/CFT policies as part of its national security remit and includes representation from all agencies involved in AML/CFT measures (see R.1). The NSC is set up by Cabinet and reports to the SOG. The terms of reference require the NSC to meet monthly.

31. *Criterion 2.3* - The NSC provides the mechanism for designated representatives from law enforcement agencies such as customs, immigration, the police, NFIU, and lead policy agencies such as the SOG and the Treasury, to cooperate and coordinate domestically on AML/CFT policies and activities. AMLOC was established under the NSC in September 2024. Agencies represented on the NSC are party to a MOU to facilitate the exchange of information to support cooperation on border control and security. Otherwise, competent authorities can share information under the provisions of the Constitution that allows them to assist the Cabinet in exercising the executive authority of Niue.

32. Niue's Cabinet Handbook sets out formalised procedures for consultation and coordination on policy measures to support Cabinet decision-making processes, including AML/CFT policy reform.

33. *Criterion 2.4* - There is no formally designated national mechanism to ensure cooperation and coordination among competent authorities to combat PF. The NSC has a broad national security remit that would encompass PF-related threats. In practice, PF-related sanctions issues involving the shipping registry have been dealt with by the SOG in consultation with the relevant members of the NSC (Secretary of Transport, Chief of Police and Solicitor General).

34. *Criterion 2.5* - There are no data protection and privacy rules in Niue that might conflict with AML/CFT requirements and no agency responsible for data protection and privacy within Niue.

Weighting and Conclusion

35. Niue's mechanisms for national cooperation and coordination at the policymaking and operational levels operate on a continual basis because of the size of the civil service and government in Niue and are appropriate for Niue's risk and context. They enable competent authorities and Ministers to confer and collaborate on a case-by-case basis on any policy and operational matter. It was not demonstrated that the National Security Strategy sufficiently includes AML/CFT considerations informed by risks. While Niue also has no national level mechanism that provides for strategic and operational level coordination for PF more broadly, there is a mechanism for managing PF-related risks generated by the shipping registry. The gaps have been weighed considering Niue's particular risk and context.

³⁵ The National Security Strategy was approved by Cabinet in May 2025 and officially launched in May 2025 and includes AML/CFT considerations.

36. **Recommendation 2 is rated partially compliant.**

Recommendation 3 – Money laundering offence

37. Niue was rated as partially compliant in the 2012 MER with the requirements for criminalising ML. The MER concluded there were: important gaps in the coverage of the domestic offence; no ancillary offences; a lack of clarity in the scope of property covered; and gaps in the definition of property for the purposes of the ML offence. There are now new, additional requirements for criminalising ML in the FATF Standards. Niue has not amended the legislative framework for the ML offence since the last MER.

38. *Criterion 3.1* - ML is criminalised under section 64 of the POCA. The offence largely follows Vienna Articles 3(1) (b) and (c), and Palermo Article 6(1). The offence broadly covers the: receipt, possession; concealment; disposal; and, importing of the proceeds of crime where the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity (s64(3), POCA). The offence does not explicitly cover “disguising the illicit origin of” the property or the exporting of proceeds of crime, but the term concealment appears broad enough to cover disguising the origins of the property.

39. The POCA also criminalises conduct where a person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime, and dealing with property suspected of being proceeds of crime (ss64(3)(a) and s65). There are no definitions provided in the POCA for the terms “engages” so it is not clear to what extent they cover conversion and transfer. There are no ancillary offences for ML.

40. *Criterion 3.2* - The POCA defines the proceeds of crime as: the proceeds of a serious offence; or, any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence (s4). A serious offence for the purposes of POCA is an offence the maximum penalty for which is death, or imprisonment for not less than 12 months (s4). This means that any offence punishable by imprisonment for a maximum term of not less than 12 months is a predicate offence for ML. However, nine of the designated categories of offences are not criminalised and six are partially criminalised, which limits the scope of the ML offence. The following categories of predicates are criminalised: participation in an organised criminal group and racketeering; terrorism and TF; illicit trafficking in narcotic drugs and psychotropic substances; corruption and bribery; murder and grievous bodily harm; robbery or theft; and forgery. The categories of sexual exploitation, fraud, kidnapping, illegal restraint and hostage taking are criminalised with some gaps. The remaining categories are not criminalised.

41. *Criterion 3.3* - Niue uses a threshold approach to criminalise ML, with predicate offences comprising serious offences where the maximum penalty is death or imprisonment over 12 months (s4, POCA).

42. *Criterion 3.4* - Niue does not set any value threshold for proceeds of crime. For the purposes of the POCA, “property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property. The scope of the definition of property is broad enough to cover any type of property, including movable or immovable assets, legal documents and instruments evidencing title to or interest in such property. This interpretation accords with advice from the Solicitor General provided for the purpose of the

2012 MER. The definition of proceeds of crime covers property directly and indirectly derived or realised from serious crime (s4, POCA).

43. *Criterion 3.5* - While POCA does not specifically require a prior conviction for a predicate offence to prove property is proceeds of crime, there is no specific provision that authorises the prosecution of an ML offence in the absence of a conviction for a predicate offence.

44. *Criterion 3.6* - The ML offence extends to conduct that occurs in another country which would have constituted a serious offence in Niue if committed domestically (s4, POCA). The definition of foreign serious offence in s4 of the POCA means a serious offence against the law of a foreign country. However, the gaps in the range of predicate offences for ML under POCA would impact on the ability of the Niue authorities to prosecute for ML in some cases where the proceeds of crime were derived from conduct that occurred outside Niue.

45. *Criterion 3.7* - The POCA does not prevent the ML offence from applying to persons who have also committed the predicate offence. There is also no fundamental principal of law in Niue that would prevent a prosecution of self-laundering. The wording of section 64 of POCA does not seem to limit those who have committed the predicate offence from being charged.

46. *Criterion 3.8* - The mental element for ML under subsection 64(3) of POCA is not restricted to actual knowledge or intent. A person shall be taken to engage in money-laundering under subsection 64(3) if the person engages, directly or indirectly in a transaction that involves money or other property that is proceeds of crime, or receives, possesses, conceals, disposes of or brings into Niue any money or other property that is proceeds of crime - if the “person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity”. The mental element of the ML offence is deemed to be established if the person had constructive knowledge. Whilst the term “know/s” is not defined, constructive knowledge may only be inferred from objective factual circumstances. Further, it is a defence to the charge if the suspect satisfies the Court that they had no reasonable grounds for suspecting that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity (s65, POCA). It is implicit that both the applicant and respondent would be required to file evidence to support or discount the alleged state of mind of the person and the Court is required to determine factual contests on the balance of probabilities (s67, POCA).

47. *Criterion 3.9* - The penalty for the ML offence under section 64 of POCA is a fine not exceeding NZD 120,000 (USD 72,000) or imprisonment for a period not exceeding 20 years or both for a natural person. Proceedings can also be initiated for the forfeiture or confiscation of the proceeds of crime. The sanctions are proportionate and dissuasive to Niue’s risk and context.

48. *Criterion 3.10* - Bodies corporate convicted of an ML offence under subsections 64(2) and section 65 of the POCA can receive a fine not exceeding NZD 1,000,000 (USD 600,000). These are proportionate and dissuasive penalties. There are no specific Niue laws that preclude parallel criminal, civil or administrative proceedings for sanctions of legal persons in relation to ML.

49. *Criterion 3.11* - Niue does not have any ancillary offences to the ML offence. There are general ancillary offences under the Niue Act but there are no provisions under the Niue Act or the POCA, that provide that these ancillary offences apply to the ML offences under the POCA.

Weighting and Conclusion

50. While Niue has criminalised ML, moderate shortcomings remain. There remain important gaps in the coverage of the ML offence, with nine of the designated categories of predicate offences not criminalised and six only partially criminalised, limiting the scope of the ML offence. There are no ancillary offences for ML.

51. **Recommendation 3 is rated partially compliant.**

Recommendation 4 – Confiscation and provisional measures

52. Niue was rated partially compliant in the 2012 MER for the former R.3. The report noted that proceeds of crime did not extend to instruments intended to be used in an offence by a person other than one convicted of the offence, and there were no provisions for the confiscation of property of corresponding value. There was also no practical application of POCA in domestic or foreign matters.

53. *Criterion 4.1* - POCA provides the legislative framework for the confiscation of the proceeds of crime in Niue. POCA is a conviction-based regime (ss 6 and 11, POCA). In addition, Niue has provisions for forfeiture under the TSTCA (s20).

54. *Criterion 4.1(a)* - A forfeiture order can be made against property that is tainted property in respect of a serious offence upon conviction (s6s(1)(a) and 11, POCA). A serious offence is an offence where the maximum penalty is death or imprisonment over 12 months (s4, POCA). The term 'tainted property' is defined as property used in, or in connection with, the commission of the offence or intended to be so used by a person convicted of the offence; or proceeds of the offence (s4, POCA). This definition is broad enough to include instruments of crime held by criminal defendants and third parties. The term 'property' covers money and all other property, real or personal, including things in action and other intangible or incorporeal property, and includes property indirectly derived from the serious offending (s4, POCA). These terms are broad enough to include property laundered and held by criminal defendants and third parties. Section 11 POCA requires the Court to have specific regard to the rights and interests of third parties in both instrument and proceeds of crime.

55. *Criterion 4.1(b)* - Tainted property that can be forfeited includes proceeds of crime (s4, POCA). Proceeds of crime includes the proceeds of a serious offence; or any property that is derived or realised, directly or indirectly, by *any* person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence (s4, POCA). Proceeds in relation to an offence includes any property that is derived or realised, directly or indirectly, by *any person* from the commission of the offence (s4, POCA).

56. A confiscation order can be made against a person in respect of benefits derived by the person from the commission of the serious offence (s6(1)(b), POCA). POCA defines 'benefit' as any property, service or advantage, whether direct or indirect, and a benefit derived also includes a benefit obtained or otherwise accrued to another person at the request or direction of another (s5, POCA). Instrumentalities used or intended for use in ML or predicate offences by the person convicted of a serious offence fall within the definition of 'tainted property' and may be forfeited upon conviction.

57. Minor gaps in the range of predicate offences for ML impact this sub-criterion (see R.3).

58. *Criterion 4.1(c)* - The TSTCA allows for forfeiture of ‘terrorist property’ (s 20). Section 3 defines ‘terrorist property’ as property that has been, is being, or is likely to be, used to commit a terrorist act; or property that has been, is being, or is likely to be, used by a terrorist group, or property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.

59. *Criterion 4.1(d)* - The POCA permits a confiscation order to be against a person in respect of the benefits derived from the commission of a serious offence (upon conviction) (s 19). The confiscation order takes effect as a civil debt to the Crown (s 16, POCA). Section 24 of POCA empowers the Court to include property under a person’s effective control when assessing the benefits received from their offending. Section 15 empowers the court to make an order for the value of property to be paid to the Crown in circumstances where property otherwise liable to forfeiture cannot be located; has been transferred to a third party in legitimate circumstances; is located outside Niue, has been co-mingled with other property and difficult to sever, and where the Magafaoa of Niuean land³⁶ is relevant to the person convicted. Section 37 of POCA empowers the Court to make an order for the sale of property to satisfy a confiscation order.

60. *Criterion 4.2(a)* - The POCA provides the following powers to identify trace and evaluate property subject to forfeiture/confiscation: powers for search and seizure contained in part 3 of the POCA (s27 and 28); production and inspection orders (s47 and 48); and monitoring orders (s54). The provisions also encompass investigations for foreign serious offences (s30, POCA). Other competent authorities have powers that enable investigation to identify and trace property. The Customs Act 1966 provides customs officials with powers to: examine goods (s203); board and search ships and aircraft (ss205 and 206); search (s213); seek warrants (ss216-217); and order production and impound documents (ss218 and 220). The FTRA also has provisions relating to the search powers, and seizure of cash or assets (ss23, 31 33-35), and the Treasurer has inspection powers and inquiry powers under the Income Tax Act 1961 (ss139 and 142).

61. *Criterion 4.2(b)* - The POCA provides for provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation by way of restraining orders. Section 31 of the POCA allows the Solicitor General to apply for a restraining order where a person has been convicted of, has been charged with or is about to be charged with a serious offence. The Court may make a restraining order under section 32 of POCA where it is satisfied that the subject person has been convicted, has been charged or will be charged within 48 hours.

62. Subsection 31(2) of POCA permits an application for a restraining order to be made *ex parte*. Subsection 34(2) of POCA provides that the Court shall consider an application without requiring notice if requested by the Solicitor General, however such a restraining order will cease to have effect after 14 days or a lesser period specified by the Court (ss 34(2), POCA). An application for an extension of the restraining order must be made on notice (ss 34(3), POCA).

63. However, the power to apply for a restraining order is confined to “realisable property” held by the defendant or “specified realisable property” held by a person other than the defendant (s31, POCA). Realisable property is property held by a person who has been convicted of, or charged with, a serious offence and any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift (s5, POCA). Property under effective control of a third person may not have been gifted, and the gifts captured by POCA are only those made after

³⁶ Magafaoa refers to the family or a group of people descended from a common ancestor in Niue. Magafaoa underpins Niuean land ownership and customary practices and has rights and responsibilities regarding land.

the offending has occurred. This means that if defendants gift property before committing crimes, that property cannot be restrained. Property held by third persons where the defendant will be charged imminently can also not be subject to a restraining order as such property does not fit within the definition of realisable property.

64. The Court may make a restraining order where it is satisfied about the offending/suspected offending and there are reasonable grounds for the belief that the targeted property is tainted property of, or under the effective control of, the defendant (s32, POCA). This power appears broader than the scope of the application which may be brought by the Solicitor General under section 31 of POCA. Niue's Solicitor General submits that the Court would likely take a purposive approach to this apparent conflict and not limit the Court's powers by reference to the scope of the application under section 31; however, this submission has not been tested as no restraining orders have been applied for in Niue.

65. Section 12 of the TSTCA empowers the Solicitor General to apply for an order that the Registrar of the High Court take custody and control of property if the Solicitor General has reasonable grounds to believe the property is 'terrorist property'.

66. *Criterion 4.2(c)* - Section 32 of the POCA empowers the Court to make a restraining order that prohibits the defendant or any person disposing of, or otherwise dealing with, the property or such part of it or interest in it as specified in the order. Section 39 of the POCA provides that where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith, the Solicitor General may apply to the Court that made the a restraining order for an order that the disposition or dealing be set aside. Furthermore, under the POCA an application may be made for a restraining order in respect of "realisable property" of the defendant or specified "realisable property" held by a person other than the defendant. "Realisable property" is defined as any property of the person convicted of or charged with a serious offence or property of a person to whom a person so convicted or charged has directly or indirectly made a gift caught by the POCA.

67. However, Niue has no provisions that set out the steps that may be taken in respect of terrorist property, to prevent or void actions that prejudice its ability to freeze, seize or recover property that is subject to confiscation.

68. *Criterion 4.2(d)* - Under the POCA the police are given powers for: search and seizure (ss 27 and 28); search for and seizure of tainted property in relation to foreign offences (section 30); production and inspection orders (ss47 and 48); and monitoring orders (s54). Other competent authorities have powers to take appropriate investigative measures. The Customs Act 1966 provides customs officials with powers to: examine goods (s203); board and search ships and aircraft (ss205 and 206); seize ships and aircraft (s13); search (s213); seek warrants (ss216-217); and order production and impound documents (ss218 and 220). The FTTRA also has provisions relating to search powers, and seizure of cash or assets (ss23, 31 33-35), and the Treasurer has inspection powers and inquiry powers under the Income Tax Act 1961 (ss139 and 142).

69. The deficiencies identified under R.31 impact this criterion.

70. *Criterion 4.3* - The POCA protects third party interests under section 11(4), which provides the Court may have regard to: (a) the rights and interests, if any, of third parties in the

property; (b) the gravity of the offence concerned; (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put, when considering an application for forfeiture.

71. Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, in respect of the person's interest in the property and the Court shall make an order declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest (s 13, POCA). The Court must be satisfied that the applicant was not in any way involved in the commission of an offence in respect of which forfeiture of the property is sought, or the forfeiture order against the property was made and if the applicant acquired the interest during or after the commission of the offence – that the applicant acquired the interest: for sufficient consideration; and without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property.

72. Section 16 of the TSTCA expressly protects the rights of third parties when the Court has made an order for custody and control of terrorist property, allowing a third party claiming an interest in property subject to custody and control orders to apply to the Court for relief (s16). A person named in an application for a forfeiture order as a person that owns or controls the property that is the subject of the application must be served with a notice of the application and may appear and present evidence at the hearing of the application (s19(2), TSTCA). Where the Court is satisfied that a person named in the application has an interest in the property included in the application; has exercised reasonable care to ensure that the property is not terrorist property; and is not a member of a specified terrorist entity, the Court must order that the interest is not affected by the order and declare the nature and extent of the interest (20(2), TSTCA).

73. A third party claiming an interest in property that has already been forfeited, but who was not listed in the application and given notice of the forfeiture, can apply to the Court within six months after the forfeiture order for relief (s22, TSTCA). However, the interaction of sections 22 and 20 of the TSTCA may impact on the ability of the court to make an order for third party relief.

74. *Criterion 4.4* - Subsection 32(1)(d)(ii) of POCA provides that the Court may direct the Financial Secretary to take custody of restrained property and to manage or otherwise deal with the property as the Court directs. Section 29 of POCA permits the Chief of Police to hold property seized and hand over such property to the Financial Secretary if directed by the Court (ss29(5)(d), POCA). The Financial Secretary may do anything reasonably necessary to preserve the property and exercise any power that the owner of the property would otherwise be able to exercise (s 32(4), POCA) and may be directed to sell property to satisfy a confiscation order (s37, POCA). The TSTCA empowers the Registrar of the High Court to take custody and control of forfeited terrorist property (s 12), and pursuant to section 21 TSTCA the Solicitor General may deal with the property, including by disposal. There are no other provisions that relate to the custody of frozen or confiscated property and no mechanisms for managing and, when necessary, disposing of any seized, frozen or confiscated property.

Weighting and Conclusion

75. Niue has a legislative framework for the restraint, confiscation and forfeiture of tainted property (instruments or proceeds) or for financial penalties in lieu of the property or for financial penalties equal to the benefits derived from criminal offending, in the hands of criminal defendants or third parties. *Bona fide* third parties' rights are protected. LEAs have powers to identify and trace property for confiscation and undertake investigations. The operation of sections 31 and 32 together with the definition of realisable property may operate as a constraint on restraint of property in the hands of third parties/under effective control. There are no provisions preventing or voiding actions that prejudice the ability to freeze, seize or recover terrorist property that is subject to confiscation. Niue has a legislative framework for the restraint, forfeiture and management of criminal assets that provides for identifying who should manage and dispose of such property, and what related powers they have. However, there are no processes or procedures setting the mechanisms for how this would be done in practice.

76. **Recommendation 4 is rated partially compliant.**

Recommendation 5 – Terrorist financing offence

77. In the 2012 MER report, Niue was rated as partially compliant with SR11. The report concluded that: providing or collecting funds for a terrorist organisation, or an individual terrorist, was not criminalised; there was no criminalisation of ancillary offences; and there were no dissuasive and proportionate sanctions that apply to legal persons. Niue has not amended the legislative framework since 2012 to address these deficiencies. There are also several new requirements for criminalising TF under the FATF Standards since the 2012 MER report.

78. *Criterion 5.1* - The TSTCA criminalises offences related to terrorism and TF under sections 6 to 11 of the TSTCA. These provisions criminalise TF based on Article 2 of the Terrorist Financing Convention to some extent. The TSTCA criminalises: the provision of property and services; dealing with terrorist property; harbouring of persons committing of terrorist acts; provision of weapons; and recruitment of members to commit terrorist acts (ss6-11, TSTCA). However, there are no specific provisions to criminalise participation, organisation, direction or contribution to terrorist act and an attempt to commit TF is not criminalised.

79. *Criterion 5.2* - The TSTCA criminalises providing or collecting, by any means, directly or indirectly, any property, intending, knowing, or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act (s6(1)). The offence that applies to terrorist organisations or terrorist entities criminalises providing or collecting, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity (s6(2), TSTCA). The TF offences do not require a link to a specific terrorist act or acts. A specified entity includes entities listed from time to time by the UNSC as terrorist entities (s5(1), TSTCA). However, in accordance with subsection 5(2) of the Niue Government Gazette Act 2022, failure to notify a matter in the Gazette invalidates or otherwise affects the matter where notification is required by an enactment. Subsection 5(2) of the TSTCA provides the responsible Minister is required to give notice of the list of terrorist entities by notice published in the Gazette. As no such notices have ever been gazetted by a Minister, there are no UNSC listed "terrorist entities" that are "specified entities" for the purposes of the TSTCA. There is

also no criminalisation of providing or collecting funds for an individual terrorist unless it is for a terrorist act.

80. *Criterion 5.2^{bis}* - Niue does not specifically criminalise the financing of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The TF offence under subsection 6(2) of the TSTCA criminalises broadly providing or collecting any property intending, knowing or having reasonable grounds to believe 'that they will benefit an entity that the person knows is a specified entity'. However, a specified entity is a terrorist entity listed by the UNSC and there are no specified entities in Niue (see criterion 5.2). If the responsible Minister gazetted terrorist entities listed by the UNSC, the offence could be applied but would only apply to entities listed by the UNSC.

81. *Criterion 5.3* - Niue's TF offence applies to a person who collects or provides 'property' (s6, TSTCA). Property is defined broadly to include assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible; and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, those assets including, but not limited to, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit (s3, TSTCA). The legitimacy or illegitimacy of the source of the property is not itself a criteria or requisite element of the TF offence.

82. *Criterion 5.4* - The TSTCA provides that, when prosecuting a TF offence, it is not necessary for the prosecutor to prove that the property collected or provided were used, in full or in part, to carry out a terrorist act (s6(3)). This provision also indirectly covers attempts to carry out a terrorist act. A terrorism offence does not have to be linked to a specific terrorist act or acts.

83. *Criterion 5.5* - The mental element of the TF offence is that the person intended, knew, or had reasonable grounds to believe that the property would be used to carry out a terrorist act or will benefit an entity that the person knows is a specified entity (s6, TSTCA). The knowledge element of 'reasonable grounds to believe' is an objective standard that can be inferred from objective factual circumstances.

84. *Criterion 5.6* - The sanction for TF under the TSTCA for natural persons is a maximum of 14 years imprisonment (s6). This is comparable to penalties for other serious offences under the law of Niue and is proportionate and dissuasive.

85. *Criterion 5.7* - The TSTCA provides that the TF offence applies to a legal person in the same way as it applies to an individual, and that a body corporate may be found guilty of any of the offences set out in the TSTCA, in addition to the liability of any person for the same offence (s49). For such an offence, the conduct or state of mind of an employee, agent, or officer of a body corporate is taken to be attributed to the legal person if that person is acting within the scope of their employment or authority, or with the consent of director, servant or agent of the legal person. However, the only available sanction for the TF offence is imprisonment, which cannot be applied to a legal person. On that basis, the sanction for the TF offence for a legal person is not proportionate or dissuasive.

86. *Criterion 5.8(a)* - The TSTCA does not directly criminalise attempting to commit the offence of TF.
87. *Criterion 5.8(b)* - The TSTCA does not criminalise participating as an accomplice in a TF offence or attempted offence.
88. *Criterion 5.8(c)* - Section 11 of the TSTCA establishes the offence of recruiting another person to be a member of a terrorist group or to participate in the commission of a terrorism act, but this does not criminalise organising or directing others to commit a TF offence or attempted offence as per Article 2.5 of the TF convention.
89. *Criterion 5.8(d)* - The TSTCA does not criminalise contributing to the commission of one or more TF offences or attempted offences by a group of persons acting with a common purpose.
90. *Criterion 5.9* - Predicate offences for ML include serious offences, which are offences which attracts the death penalty or more than 12 months imprisonment (s4, POCA). TF is punishable by imprisonment of up to 14 years, so constitutes a serious offence and is a predicate offence.
91. *Criterion 5.10* - The TF offences do not require the person alleged to have committed the TF offence to be in the same country as the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur (s48, TSTCA).

Weighting and Conclusion

92. Niue has not addressed the deficiencies identified in the 2012 MER or implemented the new requirements for criminalising TF. There is a TF offence, but there are some moderate gaps. The offences extend to any funds or other assets whether from a legitimate or illegitimate source and intent can be inferred from objective factual circumstances to prove the offence. There is no requirement that the funds or other assets be used to carry out or attempt a terrorist act(s) or linked to a specific terrorist act. Providing or collecting funds for an individual terrorist is not criminalised and the criminalisation of providing funds or assets to a terrorist organisation cannot be used. There are gaps in the ancillary TF offences, and financing travel is not criminalised. The sanctions for natural persons are proportionate and dissuasive, but there is no applicable sanction for legal persons.

93. **Recommendation 5 is rated partially compliant.**

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

94. Niue was rated as non-compliant with former SRIII in the 2012 MER. The MER found that: there was a clear legal basis for only elements of UNSCR1267, but not 1373; no implementation of UNSCR 1267 and successor resolutions; no legal system for domestic designations and considering designation by other countries; no system for communicating actions taken under freezing mechanisms; a lack of adequate mechanisms to ensure effective cooperation among countries for giving effect to the actions initiated under the freezing mechanism; a lack of comprehensive and mandatory guidelines to FIs to comply with TFS requirements; a lack of simplified mechanisms in place to unfreeze the funds and properties of delisted or innocent third parties; no exercise of available powers or monitoring of compliance;

and a lack of training and awareness programs on the TFS requirements. Niue has not changed the legal framework for TF-related TFS since the last MER.

95. *Criterion 6.1(a)* - Niue has not identified a competent authority or court responsible for proposing persons or entities to the 1267/1989 Committee for designation, and for proposing persons or entities to the 1988 Committee for designation.

96. *Criterion 6.1(b)* - Niue does not have mechanisms in place for identifying targets for designation based on the designation criteria set out in the relevant UNSCRs.

97. *Criterion 6.1(c)* - There are no procedures for identifying targets for designation to the UN, so there are no specified standards of proof of “reasonable grounds” or “reasonable basis” when deciding whether to make a proposal for designation.

98. *Criterion 6.1(d)* - Niue does not have an explicit requirement for authorities to comply with the UN Sanctions Regime procedures and standard forms for listing adopted by the relevant UN Committee.

99. *Criterion 6.1(e)* - There are no requirements for Niue authorities to provide as much relevant information as possible when proposing a designation.

100. *Criterion 6.2(a)* - Niue has not identified a competent authority or court as having responsibility for designating persons or entities that meet the specific criteria for designation under UNSCR 1373.

101. *Criterion 6.2(b)* - Niue does not have mechanisms for identifying targets for designation based on the designation criteria set out in UNSCR 1373.

102. *Criterion 6.2(c)* - Niue has no mechanisms for designating a person or entity in line with UNSCR 1373 upon prompt consideration of requests from other countries.

103. *Criterion 6.2(d)* - There are no requirements to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether to make a designation. While the definitions of a terrorist act and specified entities under the TSTCA do not require existence of a criminal proceedings (s4 and 5), there are no measures in place to designate under UNSCR 1373.

104. *Criterion 6.2(e)* - There are no provisions explicitly empowering Niue authorities to provide as much relevant information as possible to another country in support of a request to that country to designate an entity.

105. *Criterion 6.3(a)* - Niue has no legal authority, procedures or mechanisms which empower competent authorities to collect or solicit information to identify persons and entities that, based on reasonable grounds or a reasonable basis to suspect or believe, meet the criteria for designation.

106. *Criterion 6.3(b)* - There is no procedure or mechanism in place to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered.

107. *Criterion 6.4* - There is no legal framework to implement TFS under UNSCR 1373. Niue has issued regulations to give effect to some aspects of TFS under UNSCR 1267.

108. The *United Nations Act 1946* (UNA) enables the Cabinet of Niue to make all regulations necessary or expedient to enable Niue to effectively apply UNSCRs. The UNA establishes an offence that applies to every person who commits, or attempts to commit, or does any act with intent to commit, or counsels, procures, aids, abets, or incites any other person to commit any offence against regulations made under that Act (s3). The offence under section 3 of UNA requires freezing to occur immediately without prior notification to the persons involved.

109. The UN Sanctions Regulation has been made under the UNA, which designate “specified entities” (every Al-Qaida entity, the Taliban, every Taliban Entity, Usama bin Laden). It is not clear if Regulation 6 under the UN Sanctions Regulation prohibits dealing with property of specified entities without lawful justification or reasonable excuse. The UN Sanctions Regulation extends the prohibition to all persons and entities designated by the UN in relation to the Taliban and Al Qaeda without the need for a domestic list in Niue. Targeted financial sanctions relating to UNSCR 1267 (except in relation to Islamic State and all its affiliates) are therefore immediately effective under the UN Sanctions Regulation upon designation. No prosecution for an offence against these Regulations may be instituted in any court except with the consent of the Minister of External Affairs (Regulation 14(1), UN Sanctions Regulation). The consent of the Minister would be obtained through a submission to Cabinet prepared by CLO in consultation with relevant agencies. Cabinet meets twice a week to consider submissions and if a matter is urgent, a submission can be tabled out of session. A person having reasonable suspicion that property under their possession or control is owned or controlled by a 1267-listed entity, they are obliged to make a report to the police as soon as practicable after forming a suspicion (Regulation 7, UN Sanctions Regulation).

110. The UN Sanctions Regulation allows the Minister of Foreign Affairs to publish a list of names, and any other known identifying details, of entities that are specified entities and any additions to, or deletions from the list. No such list has been published in Niue, but this does not impact on the requirement for *de facto* freezing to occur immediately without prior notification to the persons involved.

111. While the TSTCA contains provisions which could provide a legal basis for the Solicitor General to apply to the court for an order to take control of property of UN designated persons or entities, (s12, TSTCA), at the time of the on-site visit the provisions were inoperative in absence of any gazettal of listed terrorist entities by the responsible Minister. It is also not clear that the court-based process can be implemented without delay, but Niue has indicated that, in practice, the timeframes for such matters would be addressed on a case-by-case basis with the Court, with urgent matters addressed in a very short time frame if required, by direct application electronically to the High Court Judge in New Zealand. Urgent applications, including interim orders, can be done relatively quickly within a day or a week depending on the nature and complexity of the matter, but where a hearing is required this would take longer to arrange.

112. *Criterion 6.5* - Gaps in the scope of the *de facto* freezing obligation in relation to Islamic State, UNSCR 1373 and the scope of property subject to freeze apply across the sub criteria below.

113. *Criterion 6.5(a)* - The UN Sanctions Regulation (regulation 6) sets out a *de facto* freezing obligation by forbidding dealing with property or funds of entities designated under UNSCR 1267 and successor resolutions. This has the effect of requiring all natural and legal persons within

Niue to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities relating to Al Qaida entity, the Taliban, and every Taliban Entity, but does not extend to Islamic State and its affiliates. The regulation does not require the Minister to gazette updated lists of designated entities.

114. *Criterion 6.5(b)* - The *de facto* freezing obligation under Regulation 6 of the UN Sanctions Regulation applies to: (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat; (ii) those funds or other assets that are wholly or jointly owned, directly or indirectly (by reference to 'interest in...') designated persons or entities; and (iii) funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities. TFS freezing obligations do not extend to (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

115. *Criterion 6.5(c)* - The *de facto* freezing obligation prohibits providing funds 'to be used' but does not prohibit simply providing funds (Regulations 5 and 6, UN Sanctions Regulation). It also does not clearly extend to making financial or other related services available for the benefit of entities owned or controlled, directly or indirectly, by designated persons or entities, or persons and entities acting on behalf of, or at the direction of, designated persons or entities (Regulations 5 and 6, UN Sanctions Regulation).

116. *Criterion 6.5(d)* - There are no mechanisms for communicating designations to the financial sector and the DNFBPs immediately upon taking such action and providing clear guidance to FIs and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in acting under freezing mechanisms.

117. *Criterion 6.5(e)* - The *de facto* freezing obligation requires all persons to report *de facto* freezing actions to competent authorities, specifically the police (Regulations 6 and 7, UN Sanctions Regulation). However, deficiencies with the scope and application of the freezing obligation impact on the reporting obligation (see above).

118. *Criterion 6.5(f)* - The UN Sanctions Regulation protect the rights of *bona fide* third parties acting in good faith to implement the *de facto* freezing obligation (Regulation 12). However, there are no correspondent requirements relating to UNSCR 1373.

119. *Criterion 6.6(a)* - Niue does not have procedures to submit de-listing requests to the relevant UN sanctions committee in the case of persons and entities designated pursuant to the UN Sanctions Regime, that in the view of the country, do not or no longer meet the criteria for designation.

120. *Criterion 6.6(b)* - In Niue, specified entities are limited to those terrorist entities designated by the UNSC rather than domestic designation, so are limited to designations under UNSCR 1267. Niue does not have procedures or mechanisms to delist and unfreeze the funds or assets of persons and entities designated pursuant to UNSCR 1373 that no longer meet the criteria for designation.

121. *Criterion 6.6(c)* - Niue does not have procedures to follow, upon request, for the review of the designation decision before a court or other independent competent authority for designations under UNSCR 1373.

122. *Criterion 6.6(d)* - Niue does not have procedures in place to facilitate review by the 1988 Committee in accordance with the applicable guidelines or procedures.

123. *Criterion 6.6(e)* - Niue does not have a procedure in place for informing designated persons of the availability of the United Nations Office of the Ombudsman pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

124. *Criterion 6.6(f)* - Niue does not have publicly known procedures for the unfreezing of funds or assets for false positives. However, individuals can apply to the court for revocation of a freezing order (s14, TSTCA).

125. *Criterion 6.6(g)* - The TSTCA requires the Minister to publish by gazette de-listings when the UNSC adds or removes any terrorist entity from that list of specified entities (s5). However, there are no mechanisms to communicate a de-listing and unfreezing to the FIs and DNFBPs immediately after taking such actions. There is also no guidance for FIs or other persons or entities that may be holding targeted funds or other assets on their obligations to respect a de-listing or unfreezing action.

126. *Criterion 6.7* - Niue has no legal provisions that authorise access to funds or other assets frozen under UNSCR 1452 or 1373 which have been determined to be necessary for basic expenses, payment of fees, expenses and service charges or extraordinary expenses.

Weighting and Conclusion

127. There are major shortcomings with Niue's legal and operational framework for TFS against terrorism and TF. There is a legal basis for some basic elements of UNSCR 1267 that provide for freezing, but implementation of those provisions is not well supported. Niue does not have a framework to implement domestic designations or to recognise other jurisdictions' designations to implement UNSCR 1373.

128. **Recommendation 6 is rated non-compliant.**

Recommendation 7 – Targeted Financial sanctions related to proliferation

129. Recommendation 7 is a new requirement added to the FATF Recommendations in 2012, so was not assessed in Niue's 2012 MER.

130. *Criterion 7.1* - Niue does not implement TFS without delay to comply with the UNSCRs that relate to the prevention, suppression and disruption of proliferation of WMD and its financing. There are limited offences under the TSCTA related to the movement of nuclear material and providing weapons to terrorist groups (ss10, 28 and 29). Niue indicates that the TF offence under section 6(2) of the TSTCA is broad and could cover financing weapons of mass destruction if the person intended, knew or had reasonable grounds to believe that the funds would be used to carry out a terrorist act using a WMD. However, there is no criminal offence of WMD proliferation consistent with UNSCR 1540, and the TF offence does not enable freezing without delay.

131. *Criterion 7.2(a)-(f)* - Niue has not formally established the necessary legal authority or identified competent authorities to assume the responsibility for the implementation and enforcement of TFS in accordance with this criterion, noting there is no legal or procedural framework for TFS for PF. National coordination relating to operational PF-related issues

involving the shipping registry are managed by the SOG in consultation with relevant NSC members (see IO.1), but there are no standards or procedures in place as required under this criterion.

132. *Criterion 7.3* - The three reporting entities do not have obligations to comply with any TFS that relate to the prevention, suppression and disruption of proliferation of WMD and its financing. On this basis, there are no measures for monitoring and ensuring compliance by the reporting entities, or sanctions for non-compliance.

133. *Criterion 7.4(a)-(d)* - Niue has not developed or implemented any publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities that, in the view of Niue, do not or no longer meet the criteria for designation. There are also: no procedures to unfreeze funds or assets in the case of false positives or authorise access to funds to assets in accordance with the relevant provisions under the UNSCRs; no mechanisms for communicating a de-listing or unfreezing; and no guidance for entities that may be holding targeted funds or other assets.

134. *Criterion 7.5(a)-(b)* - Niue does not have any measures in place that permit the addition of interest or other earnings due under a contract entered prior to designation. There are also no provisions to enable a designated person or entity to make any payment due under a contract entered prior to the listing of such person or entity.

Weighting and Conclusion

135. Niue does not have a legal or procedural framework to implement TFS related to proliferation of WMD.

136. **Recommendation 7 is rated non-compliant.**

Recommendation 8 – Non-profit organisations

137. Niue was rated partially compliant for Special Recommendation VIII (non-profit organisations) in its 2012 MER. Deficiencies identified in the MER include: the non-review of domestic NPO sector: non-conduct of outreach to NPOs on their risk to TF; and non-monitoring of the NPO sector. There was also no mandatory registration or licensing for all NPOs, and no specified period for registered societies to keep the full records of their administration and management, including financial and programmatic information. R.8 now has new requirements under the FATF Standards.

138. The Incorporated Societies Act 1908 (ISA) governs the incorporation of NPOs that are not established for the purpose of pecuniary gain. An incorporated society is any society consisting of not less than 15 persons associated for any lawful purpose but not for pecuniary gain (s4, ICA). Registration under the ISA is not compulsory. The size of the NPO sector in Niue is small, commensurate with Niue's geographic size, and the size of the population and economy. The Niue Government's visibility of the NPO sector is based on existing information collected by the Government through various legislative regimes, and through surveys conducted on island by the Chamber of Commerce.

139. *Criterion 8.1(a)* - Niue has not considered and identified which subset of NPOs fall under the FATF's definition of NPOs or identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse.

140. There are currently 46 NPOs that have registered voluntarily under the ISA. The majority are likely to be small community-based groups created for purposes of community, sporting and religious purposes. Niue authorities indicated at the on-site visit that some of these NPOs are probably inactive but do have visibility of the number. The 2017 NRA reported the presence of three foreign NPOs operating in Niue but no foreign NPOs were operating in Niue at the time of the on-site visit.

141. *Criterion 8.1(b)* - The 2017 NRA assessed that the TF risk in Niue as low but did not specifically examine the nature of threats posed by terrorist entities to NPOs likely to be at risk of TF abuse, as well as how terrorist actors abuse those NPOs.

142. *Criterion 8.1(c)* - Niue has not reviewed the adequacy of measures, including laws and regulations that relate to the subset of NPOs that may be abused for TF purposes, to take effective actions to address the risks identified.

143. *Criterion 8.1(d)* - Niue has not periodically reassessed the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

144. *Criterion 8.2(a)* - Registered NPOs are subject to a requirement to provide an annual financial statement to the Registrar (s23, ISA). This statement sets out the income and expenditure of the NPO in the last financial year, the assets and liabilities of the NPO at the close of the said financial year, and all mortgages, charges, and securities of any description that may affect any of the property of the society at the close of the respective year. Registration is voluntary, and non-registered NPOs are not subject to any requirements to promote transparency. There are no other policies to promote accountability, integrity, and public confidence in the administration and management of NPOs.

145. *Criterion 8.2(b)* - Niue has not undertaken outreach and educational programs to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to TF abuse, and the measures that NPOs can take to protect themselves against such abuse.

146. *Criterion 8.2(c)* - Niue has not worked with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from TF abuse.

147. *Criterion 8.2(d)* - Niue has not specifically encouraged NPOs to conduct transactions via regulated financial channels. However, in practice, NPOs would transact on the island using cash collected through fundraising (likely to be small amounts, see IO.4) or through a New Zealand-based bank account. NPOs could also remit funds to and from overseas using the MVTs agent.

148. *Criterion 8.3* - Niue has not applied risk-based measures to NPOs at risk of TF abuse, noting that Niue has not considered and identified a subset of NPOs likely to be at risk of TF abuse and that the NPOs are likely to face a low risk of abuse for TF.

149. *Criterion 8.4(a)* - Niue has not conducted any supervision or monitoring of the NPO sector for compliance with the requirements of this Recommendation and Niue has not applied risk-based measures to mitigate risk of TF abuse.

150. *Criterion 8.4(b)* - The ISA provides for penalties for various contraventions of the ISA to be applied to NPOs. This includes failing to provide annual reporting to the Registrar, but this only

applies to NPOs that have voluntarily registered (s23, ISA). Subsection 25(e) of the ISA allows an incorporated society to be wound up if the Court or a judge is of the opinion that it is just and equitable that the society should be wound up". Persons who may petition the Court for winding up include the incorporated society, a member, a creditor or the Registrar itself (s26, ISA). However, there are no other risk-based measures that apply to NPOs at risk of TF abuse.

151. *Criterion 8.5(a)* - Section 33 of the ISA requires the Registrar to keep a register of all matters required by the Act or by any Regulations to be recorded by the Registrar. This includes the rules of the society. The ISA does not specify a definite timeframe for maintaining reports, although Niue indicates that the registrar holds the reports indefinitely, with a minimum retention period of 7 years. Any person may inspect the register, or any other documents lodged with the registrar, including competent authorities. The Registry and other competent authorities can share information on NPOs under the executive authority set out in the Constitution (s34, ISA; Article 62(1), Constitution). The Business License Act 1997 also allows for police and other authorities in Niue to access the information submitted by incorporated societies. This access is limited to the information submitted by the incorporated societies and does not include other information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

152. *Criterion 8.5(b)* - Competent authorities have information gathering and other investigative powers that could be applied to investigate a NPO suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

153. Niue Police has SOPs for the investigation of different crime types but have not received formal training on TF investigations or developed SOPS for TF investigations. Niue Police indicated at the on-site visit that it would likely contact New Zealand Police or another regional partner for assistance on a suspected TF matter, which the assessment team considers to be a reasonable response based on Niue's risk and context. However, in the absence of TF SOPs or any other TF response framework, it is not clear that the Niue Police has the capability to coordinate a response to such activity.

154. *Criterion 8.5(c)* - Registered NPOs are required to provide annual financial statement to the Registrar and the Registrar is required to keep a register of all matters he or she is required to record (ss 23 and 33, ISA). Any person may inspect the register, or any other documents lodged with the Registrar (s34, ISA). However, registration is voluntary. The information required by the ICA does not contain information relating to administration and management of particular NPOs, (including programmatic information).

155. The FIU can request and collect, free of charge, any information it considers relevant to ML, TF, and serious offences, regardless of whether the information is publicly available (s21(2), FTRA). This includes information that is collected or maintained in databases maintained by the Government. The Solicitor General is also empowered to issue a direction to disclose information to the government, but must be satisfied that the information is relevant to any or all of the purposes of the FTRA or the detection/investigation/prosecution of ML/TF offences (s25, FTRA). Although, not explicitly included in the FTRA, any information can be obtained by the FIU including financial and programmatic information.

156. *Criterion 8.5(d)* - Niue does not have appropriate mechanisms to ensure that suspicious activities related to NPOs as provided in this criterion are promptly shared with competent authorities, to take preventive or investigative action.

157. *Criterion 8.6* - The points of contact and procedures used to respond to international requests for information regarding particular NPOs suspected of TF or involvement in other forms of terrorist support will depend on the channel used for making the request. Such requests could be made through External Affairs, Niue Police, CLO or SOG and managed by that authority. Most points of contact will not have specific procedures for processing such requests given the low TF risk profile and the absence of such requests to date, but authorities have some mechanisms for sharing information on an agency-to-agency basis (see R.40).

Weighting and Conclusion

158. Niue has not reviewed the NPO sector to identify a subset of organisations that fall within the FATF definition of NPOs or conducted any risk assessment to identify the nature of TF risks such NPOs face. Consequently, there are no risk-based measures to address identified TF risks and no oversight/monitoring, outreach has been undertaken on the NPOs at risk of TF abuse. There is no established mechanism for cooperation, coordination and information sharing between competent authorities and international counterparts, and Niue has not demonstrated that relevant law enforcement authorities have the investigative expertise and capability. While the assessment team notes Niue's unique risk and context, and the nature of most NPOs are sporting or religious clubs that do not fall within the FATF definition of a NPO, Niue has taken no steps to identify whether any NPOs are likely to be at risk of TF abuse by virtue of their activities or characteristics or put in basic measures place to prevent the misuse of such NPOs.

159. **Recommendation 8 is rated non-compliant.**

Recommendation 9 – Financial institution secrecy laws

160. In its 2012 MER, Niue was rated compliant with the requirements for secrecy laws for FIs under the former R.4. Niue has not amended the secrecy laws for FI secrecy since the 2012 MER.

161. *Criterion 9.1* - There are no FI secrecy laws that inhibit the operation of the FATF Recommendations in Niue.

162. There are confidentiality requirements that apply to public officials, and requirements under the Niue Bank Amendment Act of 2013 under which an approved agent must not disclose to any person any information relating to the provision of any authorised agency banking service, unless disclosure is permitted or required by the law of Niue or New Zealand (s84M). The information gathering powers of competent authorities under the FTRA and POCA override these requirements and competent authorities are permitted to share information with foreign counterparts (see R.40) Subsection 5(2) of the FTRA provides that an FI must comply with the provisions of the Act, "despite an obligation as to secrecy, or other restriction on the disclosure of information, and regardless of whether that obligation or restriction is imposed by law ... or otherwise." Subsection 21(2) of the FTRA provides that the FIU may collect, free of charge and at the FIU's request, any information that the FIU considers relevant to ML, TF, and serious offences, whether that information is publicly available, including information that is collected or maintained in databases by the Government. STRs and other information given to or obtained by NFIU can be disseminated to police, LEA or supervisory bodies outside Niue if the Solicitor General considers it appropriate (s.21(1)(b)(ii)).

163. FIs can share information for the purposes of R.16. There are no local banks in Niue with correspondent banking relationships and R.17 is not applicable.

Weighting and Conclusion

164. Niue's secrecy laws for FIs do not generally operate to prevent competent authorities accessing information from reporting entities, sharing information among competent authorities, conducting criminal or proceeds of crime investigations or providing mutual assistance in respect of ML or TF offences.

165. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer due diligence

166. In its 2012 MER, Niue was rated partially compliant with the former R.5 on CDD. The main deficiencies included the lack of requirements for: conducting CDD where a FI has doubts about the veracity or adequacy of previously obtained identification data; identifying and verifying beneficial ownership; conducting ongoing due diligence on the business relationship; keeping CDD information up to date; ECDD; and implementing CDD based on materiality and risk.

167. While there have been no reforms to address these deficiencies, a significant development is the closure of the only bank located in Niue offering access to transactional banking services, including bank accounts, in 2013. Since 2013, most (95%) of transactional banking services have been provided by an agent of an offshore bank located in New Zealand which is subject to New Zealand's AML/CFT regulatory framework. NCEL acts as the agent of the New Zealand bank in Niue and is not characterised as an FI in Niue. Niue has one MVTs agent of an international remittance company which provides remittance services through a terminal in the NCEL agency. The MVTs agent does not have to be licensed under the Niue's Banking Act, however the MVTs agent does hold a business license. NDB is established under the Niue Development Bank Act and provides loans for Niue's economic development but does not conduct general banking business. Niue does not have a central bank.

Detailed CDD requirements

168. *Criterion 10.1* - FIs must not open, operate, or maintain an anonymous account or an account in a false name (ss37(1), FTRA). A person who opens or operates an account with an FI in a false name is guilty of an offence (s36, FTRA). An anonymous account which existed on the commencement of the FTRA, but which appeared to the FI to be the true name of the account holder does not result in the FI being in contravention of the FTRA (ss37(3), FTRA). However, there are no bank accounts in Niue that existed prior to the commencement of the FTRA.

When CDD is required

169. *Criterion 10.2(a)* - FIs are required to undertake verification of identity when establishing a business relationship or conducting a transaction with a person (s15, FTRA). A transaction is defined broadly under section 4 of the FTRA.

170. *Criterion 10.2(b)* - The FTRA allows FIs to waive verification of identity for an occasional transaction not exceeding 1,000 penalty units (NZD10,000/USD 6,000) or its foreign currency equivalent unless the transaction is suspicious or unusual (s15(6)(b), FTRA). The

threshold for this exemption is within the FATF requirement of USD/EUR15,000. There is no explicit requirement for CDD to be conducted for occasional transactions above the designated threshold where the transaction is carried out in several operations that appear to be linked, but these types of structured transactions are likely to be suspicious or unusual.

171. *Criterion 10.2(c)* - FIs are required to include accurate originator information with electronic funds transfers and any other form of funds transfers (s19, FTRA). However, FTRA allows FI to waive the verification of identity for an occasional transaction not exceeding 1,000 penalty units (NZD 100,000/USD 60,000) (ss15(6)(b), FTRA). This limit, however, exceeds the EUR/USD 1,000 standard for wire transfers.

172. *Criterion 10.2(d)* - Verification of the identity of the customer may not be waived where the FI has reason to suspect that the transaction is suspicious or unusual (ss15(6), FTRA).

173. *Criterion 10.2(e)* - CDD may only be waived in a limited range of circumstances under subsection 15(6) of the FTRA. These are transactions that are part of an existing and regular relationship with a customer who has previously been identified or where the transaction is a low-risk bulk regular transaction of institutions like utilities, pension funds and treasury, and where the transaction is an occasional transaction not exceeding 1,000 penalty units (NZD10,000/USD 6,000) or its equivalent in foreign currency or any other amount that may be prescribed (ss 15(6)(a) and(b), FTRA). Verification of the identity of an existing customer may not be waived where the FI has reason to doubt the accuracy or veracity of previously obtained customer identification data for transactions that are part of an existing and regular relationship with a customer or the transaction is a low risk bulk regular transaction of institutions like utilities, pension funds and treasury (s15(6)(a), FTRA). There is no requirement for CDD where there are doubts about the accuracy or veracity of previously obtained customer identification data for occasional transactions not exceeding 1,000 penalty units (NZD10,000/USD 6,000) or its equivalent in foreign currency.

Required CDD measures for all customers

174. *Criterion 10.3* - FIs are required to verify the identity of its customers, including customers that are legal entities, when establishing a business relationship or conducting a transaction with a person, based on any official or other identifying documents or other evidence that is reasonably capable of verifying the identity of a person (s15, FTRA). It is not clear that documents or evidence that are reasonably capable of verifying the identity of a person constitute reliable and independent documents, data or information.

175. The *Best Practice Guidelines for Financial Institutions* elaborate that the documents should be Niue Government identification or by reference from a reputable and identifiable party. It also cites possible forms of identification as photo driver's licence, passport and certificate of identity. It recommends that secondary identification be obtained, for example certified photocopies or original utilities bills to verify addresses. However, the Guidelines are not enforceable.

176. *Criterion 10.4* - If a FI has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person or persons, the FI is required to verify the identity both of that person and of the other person or persons for whom, or for whose ultimate benefit, the transaction is being conducted (s15(4), FTRA). However, there is no requirement to verify

that any person purporting to act on behalf of the customer is so authorised unless the customer is a legal entity (s15(2)(a), FTRA).

177. *Criterion 10.5* - The FTRA does not explicitly require FIs to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner to ensure that the FI is satisfied that it knows who the beneficial owner is.

178. *Criterion 10.6* - FIs are required to take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in that transaction (s15(3), FTRA). Transaction includes the opening of an account, entering a fiduciary relationship and a payment made in satisfaction, in whole or in part, of a contractual or other legal obligation (s4, FTRA). There are no requirements for FIs to understand and, as appropriate, obtain information on the intended nature of the business relationship.

179. *Criterion 10.7(a)* - There is no explicit requirement for FIs to conduct ongoing due diligence, including to scrutinise the transactions undertaken throughout the course of the relationship in line with the customer's business, risk profile, and source of funds. However, FIs are required to pay special attention to transactions that have no apparent or visible economic or lawful purpose if they are complex, large or unusual, or have an unusual pattern (s18, FTRA). FIs are also required to take reasonable measures to ascertain the purpose of any transaction, and the origin and ultimate destination of the funds involved in that transaction (s15(3), FTRA).

180. *Criterion 10.7(b)* - There is no requirement for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships.

Specific CDD measures required for legal persons and legal arrangements

181. *Criterion 10.8* - There are no requirements under the FTRA for reporting entities to understand the nature of the customer's business for legal persons and legal arrangements. For legal persons, FIs are only required to verify legal person's existence and structure including information as to principal owners and beneficiaries, but not to the extent of identifying ultimate beneficial owners (s15(2)(a)(ii)). There are no requirements for FIs to understand the nature of the customer's business, and its ownership and control structure for legal arrangements.

182. *Criterion 10.9(a)* - FIs are required to identify and verify the customer's name, legal existence and structure, including information relating to person's name, and legal form (ss15(2)(a), FTRA). There are no corresponding requirements for legal arrangements.

183. *Criterion 10.9(b)* - FIs are required to adequately verify a legal entity's directors, principal owners and beneficiaries and the provisions regulating the power to bind the entity, provisions to verify that persons purporting to act on behalf of the customer are so authorised and provisions to identify those persons (s15(2)(a), FTRA). However, there is no provision to identify and verify its identity through the names of the relevant persons having a senior management position. There are no corresponding requirements for legal arrangements.

184. *Criterion 10.9(c)* - FIs are required to adequately verify the legal entity's address (s15(2)(a), FTRA). It is unclear whether the verification of address pertains to the address of

the registered office and, if different, the principal place of business. There are also no corresponding requirements for legal arrangements.

185. *Criterion 10.10(a)* - FIs are required to adequately verify information relating to directors, principal owners, and beneficiaries and persons purporting to act on behalf of the customer are so authorised and identifiable (s15(2)(a), FTRA). The terms principal owners and beneficiaries are not defined under the FTRA, so it is not clear that reporting entities are required to identify the natural person or persons who ultimately have a controlling ownership interest in a legal person.

186. *Criterion 10.10(b)* - There are no requirements for FIs to identify and take reasonable measures to verify the identity of the natural person exercising control of the legal person or arrangement through other means.

187. *Criterion 10.10(c)* - There are no requirements for FIs to verify a senior managing official where no natural person is identified under criterion 10(a) or (b).

188. *Criterion 10.11* - There are no requirements for FIs to identify and take reasonable measures to verify the identity of beneficial owners of customers for any type of legal arrangements.

CDD for Beneficiaries of Life Insurance Policies

189. *Criterion 10.12* - There are no businesses operating in Niue that offer life insurance to Niuean residents as it is not commercially viable to do so.

190. *Criterion 10.13* - There are no businesses operating in Niue that offer life insurance to Niuean residents as it is not commercially viable to do so.

Timing of verification

191. *Criterion 10.14* - FIs are required to verify the identity of customers when establishing a business relationship or conducting a transaction with a person based on any official or other identifying documents or other evidence that is reasonably capable of verifying the identity of a person (s15, FTRA). FIs are not permitted to conduct delayed verification after the establishment of the business relationship.

192. *Criterion 10.15* - FIs are not permitted to conduct delayed verification after the establishment of the business relationship.

Existing customers

193. *Criterion 10.16* - There is no requirement for FIs to apply CDD requirements to existing customers based on materiality and risk, or due diligence on existing relationships.

Risk-based approach

194. *Criterion 10.17* - There is no requirement for FIs to perform EDD where ML/TF risks are higher.

195. *Criterion 10.18* - FIs are not permitted to apply simplified due diligence.

Failure to satisfactorily complete CDD

196. *Criterion 10.19(a)* - When establishing a business relationship or conducting a transaction with a customer, FIs are not permitted to proceed with the transaction unless they have verified the identity of the customer (s15(1), FTRA). If satisfactory evidence of the customer's identity is not produced or obtained, the FIs must not proceed with the transaction unless directed to do so by the FIU (s16, FTRA). However, there is no requirement to terminate the business relationship or not open any account in such circumstances.

197. *Criterion 10.19(b)* - There is no requirement for FIs to consider submitting an STR in relation to the customer in cases where the FI is unable to comply with relevant CDD measures.

198. *Criterion 10.20* - There is no requirement permitting FIs to not pursue CDD where it may tip-off the customer and instead file an STR.

Weighting and Conclusion

199. FIs are prohibited from opening, operating, or maintaining an anonymous account or an account in a false name, and are generally required to undertake verification of identity when establishing a business relationship or conducting a transaction with a person. However, there are major shortcomings with the CDD requirements. FIs are not required to identify the beneficial owner for legal persons and legal arrangements and take reasonable measures to verify the identity of the beneficial owner for legal persons and legal arrangements. There are also no CDD requirements where there are doubts about the accuracy or veracity of previously obtained customer identification data for occasional transactions not exceeding NZD10,000/USD 6,000) or its equivalent in foreign currency, or to terminate the relationship or file an STR in case of failure of CDD. There are no obligations for FIs to conduct ongoing due diligence or EDD, ensure that CDD documents, data or information are kept up to date or conduct CDD for occasional transactions that are wire transfers.

200. **Recommendation 10 is rated partially compliant.**

Recommendation 11 – Record-keeping

201. In its 2012 MER, Niue was rated largely compliant with the former R.10 on record keeping. The minor deficiency was the lack of a requirement to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

202. *Criterion 11.1* - FIs are required to keep records of every transaction conducted for at least six years after the date of account closure or date that the business relationship ceases, and in any other case, such as the date on which the FI last obtained information identifying the parties to the transaction, or date in which it last received or sent correspondence related to the transaction or the date of the transaction (s14(3), FTRA). Records include the nature, amount, date, time and place of the transaction, parties and nationality of the parties to the transaction, details of identification, and legal entity constitution (s14(2), FTRA).

203. *Criterion 11.2* - FIs are required to keep records relating to customers, which include a record of the evidence of the identity that was obtained, details of all transactions (i.e. account files) and record of all correspondence between the identified person and the FI for at least six years (ss 17(1) and (2), FTRA). However, FIs are not required to maintain records of any result

of any analysis undertaken on the account following the termination of business relation or after the date of occasional transactions.

204. *Criterion 11.3* - FIs are required to keep the records of every transaction that is conducted through the FI that are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU (s14(1), FTRA).

205. *Criterion 11.4* - The Solicitor-General may issue a direction to a FI to provide information that the person may reasonably have access, or that is in the possession or under the control of that person (ss25, FTRA). However, there is no requirement to make the information available swiftly to the domestic competent authorities upon authority.

Weighting and Conclusion

206. FIs have obligations to maintain all necessary records on transactions for at least six years, including records relating to CDD, account files and business correspondence, except for records relating to the results of any analysis undertaken on the customer. The scope of transaction records is sufficient to allow reconstruction of transactions. FIs are not required to ensure that CDD information and transaction records are swiftly available to competent authorities.

207. **Recommendation 11 is rated largely compliant.**

Recommendation 12 – Politically exposed persons

208. In its 2012 MER, Niue was rated partially compliant with requirements under the former R.6 for PEPs. The main deficiencies identified included: deficiencies in the definition of PEPs; the lack of a requirement to apply the stricter CDD measures to beneficial owners who themselves qualify as PEPs; and the lack of requirement to obtain senior management approval to continue a business relationship where a customer or beneficial owner has been accepted and is subsequently found to be a PEP. Recommendation 12 now contains new requirements under the FATF Standards. Niue has not amended the legal requirements for PEPs since 2012.

209. Niue issued a *Best Practice Guidance for Financial Institutions* in 2009 which covers PEPs as individuals who have, or have previously been assigned, prominent public functions in a particular country. The Guidelines also provide that FIs should: a) have appropriate risk management systems to determine whether the customer is a politically exposed person; b) obtain senior management approval for establishing business relationships with such customers; c) take reasonable measures to establish the source of wealth and source of funds; d) conduct enhanced ongoing monitoring of the business relationship. However, the guidelines are not enforceable.

210. *Criterion 12.1(a)* - The FTRA has a circular reference relating to identifying PEPs. If a person is a PEP, the FTRA requires FIs to have appropriate risk management systems in place to determine whether the customer is a PEP (s15(2)(b)(ii)). The FTRA does not define the term PEP or distinguish between domestic or foreign PEPs, and on this basis the term PEP is interpreted to cover both foreign and domestic PEPs. The *Best Practice Guidelines for Financial Institutions* defines PEPs as individuals who have or have previously been assigned prominent public functions in a particular country but does not cover all the required types of foreign PEPs or persons who have or have been entrusted with a prominent function by an international organisation. These guidelines are not enforceable.

211. There is also no requirement to identify whether the beneficial owner is a PEP.

212. *Criterion 12.1(b)* - While FIs are required to obtain approval of senior management before establishing a business relationship with a PEP (s15(2)(b), FTRA), gaps in the definition of a foreign PEP cascade to this criterion. There is also no requirement to obtain senior management approval for continuing a relationship with an existing customer who has subsequently been identified as a PEP.

213. *Criterion 12.1(c)* - FIs are required to take reasonable measures to establish the source of wealth and funds of PEPs (s15(2)(b), FTRA). However, gaps in the definition of a foreign PEP cascade to this criterion.

214. *Criterion 12.1(d)* - FIs are required to conduct regular and ongoing enhanced monitoring of the business relationship (s15(2)(b), FTRA). Gaps in the definition of a foreign PEP impact the scope of this requirement.

215. *Criterion 12.2(a)* - As set out in cr12.1(a), if the person is a PEP, FIs are required to have an appropriate risk management system to determine whether the customer is a PEP, which includes domestic PEPs (s15(2)(b)(ii), FTRA). There is no requirement to identify if a beneficial owner is a domestic PEP. The term domestic PEP is not defined in legislation, so it is not clear that provisions of subsection 15(2) of the FTRA Act apply to all customers captured under the FATF's definition of a domestic PEP and persons who have been entrusted with a prominent function by an international organisation. The *Best Practice Guideline for Financial Institutions* definition of PEPs does not apply to domestic PEPs. These guidelines are not enforceable.

216. *Criterion 12.2(b)* - The requirements and deficiencies cited under cr12.1(b) to (d) also applies in this criterion.

217. *Criterion 12.3* - FIs are not required to apply the relevant requirements of c.12.1 and 12.2 to family members or close associates of all types of PEPs.

218. *Criterion 12.4* - There are no businesses operating in Niue that offer life insurance, as it is not commercially viable to do so.

Weighting and Conclusion

219. There are moderate shortcomings with the preventive measures that apply to domestic and foreign PEPs under the FTRA. There are requirements for FIs to have appropriate risk management systems in place to determine whether the customer is a PEP, obtain approval of senior management before establishing a business relationship with the person, take reasonable measures to establish the source of wealth and funds of the person and conduct regular and ongoing enhanced monitoring of the business relationship. However, the term PEP is not defined in legislation. Guidelines define the term foreign PEP, but there are gaps, and these guidelines are not enforceable. The extent to which the requirements under the FTRA apply to all types of domestic PEPs captured under the FATF Recommendations is not clear. There is also no requirement for FIs to identify if beneficial owners are domestic or foreign PEPs or apply the requirements under cr12.1 and 12.2 to family members or close associates of PEP.

220. **Recommendation 12 is rated partially compliant.**

Recommendation 13 – Correspondent banking

221. In its 2012 MER, Niue was rated non-compliant with the former R.7 on correspondent banking on the basis that there were no AML/CFT requirements established for correspondent banking. While Niue has not introduced reforms to address the deficiencies identified in 2012, the retail bank that was operating in Niue closed in 2013. There has been no bank operating in Niue as a FI providing transactional banking services since 2013. On this basis there are currently no banks operating in Niue that have correspondent banking relationships. This Recommendation is not applicable.

Weighting and Conclusion

222. Niue does not have any banks operating on the island that engage in cross-border transactions and seek access to international financial networks that necessitate correspondent banking relationships.

223. **Recommendation 13 is rated not applicable.**

Recommendation 14 – Money or value transfer services

224. In its 2012 MER, Niue was rated partially compliant with the former R.23. The main deficiencies were the lack of requirements for money remittance businesses to be licensed or registered. The assessment team notes that the requirement for MVTs to hold a business licence if operating in Niue was not considered during the 2012 MER.

225. *Criterion 14.1* - Any person engaging in business in Niue is required to have a license, which must be renewed annually, and is required to only carry on a business that is stated in the license (s7, Business License Act). Applications for a business license can be refused if the licensor is reasonably of the opinion that the applicant is not a fit and proper person to hold such a license (s12, Business License Act).

226. *Criterion 14.2* - There are no domestic MVTs providers operating in Niue, only the agent of an international MVTs provider under an agency agreement within NCEL. Niue authorities have not formally taken action to identify natural or legal persons that carry out MVTs without a business license. The assessment team considers that this is reasonable in the context of Niue. Any MVTs operating without a business license would be easily identifiable due to the small size of the financial sector and population and the limited options for conducting cross-border transfers.

227. Any person who engages in business without a business license, upon conviction, shall be liable to a fine not exceeding NZD 500 (USD 300) for a first offence and for a second or subsequent offence a fine not exceeding NZD 1,000 (USD 600) or imprisonment for no more than 20 days, or both the fine and imprisonment (s27, Business Licence Act). These sanctions are not proportionate or dissuasive.

228. *Criterion 14.3* - NFIU has the power to supervise FIs for compliance with the AML/CFT obligations under the FTRA (s21, FTRA). The definition of an FI under the FTRA includes a person other than a bank that collects, holds, exchanges or remits funds, or otherwise negotiates funds transfers, on behalf of other persons (ss3(d)). However, there has been no implementation of monitoring of the MVTs agent for compliance with AML/CFT obligations under the FTRA.

229. *Criterion 14.4* - There are no domestic MVTs providers operating in Niue, only an agent of an international MVTs provider which is included in the global AML/CFT program of its foreign headquarters.

230. *Criterion 14.5* - There are no domestic MVTs providers operating in Niue that use agents, and it is unlikely that it would be commercially viable for a domestic MVTs providers to operate in Niue in the future.

Weighting and Conclusion

231. MVTs providers are captured under the FTRA and required to have a business license, but are not monitored for compliance with AML/CFT obligations under the FTRA, which has been given weight by the assessment team. The MVTs agent is overseen to some extent by its offshore headquarters as part of its global AML/CFT program but is only audited every four years. Sanctions that apply to natural or legal persons that carry out MVTs without license or registration are not proportionate and dissuasive. While Niue has not formally taken action to identify natural or legal persons that carry out MVTs without a business license, the assessment team considers that this is reasonable given Niue's risk and context. There are no domestic MVTs providers operating in Niue, so the requirements under criteria 14.4 and 14.5 are not applicable.

232. **Recommendation 14 is rated partially compliant.**

Recommendation 15 – New technologies

233. In its 2012 MER, Niue was rated partially compliant with former R.8, with the MER noting there were no enforceable obligations requiring FIs to take measures to prevent the misuse of technological developments and no specific requirements on CDD procedures applying to non-face-to-face customers. Niue has not amended the legal framework for new technologies since 2012 and there are new requirements under R.15.

234. *Criterion 15.1* - The 2017 NRA did not identify and assess the ML/TF risks that may arise in relation to the development of new products and practices, or the use of new or developing technologies for both new and pre-existing products. The 2024 NRA update also did not identify or assess these risks, other than identify the absence of VASPs in Niue. There is no requirement for FIs to identify and assess the ML/TF risks associated with developing new products and practices or using new or developing technologies.

235. *Criterion 15.2* - FIs are not required to (a) undertake risk assessments prior to the launch or use of new products, practices and technologies, and (b) take appropriate measures to manage and mitigate those risks.

236. *Criterion 15.3(a)* - The 2024 NRA update notes the absence of VASPs in Niue and rates the overall risk of "new technologies" as low solely on this basis. Niue does not prohibit VASPs from operating in Niue and Niue authorities indicated at the on-site visit that they did not have the capability to identify whether a VASP was operating from Niue. However, the assessment team agrees with Niue authorities that it is unlikely that VASPs are operating in Niue.

237. *Criterion 15.3(b)* - Niue does not apply a risk-based approach to ensure measures to prevent or mitigate ML/TF are commensurate with identified risks relating to VASPs.

238. *Criterion 15.3(c)* - VASPs appear to be captured under the FTRA as a funds or assets transfer system (s38, FTRA). A funds transfer system includes a financial service that accepts cash, cheques or any other any instrument of payment or stores of value at a given location and pays an equal amount in cash or in any other form to a beneficiary located in another geographical area by means of a method of communication, a message, transfer, compensation or clearing system to which the funds or assets transfer system belongs (s38, FTRA). However, the only

obligations that apply to VASPs under the FTRA are the obligations to report CTRs and STRs and any other obligations as prescribed by the relevant supervisory authority (s38(3), FTRA). No other obligations have been prescribed.

239. *Criterion 15.4(a)* - Any person (natural or legal) operating a domestic VASP in Niue is required to obtain a business license under the Business License Act (s27). Any foreign VASP providing services in Niue would be required to be registered under the Development Investment Act 1992 (s6).

240. *Criterion 15.4(b)* - The Licensor (under s.2 of the Business License Act, the Financial Secretary or their appointed agent) may refuse to grant, or renew a licence if they are reasonably of the opinion that the applicant is not a fit, or proper person to hold such a licence or the issue of the licence would cause harm, or annoyance to the residents of any locality on Niue (s12, Business License Act). Licenses must be renewed annually, and the licensor may refuse to renew the licence if they are reasonably satisfied that the applicant is no longer a fit and proper person to hold a licence (ss14(4)). The FTRA does not expand on the scope of the fit and proper person test, but Niue authorities indicated at the on-site visit that everyone in Niue knows who has committed criminal offences and checks with the Niue Police would occur if someone applied for a business license and there was awareness of the applicant's offending behaviour. However, the business licensing process does not cover the beneficial owner, or a person with a significant or controlling interest, or holding a management function in, a VASP.

241. Cabinet determines applications from foreign businesses for a license to operate in Niue. Under Part 4 of the Development Investment Act, the Cabinet shall determine and publish in the *Gazette*, an Investment Code, which should contain the general criteria by which any investment or new enterprise will be evaluated to determine its merits. However, an investment code has not been determined and published.

242. *Criterion 15.5* - Niue authorities have not formally taken action to identify natural or legal persons that carry out VASP activities without a business license. While any VASP operating without a business license would be easily identifiable due to the small size of the financial sector and population, Niue Police indicated at the on-site visit that it does not have the capability to identify any person carrying out VASP activities without the requisite license. The penalty for conducting a VASP business in Niue without obtaining a business license is a fine not exceeding NZD 500 (USD 300) for a first offence and for a second or subsequent offence a fine not exceeding NZD 1,000 (USD 600) or imprisonment for no more than 20 days, or both the fine and imprisonment (s27, Business Licence Act). These sanctions are not proportionate or dissuasive.

243. *Criterion 15.6(a)* - VASPs are not subject to any regulation and risk-based supervision, noting there are no known VASPs operating in Niue.

244. *Criterion 15.6(b)* - Section 38 of the FTRA requires a person who is not a FI and who, on behalf of, or in the name of, another person operates a funds or assets transfer system to be authorised to do so by the 'relevant supervisory authority'. The FTRA defines the 'supervisory authority' as a person within the Public Service designated as the "Bank Supervisor" (s2). The AML/CFT supervisor is designated as the Bank supervisor.

245. The FTRA provides the relevant supervisor with powers to supervise the operator of a funds or assets transfer system for compliance with the reporting obligations (STR and CTR)

under Parts 2 and 3 of the FTRA, and the power to prescribe any other requirements in relation to VASPs (s38). However, no other requirements have been prescribed so the relevant supervisor does not have adequate powers to supervise or monitor and ensure compliance by VASPs with requirements to combat money laundering and terrorist financing.

246. *Criterion 15.7* - There are no guidelines for the VASP sector, or a framework for providing feedback, to assist VASPs in applying AML/CFT measures, including in detecting and reporting suspicious transactions.

247. *Criterion 15.8(a)* - VASPs are only subject to STR and CTR reporting obligations under Parts 2 and 3 of the FTRA and any other requirements prescribed by the supervising authority (s 38). The penalty for a failure to comply with the STR reporting obligation in the case of an individual is a fine not exceeding 2,500 penalty units (NZD 250,000/USD 150,000) or imprisonment for a term not exceeding 5 years, or both (ss10(2)(a), FTRA). These sanctions are proportionate and dissuasive. The penalty for a failure to comply with the STR reporting obligation in the case of a body corporate is a fine not exceeding 10,000 penalty units (NZD1,000,000/USD 600,000) (s10). These sanctions appear proportionate and dissuasive. There are no other prescribed AML/CFT obligations that apply to VASPs.

248. *Criterion 15.8(b)* - VASPs are only subject to STR and CTR reporting obligations under Parts 2 and 3 of the FTRA and any other requirements prescribed by the supervising authority (s 38). There are no other prescribed AML/CFT obligations that apply to VASPs. There are no sanctions that apply to directors and senior management for breaches of the STR reporting obligation.

249. *Criterion 15.9(a)* - VASPs are not required to comply with any preventive measures under the FTRA except for CTR and STR reporting and any other requirements prescribed by the supervising authority (s 38). There are no other prescribed AML/CFT obligations that apply to VASPs.

250. *Criterion 15.9(b)* - VASPs have no wire transfer obligations under the FTRA as they do not meet the definition of a MVTs.

251. *Criterion 15.10* - Niue has not implemented TFS related to TF or PF, so there are no requirements imposed on VASPs as required under this criterion.

252. *Criterion 15.11* - NFIU and LEAs have a legal basis for formal and informal cooperation with foreign counterparts on VASPs. However, there is also no designated VASP supervisor, so no basis for exchanging information with foreign supervisory counterparts.

Weighting and Conclusion

253. Niue has not identified and assessed the risks relating to the development of new products and new business practices, or the use of new or developing technologies for both new and pre-existing products. While VASPs do not appear to operate in Niue, they are not prohibited from operating in Niue. Niue has not identified the risks emerging from virtual asset activities or operation of VASPs or taken steps to mitigate those risks. VASPs are only required to report STRs and are not subject to any other preventive measures. The AML/CFT supervisor is the 'relevant supervisory authority' for VASPs but only has powers to supervise for compliance with STR and CTR reporting obligations, as no other preventative measures for ML and TF apply to VASPs. There is no TFS framework that applies to VASPs. While the NFIU and LEA can cooperate

internationally to exchange information on VASPs, there is no mechanism for international cooperation on VASPs from a supervisory perspective.

254. **Recommendation 15 is rated non-compliant.**

Recommendation 16 – Wire transfers

255. In the 2012 MER, Niue was rated non-compliant with R.16. The key deficiencies included: the lack of requirements for identifying and verifying originators and beneficiaries; insufficient monitoring of wire transfers; and poor record-keeping and reporting obligations for FIs. Niue has not introduced any reforms to address these deficiencies, but most banking services are now provided to Niueans on the basis that they are foreign customers of a bank domiciled in New Zealand and regulated under New Zealand's AML/CFT legislation. The banking agent is outside of the scope of this assessment.

256. The NDB does not offer banking services to its customers and pays loan amounts to customer accounts held with an offshore New Zealand bank. An international MVTs provider provides remittance services through an agent operating in Niue under an agreement with NCEL. Other entities defined as FIs in the FTRA include money remittance services, currency exchange offices, insurance companies, securities firms, credit unions, and any other businesses specified in the regulations. The MVTs agent is the only reporting entity conducting wire transfers in Niue and only conducts international wire transfers.

257. *Criterion 16.1(a)* - Section 15 of the FTRA requires an FI, before carrying out a transaction, to verify the identity of the person based on any official or other identifying document or other evidence that is reasonably capable of verifying the identity of the person. The definition of 'transaction' includes the transfer of funds by electronic or other non-physical means (s 4). Section 19 of the FTRA requires an FI to include accurate originator information on electronic funds transfers and on any other form of funds transfers and that information must remain with the transfers. While the FTRA requires originator information to be accurate it does not specify what originator information is and therefore sub-criteria 16.1(a) (i), (ii) and (iii) are not specifically met.

258. *Criterion 16.1(b)* - Subsection 18(2)(b) of the FTRA requires FIs to pay special attention to wire transfers that do not contain complete originator information. The FTRA does not define or require beneficiary information as set out in criterion 16.1(b) and does not include a minimum threshold for wire transfer obligations as set out in criterion 16.1(a).

259. *Criterion 16.2* - FIs are not required to ensure that the batch file of several individual cross-border wire transfers from a single originator for transmission to beneficiaries (that are bundled in a batch file) should contain required and accurate originator information. There is also no requirement to provide full beneficiary information that is traceable within the beneficiary country or the originator's account number or unique transaction reference number.

260. *Criterion 16.3* - Niue has not applied a *de minimus* threshold and the analysis for criterion 16.1 applies here.

261. *Criterion 16.4* - Under section 18 of the FTRA, the FI must examine, as far as possible, the purpose and background of transactions where no originator information has been provided, however, this requirement falls short of the requirement in criterion 16.4 to verify customer

information, and no specific reference is made to FI's obligations where it holds a suspicion of ML/TF.

262. *Criterion 16.5* - No FI can conduct domestic wire transfers under Niue's current banking arrangements.

263. *Criterion 16.6* - See criterion 16.5.

264. *Criterion 16.7* - There is no requirement for ordering FIs to maintain all originator and beneficiary information collected, in accordance with R.11.

265. *Criterion 16.8* - Ordering FIs are not prohibited from executing the wire transfer if it does not comply with the requirements specified above at criteria 16.1-16.7.

266. *Criterion 16.9* - There is no requirement for an intermediary FI to ensure that all originator and beneficiary information that accompanies a wire transfer is retained with it for cross-border wire transfers.

267. *Criterion 16.10* - Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary FI is not required to keep a record, for at least five years, of all the information received from the ordering FI or another intermediary FI.

268. *Criterion 16.11* - There are no requirements for intermediary FIs to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

269. *Criterion 16.12* - There are no requirements for intermediary FIs to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action.

270. *Criterion 16.13* - There are no requirements for beneficiary FIs to take reasonable measures to identify cross-border wire transfers that lack required originator information or required beneficiary information.

271. *Criterion 16.14* - For cross-border wire transfers of USD/EUR 1,000 or more, there are no requirements for a beneficiary FI to verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with Recommendation 11.

272. *Criterion 16.15* - Beneficiary FIs are not required to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action.

273. *Criterion 16.16* - There are no requirements for MVTs providers to comply with the relevant requirements of Recommendation 16 in the countries in which they operate, directly or through their agents.

274. *Criterion 16.17* - There are no requirements for a MVTs provider that controls both the ordering and the beneficiary side of a wire transfer to consider the information required under

sub-criterion 16.7(a) to determine whether an STR must be filed, or (b) to file an STR in any country affected by the suspicious wire transfer and make relevant transaction information available to the FIU.

275. *Criterion 16.18* - There are no measures in place to require FIs to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities in the context of processing wire transfers. Niue has established procedures for collecting transaction information and confirming transfers through the MVTs agent, but it has not demonstrated the implementation of measures to comply with criterion 16.18, particularly concerning freezing actions and prohibitions on transactions with designated persons and entities.

Weighting and Conclusion

276. There are major shortcomings with Niue's compliance with Recommendation 16. The FTRA provides some prescription concerning identification of originator information when making wire transfers which in part addresses criteria 16.1 and 16.3 but otherwise Niue has not demonstrated that it complies with other criterion under this Recommendation.

277. **Recommendation 16 is rated non-compliant.**

Recommendation 17 – Reliance on Third Parties

278. The 2012 MER rated the predecessor to R.17 (R.9) as not applicable as Niue did not permit FIs to rely on CDD performed by third party FIs. This requirement has not changed since 2012.

Weighting and Conclusion

279. Niue does not permit FIs to rely on CDD performed by third party FIs.

280. **Recommendation 17 is rated not applicable.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

281. The 2012 MER rated Niue as non-compliant with R.18 due to the absence of legislative provisions for internal controls and compliance programs, as well as the lack of requirements for foreign branches and subsidiaries to implement AML/CFT measures consistent with the home jurisdiction. While the FTRA includes some obligations on FIs to appoint compliance officers, screen employees, and establish internal policies and procedures to prevent money laundering, significant deficiencies remained. These include the absence of requirements for compliance officers to operate at a management level, a lack of provisions for independent audits, and no coverage of TF in training and internal controls. Additionally, Niue has not implemented requirements for financial groups or foreign branches and subsidiaries, though no such entities currently operate within Niue.

282. *Criterion 18* - The FTRA has requirements for FIs to implement internal policies, procedures and controls but there is no requirement for FIs to have regard to the ML/TF risks and the size of the business when developing programs against ML/TF.

283. *Criterion 18.1(a)* - Subsection 13(1) of the FTRA requires an FI to appoint a compliance officer to be responsible for ensuring the FI's compliance with the requirements of the FTRA. However, there is no requirement for the compliance officer to be at management level.

284. *Criterion 18.1(b)* - Subsection 13(3)(a) of the FTRA requires FIs to screen prospective officers and employees to ensure, as far as practicable that they do not have a criminal background and no involvement in ML/TF.

285. *Criterion 18.1(c)* - Subsection 13(3)(d) of the FTRA requires FIs to train the institution's officers and employees to recognise and deal with ML, however, there is no requirement for this training to be ongoing, and the training does not cover TF. Subsections 13(3)(b) and (c) of the FTRA requires FIs to establish and maintain internal procedures to make their officers and employees aware of the laws in Niue about ML, and the procedures, policies and audit systems adopted by the FI to deal with ML, and train officers and employees how to recognise and deal with ML. These internal procedures do not apply to TF.

286. *Criterion 18.1(d)* - There are no requirements for FIs to have an independent audit function in place to test internal policies, procedures and controls.

287. *Criterion 18.2(a)* - There are no requirements under Niue's legal or regulatory framework for financial groups to implement group-wide AML/CFT programs including policies and procedures for sharing customer due diligence (CDD) and transaction information among group entities.

288. *Criterion 18.2(b)* - The FTRA does not require that AML/CFT programs be applied to all branches and majority-owned subsidiaries of a financial group, regardless of whether these entities operate domestically or abroad.

289. *Criterion 18.2(c)* - There are no legal provisions that require financial groups to implement adequate safeguards to maintain the confidentiality and security of AML/CFT-related information shared within the group structure.

290. *Criterion 18.3* - Niue has no requirements in place for FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements where the minimum AML/CFT requirements of the host country are less strict than those of the home country, to the extent that host country's laws and regulations permit. Where a host country does not permit the implementation of such AML/CFT measures, FIs are required to inform the NFIU, or apply additional measures to manage ML/TF risks if these circumstances arise. However, Niue has no FIs with the parent entity in Niue which have subsidiaries or branches in foreign jurisdictions.

Weighting and Conclusion

291. The FTRA imposes some obligations on FIs to implement internal policies, procedures and controls but there are moderate deficiencies. The obligations do not cover all aspects of AML/CFT, including internal procedures for CDD, record keeping, or detection and reporting of suspicious transactions. Procedures for the raising of employees' awareness of an FI's procedures only apply to ML. Obligations around compliance officers do not cover seniority. There is no requirement for an independent audit function. While there are no requirements for FIs to implement group-wide programs against ML/TF to all branches and majority-owned subsidiaries

of the financial group, or requirements relating to the application of AML/CFT measures by majority-owned subsidiaries, there are no financial groups in Niue.

292. **Recommendation 18 is rated partially compliant.**

Recommendation 19 – Higher-risk countries

293. The 2012 MER rated Niue as non-compliant with the previous requirements for higher risk countries. The main deficiencies identified included: the lack of legislative provisions requiring FIs to apply EDD to business relationships and transactions with higher-risk countries; insufficient guidance on identifying and mitigating risks associated with such countries; and inadequate monitoring and enforcement mechanisms.

294. *Criterion 19.1* - There is no provision requiring FIs to apply EDD, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries when called upon to do so by the FATF.

295. *Criterion 19.2* - There is no requirement for FIs to apply countermeasures when called upon to do so by the FATF or independently of any call by the FATF to do so.

296. *Criterion 19.3* - Niue does not have measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries.

Weighting and Conclusion

297. Niue does not have any measures in place for this Recommendation.

298. **Recommendation 19 is rated non-compliant.**

Recommendation 20 – Reporting of suspicious transactions

299. Niue was rated as partially compliant with the former Recommendation 13 and Special Recommendation IV in the 2012 MER. The report noted a range of deficiencies, including: a cascading effect from deficiencies identified with criminalisation of ML and TF, a lack of coverage of all predicate offences, and gaps in the coverage of FIs required to report. A lack of STR reporting from FIs was also noted.

300. *Criterion 20.1* - Niue has three reporting entities with an obligation to report STRs. Under section 8 of FTRA, FIs must report STRs to the FIU when they have reasonable grounds to suspect that a transaction or a proposed transaction may be relevant to the investigation or prosecution of any person for a ML/TF offence, any other serious offence, or the enforcement of POCA (s.8, FTRA). The impact of the requirement for the FI to have reasonable grounds that the transaction may be relevant to the investigation or prosecution of a person for a serious offence on the scope of the reporting obligation is unclear, as it appears that the FI must, beyond forming a suspicion, form a judgment about evidentiary relevance of a transaction before forwarding an STR to the FIU. The assessment team has concerns that this requirement may result in some transactions being excluded from STR reporting if the FI considers there is insufficient information for an investigation or prosecution.

301. There is also a cascading effect from deficiencies identified with criminalisation of ML and TF offences and a lack of coverage of all predicate offences (see R.3), and gaps in the coverage of FIs required to report.

302. The STR must be made as soon as possible but no later than two working days after forming the suspicion under subsection 8(1) of the FTRA.

303. *Criterion 20.2* - The STR requirements under subsection 8(1) of the FTRA extend to conducting or seeking to conduct (attempt) a transaction, regardless of whether it involves cash, and is not limited by any monetary threshold. Sanctions apply for failing to make a report (s.8(5), FTRA). However, the gaps noted above also apply to attempted transactions.

Weighting and Conclusion

304. FIs have obligations under the FTRA to report STRs, including attempted transactions, but are required to form an evidentiary value judgement after forming a suspicion but before submitting to the FIU, which may have an impact on reporting. There is also a cascading effect from deficiencies identified under R.3.

305. **Recommendation 20 is rated partially compliant.**

Recommendation 21 – Tipping-off and confidentiality

306. *Criterion 21.1* - Section 12 of the FTRA provides that no civil, criminal, or disciplinary proceedings may be taken against an FI, an officer, employee, or agent of the FI acting in the course of that person's employment or agency in relation to any action to comply with a STR reporting obligation by the FI or the officer, employee or agent taken in good faith. This protection applies even if the person did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity occurred. However, it is not clear if section 12 covers directors.

307. *Criterion 21.2* - Subsection 10(1) of the FTRA prohibits FIs from disclosing to any person that the FI is contemplating making or has given an STR to the FIU unless required to do so under this Act or any other Act. The extent to which this applies to directors, employees, officers or agents during that person's employment or agency is not clear.

Weighting and Conclusion

308. The FTRA provides broad legal protection for officers and employees from criminal and civil liability for breach of any restriction on disclosure of information, but it is not clear if this covers directors. While FIs are prohibited from disclosing the fact that an STR has given or may be given to the FIU, the FTRA does not expressly extend that prohibition to directors, officers and employees.

309. **Recommendation 21 is rated largely compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

310. Niue was rated partially compliant with the former R.12. Main deficiencies included: the lack of legislative provisions requiring DNFBPs to conduct CDD; insufficient guidelines for DNFBPs on implementing CDD measures; and inadequate monitoring and enforcement

mechanisms. Niue has not addressed these deficiencies. There are also new requirements for CDD for DNFBPs. There is only one DNFBP operating in Niue providing a limited range of legal services.

311. *Criterion 22.1* - The definition of an FI under section 3 of the FTRA includes DNFBPs, but there are some gaps in CDD (see R.10). These include CDD requirements that are limited to verification of a customer's identity with no ongoing due diligence, CDD on existing customers, or EDD conducted. There are no CDD requirements for legal arrangements or occasional transactions, no requirement to terminate a relationship or file an STR in case of failure of CDD, and no provisions relating to the timing of verification of CDD.

312. DNFBPs are required to conduct CDD when establishing a business relationship or conducting a transaction with a person (s.15, FTRA). However, the deficiencies identified in the analysis of R.10 above apply equally to DNFBPs (see, in particular, criteria 10.3-7, criteria 10.8-10.11, and criterion 10.20).

313. The scope of the coverage of DNFBPs also has an impact here, as TCSPs and lawyers, notaries, independent legal professionals and accountants are not subject to AML/CFT obligations when creating, operating or managing legal persons and arrangements (FTRA s.3). This gap has not been heavily weighted in view of Niue's risk and context, including that there is only one DNFBP in Niue. There are no casinos, accountants, real estate agents, dealers in precious metals and precious stones or trust and company service providers currently operating in Niue. The lawyer operating in Niue does not appear, in practice, to provide any of the services captured under the definition of a FI in subsection 3(f) of the FTRA but does provide other services that are required to be regulated under R.22.

314. *Criterion 22.1(a)* - The definition of an FI under subsection 3(e)(v) of the FTRA includes a casino or gambling house, including a person who carries on that business through the internet, when their customers engage in transactions equal to or above NZD10,000 (USD 6,000) or its equivalent in foreign currency. This exceeds the USD/EUR3,000 limit required by the FATF Standards. However, the Schedule to the Gaming (Fees) Regulations 2005 (Gaming Regulations)³⁷ made under the Niue Act 1996 prescribes the gambling activities that are permitted in Niue, which include raffles, bingo, coin-operated machines and card games. There are no provisions that enable a person to operate a casino in Niue and there are no casinos operating in Niue. Cruise ships with casinos do not visit Niue.

315. *Criterion 22.1(b)* - There are no real estate agents in Niue as ownership of land is principally transferred by inheritance or transfer of leasehold. Leasehold transfer is generally managed by the family owning the land and all leases are registered with the High Court. However, the definition of FI under subsection 3(e)(iv) of the FTRA includes a person carrying on a business of acting as agents in the buying and selling of real estate.

316. *Criterion 22.1(c)* - Although there are no dealers in precious metals and stones operating in Niue, the definition of an FI under subsection 3(e)(iii) of the FTRA includes a person dealing in precious metals or precious stones when they engage in any transaction with a customer equal

³⁷ New Gambling Regulation 2024 replacing the Gaming (Fees) Regulations 2005, was signed after the ME on-site visit and retrospectively dated to 20 February 2024. Niue advises that the new Regulations largely follow the 2005 Regulations and do not allow for casinos but allow for raffles, bingo/housie and card games. Coin operated machines are not allowed.

to or above NZD 10,000 (USD 6,000). This is within the USD/EUR15,000 limit prescribed by the FATF Standards.

317. *Criterion 22.1(d)* - The definition of an FI in subsection 3(f) of the FTRA includes a lawyer, notary, an independent legal professional and an accountant for most activities under this criterion, except for creating, operating or managing legal persons or legal arrangements. This is a critical gap because one of the main services provided by the lawyer in Niue relates to creating, operating or management of legal persons or arrangements. On this basis, the lawyer does not appear to be providing services that trigger AML/CFT obligations under the FTRA. This deficiency has been weighted in view of the nature of the services provided by the lawyer and the scope of Niue's trust laws that enable foreign trusts to be created in Niue and provide tax exemptions to trustees that have foreign settlors and beneficiaries (see R.25).

318. *Criterion 22.1(e)* - The definition of FI in subsection 3(b) of the FTRA includes a person carrying on the business as a trustee in respect of funds of other persons or as a trust or company service provider. However, the term trust and company service provider is not defined under the FTRA, so is unlikely to capture all the activities required to be regulated under this criterion. The lawyer operating in Niue is providing some trust and company services in Niue.

319. *Criterion 22.2* - DNFBPs are required to keep all records, documents and copies of documents involved in all forms of transactions for at least six years after the date of account closure or date that the business relationship ceases, and in any other case, when they last had dealings with the customer (s.14(3), FTRA). However, the moderate shortcomings identified in the analysis under R.11 above apply to DNFBP obligations. The gap in coverage of DNFBPs under criterion 22.1 also impacts this criterion.

320. *Criterion 22.3* - DNFBPs are required to have appropriate risk management systems in place to determine whether the customer is a PEP (s15(2)(b)). However, there are moderate shortcomings with the requirements for PEPs (see R.12). The gap in coverage of DNFBPs under criterion 22.1 also impacts this criterion.

321. *Criterion 22.4* - The FTRA does not include requirements for DNFBPs covering new technologies, new products and new business practices (see R.15). The gap in coverage of DNFBPs under criterion 22.1 also impacts this criterion.

322. *Criterion 22.5* - Niue does not permit DNFBPs to rely on third parties for CDD. All CDD obligations must be fulfilled directly by the reporting entity as required under section 13 of the FTRA and other relevant sections of the FTRA.

Weighting and Conclusion

323. DNFBPs are required to comply with CDD, record-keeping and PEPs requirements under the FTRA, but the moderate shortcomings with R.10, R.11, R.12, and R.15 cascade to R.22. There are also gaps in the coverage of lawyers, notaries, independent legal professionals and accountants.

324. **Recommendation 22 is rated partially compliant.**

Recommendation 23 – DNFBPs: Other measures

325. Niue was rated as partially compliant with the former R.16. The main deficiencies identified in the report included: a lack of legislative provisions requiring DNFBPs to report suspicious transactions; insufficient guidelines for DNFBPs on AML/CFT measures; and inadequate monitoring and enforcement mechanisms.

326. *Criterion 23.1* - DNFBPs are subject to the same STR reporting obligation as FIs under subsection 8(1) of the FTRA, and the same moderate shortcomings apply (see R.20). There is also a gap in coverage of DNFBPs (see c22.1).

327. *Criterion 23.2* - Under section 13 of FTRA, DNFBPs have some limited requirements to appoint a compliance officer, screen prospective officers and employees, and have an ongoing employee training program, but no enforceable obligations to implement all the required internal controls in line with criteria 18.1(d), 18.2 and 18.3 (see R.18).

328. *Criterion 23.3* - There are no requirements for DNFBPs to comply with the higher risk country requirements (see R.19).

329. *Criterion 23.4* - DNFBPs have the same requirements in relation to tipping off and confidentiality as FIs under subsection 10(1) and section 12 of FTRA. The minor shortcomings under R.21 are also applicable to this criterion.

Weighting and Conclusion

330. Niue provides for DNFBPs to report STRs, and there are moderate shortcomings in relation to those obligations. There are limited obligations relating to R.18, and no obligations relating to R.19 and 21.

331. **Recommendation 23 is rated partially compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

332. In the 2012 MER Niue was rated partially compliant for the former R 33. The report noted there was no legal requirement for acquiring information on beneficial ownership and control of legal persons. The non-availability of information on beneficial ownership and control of legal persons consequently means this information cannot be made available to competent authorities. Finally, there were no measures in place to prevent the unlawful use of legal persons and enhance transparency, and no certainty as to whether bearer shares were prohibited.

333. *Criterion 24.1* - Legal persons in Niue consist of the following entities: (a) public or private companies; (b) foreign companies (international business companies and overseas companies); (c) partnerships (including general, limited liability and special partnerships); and (d) incorporated societies. The different types, forms and basic features of legal persons in Niue are set out in the Companies Act 2006 (Companies Act), the Partnership Application Act 1994 (Partnership Act), and the Incorporated Societies Act 1908 (Incorporated Societies Act). Unincorporated societies and associations can operate subject to the Business Licence Act 1997. The processes for creation of these legal persons are also set out in these pieces of legislation. These laws are publicly available on the Niue Government website.³⁸ Information on how to

³⁸ <https://www.gov.nu/legislation/>

register or maintain a company is also outlined on the website of the Companies Office of Niue³⁹. Niue's legal framework does not provide for the establishment of cooperatives and foundations.

334. The Companies Act provides for the incorporation of public and private companies in Niue. Applications for the incorporation of a company must be made to the Registrar of Companies in the prescribed form (s6, Companies Act). There are 57 private, domestic companies in Niue. Overseas companies that, on or after the commencement of the Companies Act in 2006, commence to carry on business in Niue must apply for registration within 20 working days of commencing to carry on business (s281, Companies Act). An overseas company is a company that: establishes or uses a share transfer office or a share registration office in Niue; or administers, manages, or deals with property in Niue as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner. There are two overseas companies operating in Niue (an importer and an educational provider). Before the closure of the IBC registry in 2006, approximately 10,000 international business companies had been registered. These international business companies were deregistered with the closure of the IBC registry and only two applied for restoration by Court order as overseas companies under the Companies Act 2006. This brings the number of foreign companies registered in Niue to four. The two international business companies do not have a business license in Niue. The Companies Office indicated that it is likely that these two companies sought re-instatement of registration because they are shareholders in Niue companies or required legal status to dispose of assets prior to dissolution.

335. Companies are not required to obtain or record beneficial ownership information, and the Registrar of Companies does not collect or keep beneficial ownership information, accordingly this information is not available to the public.

336. Foreign businesses may only carry on business as foreign enterprises in Niue if registered by Cabinet under the Development Investment Act 1992 (s8). Basic information is collected as part of this process (s8, Development Investment Act).

337. Documents that are included on the register for companies or overseas companies can be inspected on payment of a fee (s324, Companies Act). However, Niue has established an electronic register available for public search 24 hours per day, seven days per week, free of charge. The electronic register allows online access to search the company number; name; previous name; date of registration, annual return filing month; registered office address; company director details and registered/imaged documents. Registered/imaged documents include constitutional documents, the company rules, changes of circumstances documents or annual reports. Restored International Business Companies are required to lodge information in accordance with the Companies Act.

338. To undertake a search an applicant needs to know the name or company number of the entity to be searched. Searches cannot be made against a person's name to see if they are a director or shareholder.

339. A partnership is formed in Niue when the deed or written agreement of partnership constituting the partnership is executed or signed in Niue by all the partners or by their duly appointed attorneys (s5, Partnership Amendment Act). Any partnership formed in Niue that is not a special partnership may apply to the Register of Limited Liability Partnerships for

³⁹ <https://www.companies.gov.nu/>

registration as a limited partnership (s12, Partnership Amendment Act). Registrations are made with the High Court Registrar. As registering a partnership is voluntary, there are no sanctions for not registering. Applications for registration must include some basic information on the partnership, but do not require the provision of beneficial ownership information.

340. General and special partnerships are formed under the Partnership Act, but only special partnerships are required to be registered (a section 54 certificate). The persons forming a special partnership must sign a certificate containing: the style of the firm; names and places of residence of all the partners, the amount of capital from each partner; the general nature of the business; the principal place of business and the time for the partnership to commence and cease. The special partnership is only deemed formed once this certificate has been registered with the High Court Registrar in a book which is open to public inspection (s 54, Partnership Act). Beneficial information is not required to be disclosed upon registration of either ordinary or special partnerships.

341. Any partnership conducting business in Niue must have a business licence which must be renewed annually. The application form for a business licence includes a requirement to identify whether the business is being conducted under a partnership, giving the Companies Office some visibility of partnerships.

342. Special partnerships can be formed for the transaction of agriculture, mining, mercantile, mechanical, manufacturing, or other business, by any number of persons, but not for banking and insurance (s49). Every special partnership can consist of general and special partners: general partners are jointly and severally responsible as general partners; and special partners are partners who contribute to the common stock specific sums in money as capital, beyond which they are not be responsible for any debt of the partnership except in specific circumstances (s50, Partnership Act). Societies can be incorporated as not-for-profit legal entities under the Incorporated Societies Act (s4, Incorporated Societies Act). Applications for incorporation must be accompanied by the Rules of the society, and the signature and address of each subscriber to the society (s7, Incorporation Societies Act). It is not clear this process provides for the collection of basic and beneficial information. Any person can inspect the register, or any document lodged with the Registrar for Incorporated Societies, and any person may require a copy of the certificate of incorporation of any society, or a copy or extract of any document lodged on payment on a fee (s34, Incorporated Societies Act).

343. *Criterion 24.2* - The ML/TF risks associated with all types of legal persons operating in Niue were not assessed in the 2017 NRA, except for overseas companies. The NRA considered that, in relation to overseas companies, the risk was a low to moderate threat considering Niue's materiality and context. It is not clear that the risk posed by international business companies was considered although at this point of time all international business companies had been de-registered, subject to re-instatement only by Court order. The NRA update 2024 assessed the risk associated with "company formation" to be low and noted the limited searchability of the Company Register, but did not assess the ML/TF risks associated with all types of legal persons operating in Niue. There are no cooperatives or foundations operating in Niue. The vulnerability of NPOs (incorporated societies) to abuse for TF is discussed under R.8. The assessment team considers that the ML/TF risks posed by legal persons operating in Niue is likely to be low in view of the size of the economy, limited investment opportunities, and limited options for conducting cross-border transactions.

344. *Criterion 24.3* - The Companies Act requires applications for incorporation of a company to be made to the Registrar, and for the Registrar to maintain a register of domestic companies and overseas companies (s6 and s323). The Companies Office of Niue maintains the Companies Register, which is an electronic register available for public search 24 hours per day, seven days per week.

345. Applications for registration as a company must include: name; the proposed legal form (private or public); an indication of whether the rules of the company differ from the model rules set out in the Schedule to the Companies Act; the full name, residential address, and postal address of every director; the full name of every shareholder; the number of shares to be issued to every shareholder; the registered office; and the postal address (s6, Companies Act).

346. Overseas companies operating in Niue must apply for registration with the Registrar for Overseas Companies within 20 days of commencing to carry on a business (s281(1), Companies Act). Applications for registration must include: the name of the company; the full names and residential addresses and postal addresses of the directors at the date of the application; the full address of the place or principal place of business in Niue; postal address in Niue; evidence of incorporation and, if not in English, a certified translation of that document; and the full name of one or more persons resident or incorporated in Niue who are authorised to accept service in Niue of documents on behalf of the overseas company, and the postal address and residential or business address of each those persons. This information is available to search, for free, on the electronic Companies Register.

347. Partnerships that are not special partnerships may be registered, although this is not mandatory. An application for registration of a partnership must be in the prescribed form and include the deed or written agreement of the partnership. For limited liability partnerships, a person authorised by the registrar may inspect the register or record kept by limited liability partnerships (Part 3 of the Partnership Amendment Act). A person authorised by the registrar may inspect the register and information kept by limited liability partnerships (Part 3 of the Partnership Amendment Act). A copy of the prescribed form was not made available to the assessment team, and, on that basis, it is unclear what information would be able to be inspected on the register.

348. Societies are required to provide the information on basic regulating powers, and the signature and address of each subscriber to the society as part of registration (s7, Incorporation Societies Act). The register of Incorporated Societies includes the name of the society, its registration number, date of incorporation and name of its contact person. This information is available to the public for a fee (s34 Incorporated Societies Act).

349. Niue's business licensing framework also gives Niue visibility over legal persons operating in Niue. Companies must first be registered as a company with the Company Registrar before they can seek a business licence under the Business Licence Act 1997. Carrying on a business without a licence is prohibited in Niue and business licences are granted by the Financial Secretary (s7, Business License Act). Applicants must provide a range of information, including: their full name and address; information on whether the business is a sole operator, partnership, family business or incorporated company; and information on the nature of the business (s8, Business License Act). Licenses must be renewed annually, and applicants must provide their full name, occupation and address, and any type of business, and place of business (s10 and 13, Business License Act). The assessment team was advised at the on-site visit that criminal history checks are made for applicants and that CDD is carried out, but no detail was provided as to the

form or extent of CDD undertaken or whether and how it is verified, nor how such information may be shared with competent authorities.

350. Similarly, foreign enterprises are prohibited from carrying on a business in Niue unless they have first applied to and been registered by Cabinet as a foreign enterprise to carry on business (s8, Development Investment Act). Once approved by Cabinet, the foreign enterprise is permitted to register as an overseas company. A range of information is collected as part of this registration process, including: name of the enterprise; address of its registered office and principal place of business; proposed activities; names and addresses of its shareholders, or partners, directors, executive officers, secretary, accountant and auditor; the legal and beneficial ownership of authorised, issued and paid-up capital, and the number, class, nominal and paid-up shares held by each shareholder (s8, Development Investment Act). The information required for registration as an overseas company is provided to Cabinet at the time it considers the application for registration as a foreign enterprise to carry on business in Niue; however, the assessment team was not able to assess if this information was verified by Cabinet or the Trades Office at the time of making the decision under the Development Investment Act, or if the decision would be made subject to verification under the Companies Act processes for registration.

351. *Criterion 24.4* - Section 40 of the Companies Act mandates that a company must maintain a share register that includes: the names last known address of each person who is or has within the last 7 years been a shareholder; the number of shares of each class held by each shareholder within the last 7 years; the date of any issue of shares to repurchase or redemption of shares from, or transfer of shares by or to, each shareholder within the last 7 years; and, in relation to the transfer, the name of the person to or from whom the shares were transferred. Voting rights of shareholders are set out in section 20 of the Act, subject to the rules of the company and the terms upon which the share/s issued. The share register must be kept in a prescribed form and at the registered office of the company, or any other place or places given to the Registrar (ss40(2), 118 and 119, Companies Act). There are no requirements in the Companies Act for overseas companies to maintain a list of shareholders.

352. General partners in limited liability partnerships are not required to maintain information set out in cr24.3 at a location within Niue that is notified to the registry. They are required to renew their registration annually but as there is no registry, this does not occur (s13, Partnerships Amendment Act). Incorporated Societies are required to keep a register of their members (including names, addresses and occupations) and to send to the registrar such information at the registrar's request (s22, Incorporated Societies Act).

353. *Criterion 24.5* - Companies have several obligations to notify the Registrar of changes related to company information. A change in the registered office or postal office for a company must be notified to the Registrar, but no timeframe is specified for the provision of this information (s18, Companies Act). Companies must also notify the Registrar with 20 working days where there is a change in the names or addresses of directors of a company, and provide information on: the date of the change; the full name and residential address and postal address of every person who is a director of the company from the date of the notice; and documentation of the consent provided by any new director to act as a director (s88, Companies Act).

354. Companies also have an obligation to provide documents to the Registrar where changes occur, including changes to company's rules, registered address or postal address, or changes to the issue of shares and acquisition or redemption of shares (s126, Companies Act). However, there is no timeframe attached to these requirements.

355. Overseas companies have an obligation to notify the Registrar within 20 working days of any changes in directors or their addresses, registered business address, postal address in Niue or the post address of the person authorised to access service in Niue of documents on behalf of the company (s286, Companies Act), but no obligations to provide information about shareholders and shareholdings.

356. Section 124 of the Companies Act requires that the directors of a company must ensure that an annual return of the company is delivered to the Registrar for registration each year during the month allocated by the Registrar. An overseas company must also file an annual return each year (s287, Companies Act 2006). Annual returns include requirements to update company address, postal address, registered office, and the name and address of company directors. Annual returns must also include share parcels and auditor details.

357. There are no provisions in the Companies Act requiring international business companies to provide the registrar with updated information.

358. Information provided under this criterion are only verified where an irregularity is apparent from the documents provided.

359. There are no provisions in the Incorporated Societies Act requiring societies to provide the registrar with details of any changes to information.

360. *Criterion 24.6(a) - (b)* - Niue does not appear to have mechanisms under criterion 24.6(a) and (b) to ensure that information on the beneficial ownership of a domestic company is obtained by that company and available at a specified location or can be otherwise determined in a timely manner by a competent authority. The requirements for registering a company focus on collecting basic information, including information in relation to legal ownership, rather than beneficial ownership of the company. Some beneficial ownership information relating to overseas companies appears to be collected by the Cabinet as part of the registration process (for a foreign enterprise), but the extent to which that information held by the Trade and Investment Office is verified, kept up to date and able to be made available in a timely manner is unclear. There are no requirements for domestic or foreign companies to obtain and hold up-to-date information on the companies' beneficial ownership. As mentioned in criterion 24.4, there is no register held for partnerships and no requirement for partnerships to collect beneficial ownership information and the register held for incorporated societies does not contain beneficial ownership information, nor is there any requirement for incorporated societies to collect this information.

361. *Criterion 24.6(c)* - The competent authorities in Niue are legally able to obtain and have access to the data held by the Registrar, and information held by companies and FIs under provisions in the POCA, TSTCA and the FTRA. However, companies are not required to identify and hold information on beneficial owners, and there are deficiencies with FI's obligations to identify and verify beneficial ownership as part of CDD (see cr10.10). There is no stock exchange in Niue. Cabinet does collect some beneficial ownership information relating to foreign companies as part of the registration process, but it is not clear that this information is verified.

362. *Criterion 24.7* - Niue has not provided any information to demonstrate that there are any measures in place that would require beneficial ownership information to be accurate and as up to date as possible.

363. *Criterion 24.8* - Niue does not use any of the mechanisms outlined in c.24.8 (a) and (b) to ensure companies cooperate with competent authorities to determine beneficial ownership, or (c) take other comparable measures.

364. *Criterion 24.9* - Niue does not have any requirements for a company to maintain information and records for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the FI.

365. *Criterion 24.10* - Most basic information collected on companies is available online or upon inspection. As per the 2012 MER report the competent authorities in Niue are legally able to obtain and have access to the data available held by the Registrar under provisions in the POCA, TSTCA and the FTRA and the Companies Act. They are also empowered to obtain information directly from companies.

366. The ability of competent authorities to access beneficial ownership information in a timely manner is constrained by the absence of any requirement for legal persons to record this information or verify it and keep it up to date and make it accessible.

367. Subsection 21 (2) of the FTRA allows the NFIU to collect on request, any information that it considers relevant to ML, TF, or a serious offence, whether or not the information is publicly available.

368. *Criterion 24.11* - Niue does not expressly prohibit the issuing of bearer shares and bearer share warrants. However, the requirement under sections 40 and 41 of the Companies Act functionally operate to prevent the use of bearer shares. Section 40 requires companies to identify shareholders, their address details and number and class of shareholdings and section 41 provides that the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person (Companies Act). In addition, companies must treat the registered holder of a share as the only person entitled to exercise the right to vote attaching to the share, receive notices, receive a distribution in respect of the share; and exercise the other rights and powers attaching to the share (s41, Companies Act). The requirements under sections 40 and 41 of the Companies operate to mitigate the risk of bearer warrants to some extent, as the holder of a warrant must ultimately register as a shareholder to exercise any rights and powers relating to the share. Competent authorities indicated at the on-site that they are not aware of the use of any bearer shares or share warrants.

369. *Criterion 24.12* - The requirement under sections 40 and 41 (and section 43 regarding trusts as shareholders) of the Companies Act to identify shareholders and their address details and for companies to recognise the registered shareholder as the only person entitled to exercise the rights and powers of a shareholder operates to mitigate some of the risks associated with nominee shareholders. However, Niue has not provided information to demonstrate that there are any mechanisms in place to prevent the misuse of nominee directors.

370. *Criterion 24.13* - There are a range of proportionate and dissuasive sanctions under the Companies Act for failure by domestic and foreign companies to comply with the relevant provisions: making false statements on documents carries a penalty of an imprisonment term not exceeding 7 years and a fine not exceeding NZD 100,000 (USD 60,000) (s 337); falsifying records carries a penalty of an imprisonment term not exceeding 7 years and a fine not exceeding NZD 100,000 (USD 60,000) (s 339); failure to notify the registrar regarding issuance of shares carries

a penalty of a fine of NZD 5,000 (USD 3,000) (s 26); failure to maintain a share register carries a fine of NZD 5,000 (USD 3,000) (s 40); failure to notify the registrar of change of directors carries a penalty of NZD 5,000 (USD 3,000) (s 88); failure to maintain company records carries a penalty of NZD 5,000 (USD 3,000) (s117); failure to keep company records in the prescribed forms carries a fine of NZD 5,000 (USD 3,000) (s118); and, not complying with requirements of alternative location for keeping company records carries a fine of NZD 5,000 (USD 3,000) (s119).

371. Niue has not demonstrated that there are proportionate and dissuasive sanctions in place for other legal persons.

372. *Criterion 24.14(a)-(c)* - Foreign competent authorities can access basic information held by the Companies Register online via the Companies Office website. However, there is no beneficial ownership information available on the register. While competent authorities can use their investigative powers to obtain beneficial ownership information on behalf of foreign counterparts, the deficiencies in the requirements to collect and verify beneficial ownership information would impact on the availability of such information and the ability to provide it rapidly.

373. *Criterion 24.15* - While Niue authorities can exchange basic and beneficial ownership information internationally pursuant to legislative provisions and the executive authority of Government under the Constitution Act (see R.37 and R.40), no request for such assistance has been made and consequently no monitoring of the quality of the assistance received has occurred.

Weighting and Conclusion

374. Niue's understanding of ML/TF risk associated with different types of legal persons is limited. While basic information is collected and updated annually for domestic and overseas companies, and some basic information is available for public search, beneficial ownership information is not collected, nor are companies obliged to keep records of same. The number and types of other legal persons and the information maintained on these legal persons, and accessibility to such information, varies. However, no beneficial ownership information is required to be maintained. There are measures in place to prevent the misuse of bearer shares, and to a lesser extent, bearer share warrants and nominee shareholders, but no measures in place to mitigate the risks of nominee directors. Sanctions for failures to keep company information appear proportionate and dissuasive but Niue does not have sanctions applying to other legal persons. Niue can exchange information on basic and beneficial ownership (if available) internationally, but has not received or made any such requests, which is consistent with risk and context. While there are deficits with Niue's technical compliance, noting its limited economy and banking arrangements, the risk of misuse of legal persons for ML/TF is considered low and no significant weight is given to compliance with this Recommendation.

375. **Recommendation 24 is rated partially compliant.**

Recommendation 25 - Transparency and beneficial ownership of legal arrangements

376. In the 2012 MER, Niue was rated non-compliant with R.34 (now R.25). Beneficial ownership was not required to be obtained by a party and made available to authorities as needed. There was no legal or other system for collecting information on beneficial ownership

and control of trusts, consequently, this information could not be made available to competent authorities.

377. There are two statutes governing the operation of trusts in Niue: The Trusts Act 1994 (Trusts Act) which applies to trusts created on or after 28 March 1994 that do not provide benefits to Niuean residents or Niuean owned companies and entities; and the Trustee Act 1956 (Trustee Act) which does apply to Niueans, and companies owned by Niueans. Trusts, including Unit Trusts, can be created in Niue under the Trusts Act by instrument in writing, by conduct, by operation of law, or in any other manner (s6, Trusts Act). Information about the creation and types of trusts is set out in the Trusts Act 1994 and the Trustee Act 1956, which are publicly available on the government website.⁴⁰ Common law trusts can also be established in Niue.

378. While section 64 of the Trusts Act provides for settlors and trustees to voluntarily register trusts with the Registrar of the Court, Niuean authorities advise that only three trusts have been registered and there is no similar provision in the Trustee Act. It is not clear the extent to which domestic and foreign trusts operate in Niue, but there are likely to be family trusts in operation, created under the Trustee Act or at common law. Any domestic trust operating in Niue requiring access to banking services would need to apply to have a bank account with the offshore New Zealand bank.

379. Niue authorities are aware of three trusts operating in Niue. The Niue Ocean Wide Trust (NOW trust) is a foreign trust set up under the Charitable Trusts Act 1957 of New Zealand for the purpose of raising donations for the environmental protection of Niue's oceanic waters and which is not required to be registered in Niue. The Matavai Property Trust, which owns the Matavai Resort, is registered with the Registrar of Niue's High Court. The Niue Government Ekalesia Kirisiano Niue Charitable Trust is a government established trust set up for a charitable purpose (church/missionaries) and is registered with the Registrar of Niue's High Court pursuant to section 64 of the Trusts Act 1994.

380. Apart from these three trusts, Niue authorities are unaware of how many domestic or foreign trusts exist in Niue. Tax authorities are also unaware of any trusts operating in Niue, but the lawyer providing services in Niue indicated that they have assisted with the creation of family trusts. There are no legislative requirements or measures in place to require transparency of beneficial ownership in relation to trusts. However, the NOW Trust is also an example of how bespoke measures were put in place by Niue's government to address concerns about donations or funding from questionable sources.

381. Niue has no requirements for FIs and DNFBPs to conduct CDD on customers that are legal arrangements under the FTRA (see R.10). Trustees are bound by their fiduciary duties, expressly so under the Trusts Act, and otherwise at common law, and consequently trustees are indirectly required to maintain some basic information to be able to administer the trusts in accordance with these duties.

382. *Criterion 25.1(a)* - Trustees of express trusts, governed by the Trustee Act, are not required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. The Trusts Act specifies who may be a settlor, trustee, beneficiary (including identification of a description or class of

⁴⁰ <https://www.gov.nu/information>

beneficiaries) and protector of a trust and the property which may be held on trust (ss9, 17, 18, 19). The obligation to obtain and hold information of this type is implicit by reference to the duties imposed upon trustees under Part 4 of the Trustee Act; however, there are no specific provisions regarding accuracy and currency of the information, nor the identification of a natural person with ultimate effective control of the trust. While the obligation to obtain and hold information of this type is implicit by reference to the duties imposed upon trustees under Part 4 of the Trustee Act, there are no specific provisions regarding accuracy and currency of the information, nor the identification of a natural person with ultimate effective control of the trust.

383. *Criterion 25.1(b)* - Trustees of trusts governed under either the Trusts Act or the Trustees Act are not required to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors.

384. *Criterion 25.1(c)* - There is a general obligation for trustees to keep accurate accounts and records of their trusteeship (s28(7) Trusts Act) and an implied obligation under the Trustee Act (ss 83 A and 83B), but no specific requirements for trustees to maintain the trust-related information required under cr25.1(a) and (b) for at least five years after their involvement with trusts ceases.

385. *Criterion 25.2* - There is no requirement for trustees to keep information held pursuant to R.25 accurate and as up to date as possible and to be updated on a timely basis.

386. *Criterion 25.3* - There are no obligations on trustees in Niue to disclose their status to FIs and DNFBPs regulated under the FTRA when forming a business relationship or carrying out an occasional transaction above the threshold in the Recommendations.

387. *Criterion 25.4* - Section 66 of the Trustee Act provides that a trustee may apply to the Court for directions respecting the exercise of the trustee's powers or duties and section 67 provides protection to the trustee while acting under direction of the Court. Trustees are otherwise bound to keep trust information confidential and are only permitted to disclose information subject to (generally) the terms of the trust deed, where there is consent to do so from the beneficiaries of the trust, or under a Court order. The Trusts Act provides that all information regarding the state and amount of the trust property or the conduct of the trust administration is confidential, and only disclosable subject to the terms of the trust and any Court order, except as is necessary for the proper administration of the trust or by reason of any other Act (s29). These confidentiality requirements may limit the ability of trustees to provide competent authorities with information about beneficial ownership and assets of the trust.

388. Trustees are also able to disclose information about the trust where it is necessary for the proper administration of the trust (s29, Trust Act). This would include providing FIs and DNFBPs with information for the purposes of accessing services for the administration and management of the trust. The FTRA requires reporting entities to keep the records to enable a transaction to be readily reconstructed by NFIU at any time (s14, FTRA).

389. *Criterion 25.5* - Competent authorities can use their powers under POCA, TSTCA and FTRA to gain access to information held by trustees and other parties including FIs and DNFBPs about the trust, but there are gaps (see R.31). NFIU has a broad information gathering power under subsection 21(2) of the FTRA (see R.29 however, the information available to be gathered by competent authorities is, generally, inherently limited to basic information as there is no obligation on trustees to obtain or keep ultimate beneficial ownership or effective control

information). Information held by FIs and DNFBPs may include additional beneficial ownership information, and details of assets held by the FI or DNFBP in response to the obligations set out in sections 14 and 15 of the FTRA (as referred to in c.25.4). It is not clear that access to information would be timely.

390. *Criterion 25.6* - Niue has not demonstrated that it could rapidly provide international cooperation in relation to information, including beneficial ownership, on trusts and other legal arrangements, on the basis set out in R.37 and R.40. Niue only holds basic information in relation to three trusts and if information were sought about a trust, of which Niue has no knowledge, a court order would likely to be required to obtain disclosure of information held by the trustee and there are no requirements for trustees to obtain or maintain ultimate beneficial ownership information.

391. *Criterion 25.7* - Section 51 of the Trusts Act provides that a trustee who commits or concurs in a breach of a trust is liable for: (a) any loss or depreciation in value of the trust property resulting from the breach; and (b) any profit which would have accrued to the trust had there been no breach. The Trustee Act does not provide for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees however the common law applies, and the Court is able to apply remedies.

392. *Criterion 25.8* - While sanctions apply to persons who fail to respond to competent authorities exercising their information gathering powers under POCA, TSTCA and FTRA to gain access to information held about trusts (see R.31), there are deficiencies with the information required to be kept under R.25.1 which impact upon the applicability of sanctions. There are no obligations on trustees to disclose their status to FIs and DNFBPs regulated under the FTRA, so no sanctions apply to trustees for failing to provide this information.

Weighting and Conclusion

393. Niue has little visibility on the number or type of trusts which may exist in Niue, other than the three which have voluntarily registered with the High Court Registrar. There are no express requirements for trustees to obtain, verify and update basic information and no requirements to identify the ultimate beneficial owner or effective controller of trusts. As there is no legal or other system for collecting information on beneficial ownership and control of trusts, this information cannot be made available to competent authorities domestically or internationally.

394. **Recommendation 25 is rated non-compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

395. Niue was rated as partially compliant with the former R.23 in the 2012 MER. The main *deficiencies* identified included: the lack of comprehensive legislative provisions for the regulation and supervision of FIs; insufficient mechanisms for ensuring compliance with AML/CFT requirements; and inadequate monitoring and enforcement measures. The licensing provisions under the Niue Bank Act have not been operationalised and no banking licenses are currently issued. There is no prudential regulation of banks or other FIs in Niue.

396. *Criterion 26.1* - While responsibility for supervising the compliance of FIs with their AML/CFT obligations has the potential to be shared by three separate authorities (NFIU, the designated Banking Supervisor and the Registrar of Companies), a sole AML/CFT supervisor was

appointed in September 2024. The AML/CFT supervisor also holds the position of head of the FIU.

397. The FTRA Act specifies that the functions of NFIU include conducting examinations and supervision of FIs to ensure compliance with the Act (s.21(1)(c)). Subsection 13(5)(a) of the FTRA also provides that the supervisory authority of an FI must examine and supervise the FI to ensure compliance with the Act.

398. *Criterion 26.2* - There are no Core Principles Financial Institutions (CPFIs) operating in Niue. There are also no insurance companies, no securities sector or foreign exchange services in Niue. The only domestic FIs are a development bank and MVTs agent.

399. Section 17 of the FTRA requires registration of reporting entities, but no registration has been conducted. Subsection 13(5)(b) of the FTRA empowers the supervisory authority of a FI to adopt any necessary measures to prevent any unsuitable person from controlling or participating, directly or indirectly, in the directorship, management or operation of the DNFBP but this power does not extend to the beneficial owners of a significant or controlling interest in a FI.

400. Any business operating in Niue requires a business license, which must be renewed annually, and the Licensor to refuse to grant, or renew a licence if they are reasonably of the opinion that the applicant is not a fit and proper person to hold such a license (s.12, Business Licence Act). The two FIs operating on Niue hold business licences, but there are no procedures or prescribed criteria for the fit and proper person test, and the Licensor only considers if the applicant has a criminal record. It does not extend prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in a FI.

New Zealand banking agent and NCEL

401. A New Zealand bank operates under an agency arrangement in Niue and is regulated under New Zealand legislation; the Reserve Bank of New Zealand Act 2021. The banking agent (NCEL) is not an FI for the purposes of the FTRA or a CPFI. The relationship between the New Zealand bank and NCEL is one of principal and agent. NCEL is a government owned entity and is not registered in Niue, but holds a business license for financial transfer services.

Niue Development Bank

402. NDB is established under the Niue Development Bank Act, with Parts 1, 2, 3, 4 and 5 of the Act setting out the terms of its governance and operation. The Board of Directors include the Financial Secretary and four persons from the private sector of good character and standing with relevant experience (s4, Niue Development Bank Act). The Chair is appointed by Cabinet and Directors are responsible to the Cabinet for the proper and efficient operation of the Bank (ss4 and 5, Niue Development Bank Act). NDB only provides loans for the economic development and is not a CPFI. As a government owned bank operating under its own legislation and holds a business license in Niue. The Board can appoint a general manager and employees but there is not requirement for the Board to conduct a fit and proper person test as part of appointing the general manager (s11, Niue Development Bank Act).

403. There are no legal or regulatory provisions that require licensing or impose fit-and-proper requirements to prevent criminals or their associates from owning or controlling financial

institutions, or from holding a management function of FIs. The NDB holds a business license but the scope of the fit and proper test for a business license is unclear and mainly appears to involve liaising with Niue Police if the applicant is known to have a criminal history (as this information is widely known in Niue).

MVTS agent

404. An MVTS agent operates a remittance terminal in the premises of NDB. The MVTS agent is a remitter and a FI for the purposes of the FTRA. NCEL and the MVTS agency hold a business licence for financial transfer services.

Niue Bank

405. The Niue Bank Act 1994 also provides for the establishment of the Niue Bank, as the central bank of Niue and sets out the bank's powers, functions and management arrangements. However, the Niue Bank itself has never operated and does not exercise any of its statutory functions.

Currency exchange

406. There are no formal currency exchange businesses operating in Niue. However, there are some businesses offering small and informal currency exchange for tourists on an ad hoc basis for convenience (for example, where travellers may have no credit cards and only have USD), but tourists are able to use EFTPOS facilities. The assessment team has not weighted the non-licensing of these businesses.

Shell banks

407. There are no statutory provisions expressly prohibiting the establishment and operation of shell banks in Niue. However, a person who is not registered as a bank is prohibited from carrying on banking business in Niue (s.40(1), Niue Bank Act 1994). There are no shell banks registered, or to Niue's knowledge operating, in Niue and that there are no plans to register such entities in Niue.

408. *Criterion 26.3* - Niue has no measures to prevent criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, in an FI.

409. *Criterion 26.4(a)* - There are no CPFIs operating in Niue.

410. *Criterion 26.4(b)* - The NDB and MVTS agent are subject to the FTRA and supervision for compliance with that Act by NFIU. However, the NFIU has no systems for supervising or monitoring having regard to ML/TF risks for ensuring compliance with AML/CFT obligations having only been appointed as the AML/CFT supervisor two months prior to the on-site visit.

411. *Criterion 26.5* - Niue has not demonstrated that the frequency and intensity of its on-site and off-site AML/CFT supervision of FIs is determined based on identified ML/TF risks, the size of FIs, and the nature of their activities, as required by the criterion. There are no financial groups operating in Niue.

412. *Criterion 26.6* - Niue does not review the assessment of the ML/TF risk profile of an FI periodically, and when there are major events or developments in the management and operations of the FI. There are no financial groups operating in Niue.

Weighting and Conclusion

413. Niue designated NFIU as the sole AML/CFT supervisor in September 2024, which is a positive development. At the time of the on-site visit in late November 2024, NFIU had commenced engaging with the three reporting entities about their AML/CFT obligations under the FTRA but had not implemented risk-based supervision and monitoring. Resource constraints and the small size of the supervisory authority limits the capacity for proportionate and effective oversight consistent with Niue's risk and context. The MVTs agent and NDB are licensed to conduct a business which includes a basic fit and proper person test, but there are no controls to prevent criminals or their associates from holding (or being the beneficial owner of) a significant controlling interest, or holding a management function, in a FI. There are no prohibitions relating to the operation of shell banks.

414. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

415. In the previous MER of 2012, Niue's compliance with R.27 (former R.29) was rated largely compliant. The MER found that there were adequate powers given to the FIU to monitor compliance, conduct on-site examinations and to obtain information to carry out AML/CFT supervision. However, there was no regular monitoring of AML/CFT compliance and no on-site examinations. The MER concluded that the powers lacked effectiveness due to the powers not being exercised. Subsequent follow-up reports indicate that Niue has made progress in addressing these deficiencies.

416. *Criterion 27.1* - The NFIU is the supervisory authority for FIs for compliance with AML/CFT requirements.

417. Subsection 21(1) of the FTRA details the functions of NFIU, which includes: conducting examinations of FIs to ensure compliance with the Act; issuing guidelines to FIs in relation to transaction record keeping and reporting obligations and measures to prevent the misuse of FIs; and assisting in investigations and prosecutions related to AML/CFT. Subsection 21(6) of the FTRA specifies that a member of NFIU may enter the premises to inspect any records kept by the FI, analyse and assess all reports and information, and take copies of records. Subsection 13(5)(a) of the FTRA also provides that the supervisory authority of an FI must examine and supervise the FI to ensure compliance with that Act.

418. Section 2 of the FTRA defines a 'supervisory authority' as a person designated as the 'Banking Supervisor' and, in relation to FIs, includes the Registrar of Companies. The AML/CFT supervisor also serves as the banking supervisor. The Registrar of Companies also has no powers vested and does not supervise FIs in practice.

419. The FTRA grants significant powers to NFIU and the banking supervisor, including the authority to examine FIs' records, issue guidelines, conduct inspections, collaborate with law enforcement, and apply for search warrants. However, there are gaps relating to detailed monitoring mechanisms for routine compliance checks, enforcement tools such as administrative

penalties, and clear escalation procedures for non-compliance. NFIU has yet to commence substantive supervision activities.

420. *Criterion 27.2* - Subsection 21(6) of the FTRA specifies that NFIU members may enter the premises of any FI during business hours to inspect records, make notes, and take copies of any part of the records. This provides a legislative basis for NFIU's authority to conduct inspections.

421. *Criterion 27.3* - There is no legal power for AML/CFT supervisors to compel the production of records by FIs. NFIU may, pursuant to subsection 21(4) of the FTRA, collect information relevant to ML/TF and serious offences whether it is or not publicly available, but there is no penalty for a failure by a reporting entity to respond to a request for information. Pursuant to subsection 21(6) of the FTRA, obtain access to records, documents or information for AML/CFT purposes by way of an on-site inspection without the need to obtain a court order but there are no sanctions for non-cooperation with, or obstruction of, an officer of the NFIU in this regard. NFIU does have the power to apply for a search warrant where it appears that the FI has failed to keep a transaction record or report a suspicious transaction or that an officer or employee of a FI is committing, has committed, or is about to commit, an ML offence. Subsection 21(6) of the FTRA gives NFIU authority to take notes and copies of records, and section 23 allows NFIU to apply for a search warrant to enter premises and remove any document, material or thing.

422. *Criterion 27.4* - The FTRA includes several provisions that authorise the FIU to impose criminal and financial sanctions to ensure the FIU can act against non-compliance with AML/CFT requirements. Sanctions include fines and imprisonment for individuals and corporations (see 35.1). Sanctions apply for failing to make a CTR, structuring a transaction to avoid CTR reporting, failing to make a STR and the unlawful disclosure of a STR. The FTRA also provides record keeping requirements for FIs and the obligation to verify customers' identity.

423. In addition, the FTRA empowers the supervisory authority of an FI to adopt any necessary measures to prevent any unsuitable person from controlling or participating in the directorship, management or operation of the FI. However, NFIU does not have the power to withdraw, restrict or suspend an FI's license.

424. There are no sanctions for breaching obligations relating to internal controls. There are also no sanctions that apply to directors or senior management, or any administrative or non-criminal sanctions against FIs failing to comply with provisions of the FTRA.

425. NFIU does not have the power to impose administrative, disciplinary or financial sanctions.

Weighting and Conclusion

426. NFIU is designated as the AML/CFT supervisor for FIs and has powers to supervise and ensure compliance with AML/CFT requirements under the FTRA, including conducting inspections of FIs. However, NFIU lacks the legal power to compel the production of records by FIs. There are sanctions available for failure to comply with the AML/CFT requirements, but no administrative sanctions. There are other minor gaps in the scope of sanctions that apply to FIs. There are no administrative sanctions that can be applied under the FTRA and there is a lack of

sanctions for directors and senior management. No competent authority has the power to withdraw, restrict or suspend a FI's licence.

427. **Recommendation 27 is rated partially compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

428. In 2012 MER, Niue was rated as partially compliant with the former R.24. The MER found several deficiencies, including: inadequate identification of potential DNFBP; a lack of on-site AML/CFT examinations; inadequate information for offsite monitoring; no legislation to prevent criminals from holding significant roles in FIs, and no registration or licensing requirements for money or value transfer service providers or other non-bank financial institutions. The MER also reported that there were insufficient penalties for AML/CFT compliance breaches; absence of administrative sanctions; lack of sanctions for directors or senior management; and ineffective use of formal sanctions powers. Niue has not introduced any reforms to address these deficiencies.

429. *Criterion 28.1(a)* - The Schedule to the Gaming (Fees) Regulations 2005 made under the Niue Act 1996 prescribes the gambling activities that are permitted in Niue. Casinos are not prescribed for the purposes of these regulations and there are no casinos currently operating in Niue (including internet casinos).

430. *Criterion 28.1(b)* - Section 13 (5)(b) of the FTRA empowers the supervisory authority of an FI, which includes casinos, to adopt any necessary measures to prevent any unsuitable person from controlling or participating in the directorship, management or operation of the FI. While casinos are treated as an FI under the FTRA, casinos are not permitted to operate in Niue.

431. *Criterion 28.1(c)* - While section 21(1) and 21(6) of the FTRA provides for NFIU to supervise casinos (as FIs) for compliance with AML/CFT requirements, casinos are not permitted to operate in Niue without authorisation and no authorisation has been provided.

432. *Criterion 28.2* - DNFBPs other than casinos are also included under the definition of an FI in the FTRA (s3) and subject to supervision by NFIU for compliance with AML/CFT requirements. There is a gap as outlined in c.22.1, with lawyers, notaries, independent legal professionals and accountants not required to be regulated when they create, operate or manage legal persons or legal arrangements. The single DNFBP, the lawyer operating in Niue, provides these services and appears only to be captured under the FTRA for the provision of some limited TCSP services. The lawyer does not operate a trust account, does not hold money on behalf of clients and does not act as a director for companies. However, the lawyer's exposure to risk may be considered moderate (as in IO.3), noting the overall low risk environment of Niue.

433. *Criterion 28.3* - There are no systems in place in Niue for monitoring the compliance of other DNFBPs with AML/CFT requirements, noting there is only one DNFBP in Niue. Niue has indicated it plans to adopt a proportional approach to monitoring due to the small number of DNFBPs.

434. *Criterion 28.4(a)* - The analysis in R.27 applies here as DNFBPs are categorised as FIs, with some gaps, as outlined in c.22.1. The FIU has powers to conduct examinations of DNFBPs to ensure compliance with the FTRA; collect information relevant to ML/TF from DNFBPs, and serious offences; and provide training and issue guidelines to DNFBPs about their record-keeping

and reporting obligations and other measures (s21(1), FTRA). The supervisory authority also must examine and supervise DNFBPs to ensure compliance with the FTRA (s13(5)(a), FTRA).

435. *Criterion 28.4(b)* - The sole DNFBP operating in Niue is not subject to any professional accreditation but is required to hold a business license and renew it annually (s7, Business Licence Act). This process is set out in R.26. The Licensor may refuse to grant, or renew a licence if reasonably of the opinion the applicant is not a fit or proper person to hold such a licence (s12, Business Licence Act). Subsection 13 (5)(b) of the FTRA empowers the supervisory authority of a DNFBP to adopt any necessary measures to prevent any unsuitable person from controlling or participating, directly or indirectly, in the directorship, management or operation of the DNFBP but this power does not extend to the beneficial owners of a significant or controlling interest in a DNFBP. A basic fit and proper person test is applied as part of the annual business licence any business operating in Niue is required to hold (see R.26).

436. *Criterion 28.4(c)* - The FTRA includes various sanctions for non-compliance for FIs, which include DNFBPs, as outlined in c.27.4. The deficiencies outlined in criterion 27.4 apply here and include: no powers of enforcement or sanction available against DNFBPs for failing to maintain procedures; prepare and submit written statements; and monitor transactions. There are no administrative sanctions available where a DNFBP has contravened any of the provisions of the FTRA, and lack of sanctions for directors or senior management.

437. *Criterion 28.5* - Niue has not conducted any risk-based supervision of DNFBPs as at the time of the on-site visit, and there is no supervision framework in place for ensuring DNFBP's compliance with AML/CFT requirements.

Weighting and Conclusion

438. While the FTRA provides for the supervision of DNFBPs for compliance with AML/CFT requirements, NFIU has no systems in place for monitoring DNFBPs' AML/CFT compliance, and no risk-based supervisory framework or compliance checks have been implemented. These deficiencies have been heavily weighted. The NFIU has powers under the FTRA to conduct examinations, issue guidelines, and prevent unsuitable persons from holding key positions in DNFBPs but has no power to prevent criminals or their associates from being the beneficial owner of a DNFBP. There are some market entry controls that can be applied to DNFBPs. There remain insufficient penalties for AML/CFT compliance breaches; absence of administrative sanctions; and lack of sanctions for directors or senior management.

439. **Recommendation 28 is rated non-compliant.**

Recommendation 29 – Financial intelligence units

440. In its 2012 MER, Niue was rated partially compliant with the former R.26. The 2012 MER noted a lack of clarity on the set-up and legislated functions of the FIU with respect to its additional powers to direct certain third parties to facilitate any investigation, lack of AML/CFT guidance for covered FIs, and lack of formal and consistent feedback processes with FIs. There was also a lack of clarity on the operational independence of the Head of NFIU, no independent budget for the NFIU, and a limited number of NFIU staff to deliver FIU responsibilities and address any perceived conflict of interest. In addition, there was no backup and offsite storage of NFIU information, and a lack of engagement and consultation with agencies responsible for AML/CFT.

No STRs had been received by the FIU, so effectiveness of analysis and dissemination could not be established.

441. *Criterion 29.1* - NFIU is established under section 20 of the FTRA and has FIU and AML/CFT supervisory functions. Section 21 of the FTRA sets out the NFIU's functions, which include: receiving and analysing STRs and other information, and disseminating information based on reports received; and receiving information from and otherwise assisting, the Department hosting and supporting the NFIU, law enforcement agencies (domestic or foreign), or a supervisory body outside Niue, to detect, investigate or prosecute a ML offence, TF offence, or a serious offence; or enforce POCA. The FIU also has a power to direct FIs or government agencies to take appropriate steps to facilitate any investigation being conducted by the NFIU and includes powers to apply for a search warrant (s23, FTRA).

442. In 2024, the NFIU was moved from the CLO to the Office of the SOG, with the head of NFIU now reporting to the SOG.

443. *Criterion 29.2(a)* - The NFIU is authorised under subsection 21(1) of the FTRA as the central agency to receive or obtain STRs reported by FIs and DNFBPs.

444. *Criterion 29.2(b)* - Section 6 of the FTRA requires FIs to report cash transactions and EFTs over NZD 10,000 (USD 6,000) or the foreign equivalent to the NFIU.

445. *Criterion 29.3(a)* - Subsection 21(2) of the FTRA provides the NFIU with a broad power to request, free of charge, any information the FIU considers relevant to ML, TF and serious offences, regardless of whether that information is publicly available, including information that is collected or maintained in databases maintained by the government. The NFIU is empowered to receive and analyse any information given to or obtained by it (ss21(1)(a) and 21(6)(c), FTRA).

446. *Criterion 29.3(b)* - Section 21 of the FTRA permits collection of a wide range of information relevant to its functions and the reference to Government databases is considered broad enough to include taxation data. Additionally, NFIU has the power to obtain a search warrant in respect of an FI and the Solicitor-General can direct a person in charge of a FI, a government department or a statutory body to disclose relevant information to the Solicitor-General or a nominated police officer (ss23 and s25, FTRA). A direction must be complied with, and protections are provided to persons making disclosures under such a direction (ss25(3) and s28, FTRA). However, there is no sanction for failure to comply. NFIU is also able to enter into agreements for exchange of information with any law enforcement agency outside Niue (s22, FTRA).

447. *Criterion 29.4(a)* - NFIU can conduct operational analysis pursuant to subsection 21(1)(a) of the FTRA, which provides that NFIU's functions include the receipt and analysis of suspicious transactions reports and any other information given to or obtained by NFIU. NFIU conducted some operational analysis on a limited basis prior to closure during the COVID-19 pandemic. Since NFIU's re-establishment in 2024 and the subsequent recruitment of a new Head of FIU, NFIU has limited capacity to conduct operational analysis due to insufficient resourcing as noted in the analysis under IO.6.

448. *Criterion 29.4(b)* - Subsection 21(1)(a) of the FTRA provides NFIU with a broad power to receive and analyse information, which could include the conduct of strategic analysis. However, consistent with its risk and context, Niue does not conduct strategic analysis to identify

ML/TF related trends and patterns. This deficiency has not been weighted heavily noting that there has been no ML or TF activity in Niue and predicate offending is uncommon.

449. *Criterion 29.5* - Subsection 21(1)(b) of the FTRA broadly permits NFIU to disseminate information based upon the reports it receives to the Office of the SOG, and this appears to cover spontaneous disseminations and disseminations upon request. However, disseminations to LEAs can only be made if the Solicitor General considers it is appropriate. Subsection 21(1)(d) of the FTRA gives the NFIU a function of “otherwise assisting” the Office of the SOG and LEAs with detecting, investigating or prosecuting a ML offence, TF offence, or a serious offence, or enforcing POCA, which appears broad enough to include disseminating analysis.

450. The NFIU disseminates information using the Government of Niue network (a secured and protected network) and the Egmont Secure Web.

451. *Criterion 29.6(a)* - Section 24 of the FTRA sets out the obligations imposed on current and former officers, employees, and agents of the NFIU, Office of the SOG or the police to protect the confidentiality of NFIU information. At the time of the on-site visit, the NFIU had temporary accommodation in the Office of the SOG, where premises access is secured, and paper files were securely stored. Information technology access is subject to secure controls, including password protection, and hardware access and connectivity restrictions. New premises for NFIU are being established within the CLO⁴¹, which is in the Parliamentary building, but the head of NFIU will continue to report to the SOG.

452. *Criterion 29.6(b)* - The FIU has only one staff member, who at the time of the on-site visit, has the roles of head of NFIU, the AML/CFT supervisor and a senior customs officer. This staff member has a security clearance and has received training on information management and dissemination. All public servants are bound by the Code of Conduct and are accordingly required to keep information confidential (ss1.15, Niue Public Service Code of Conduct).

453. *Criterion 29.6(c)* - There is limited access to NFIU’s facilities and information, including information technology systems. Access to NFIU’s temporary accommodation in the Office of the SOG is secured, and NFIU’s paper information, and information recorded on its computer systems, is subject to secure storage, and password protection and hardware access and connectivity restrictions.

454. *Criterion 29.7(a)* - NFIU has its own budget and its reporting line to Government is through the SOG who has no powers under the FTRA. The appointment of and termination of employment for the Head of NFIU is managed by the Niue Public Service Commission.

455. While NFIU is able to receive and analyse reports and other information and otherwise assist the Office of the SOG and LEAs (domestic and foreign) to combat ML, TF, and other serious offences, and enforce the POCA, dissemination of information based on STRs and other reporting to the police, a LEA or a foreign supervisory body is subject to approval by the Solicitor General (ss21(1)(b)(ii), FTRA).

⁴¹ Niue authorities indicate that secure storage for paper-based files and reports will be established, and measures will be implemented for the physical security of FIU electronic data when the FIU relocates to the CLO office.

456. NFIU's independence from undue influence or interference is also constrained by a requirement for the Minister of Finance to approve NFIU entering into an agreement or arrangement with foreign agencies for the exchange of information (ss22(2), FTRA).

457. *Criterion 29.7(b)* - While subsection 21(2) of the FTRA gives NFIU a broad power to collect information, the FTRA makes no specific provision permitting NFIU to arrange or engage independently with other domestic competent authorities on the exchange of information. However, NFIU can exchange information with other domestic competent authorities as part of the executive authority of government established under the Constitution (Article 62(1)). NFIU may enter into agreements for the exchange of information with foreign LEAs or supervisory bodies, however, NFIU may only enter into these agreements with the Minister of Finance's approval (ss22(2), FTRA).

458. *Criterion 29.7(c)* - NFIU is located within the Office of the SOG and reports to the Minister through the SOG. NFIU has distinct core functions from those of the Office of the SOG.

459. *Criterion 29.7(d)* - NFIU has its own budget that is independent of the budget of the Office of the SOG and can freely obtain and deploy those resources.

460. *Criterion 29.8* - NFIU was accepted as a member of the Egmont Group in May 2007.

Weighting and Conclusion

461. NFIU has functions and powers broadly in accordance with R.29, but it is not evident that NFIU has the independence and autonomy required to be able to carry out its operational functions free from interference or influence. NFIU has broad powers under the FTRA to analyse information, including suspicious transaction reports, and prior to its temporary closure in 2020, NFIU conducted limited operational analysis and no strategic analysis. The assessment team considers this is consistent with Niue's unique risk and context. Since NFIU's re-establishment in 2024, it does not have sufficient resourcing to conduct operational and strategic analysis, but this deficiency has not been weighted heavily given there has been no ML or TF activity in Niue and predicate offending is uncommon.

462. **Recommendation 29 is rated partially compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

463. The former R.27 was rated partially compliant in Niue's 2012 MER. The MER found that Niue had not considered allowing competent authorities to postpone or waive the arrest of suspected persons and/or seizure of the money and there was no investigation or consideration of ML charges despite there being at least one opportunity to investigate or consider a charge. The ability to postpone or waive arrests is not a criterion under R.30.

464. *Criterion 30.1* - Niue Police is the primary law enforcement authority for the investigation of any serious offence, including ML and TF, and conducts prosecutions for minor offences.

465. Niue Police consists of three divisions: Police, National Disaster Management and Corrections, and employs eight personnel currently. Niue Police also support Customs and Immigration officers at the airport and seaport when flights or vessels arrive or depart.

466. Customs works with Niue Police in relation to control of the airport and seaport and cross-border offences (and collects and checks cross-border declarations) but does not have a significant investigative role with respect to ML and TF due to the limited number of air and sea transportation crossing Niue's border.

467. *Criterion 30.2* - There is no legal provision indicating which agencies are authorised to implement a ML/TF investigation during a parallel financial investigation. However, in practice, the only agency in Niue equipped to undertake a ML/TF or other serious offence investigation is Niue Police, applying general policing investigation skills and seeking assistance from regional counterparts where required. Any investigation by Customs that may develop into an investigation of a ML, TF or other serious offence would be referred to Niue Police.

468. *Criterion 30.3* - Niue Police and Customs are the designated competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Niue Police are empowered under the POCA to undertake relevant investigations (Part 3, POCA), and Customs' powers in relation to forfeiture and seizure are provided in Part 12 of the Customs Act. The Solicitor General is empowered to bring freezing and restraint action before the Court (Part 2, POCA). While there have been no ML/TF investigations or prosecutions in Niue, Niue Police provided case studies demonstrating the application of general policing skills to financial investigation and proactive transnational cooperation.

469. Niue's Maritime Authority also works with Niue Police in relation to search and rescue operations, suspicious movements of vessels through Niuean waters and illegal fishing vessels. Niue Police, Fisheries officers and Customs officers are enforcement officers for the purposes of the Maritime Safety Act and are empowered to detain, board and search vessels and require persons to attend an interview and produce documents. Authorised officers under the Maritime Zones Act 2013 have a general power to exercise the control necessary to prevent infringement of customs, fiscal or immigration laws (s.14). The Maritime Safety Act gives the Government of Niue a broad remit to deal with any issues that arise in relation to maritime activities. In practice, Niue's Maritime Authority would refer ML matters to the SOG, for sharing with Niue Police if necessary.

470. *Criterion 30.4* - Niue Police is responsible for ML/TF investigations. Niue's Tax Authority is also empowered to undertake investigations into ML related to tax offences and may refer matters to the CLO for prosecution.

471. *Criterion 30.5* - Niue does not have a designated anti-corruption enforcement authority.

Weighting and Conclusion

472. There are minor deficiencies for R.30. Niue Police has responsibility for investigating ML, associated predicates and TF offences, Niue Police and Customs have responsibilities relating to identifying, tracing and seizing proceeds of crime, and the Niue Tax Office may investigate ML related to tax offences. It is not clear that Niue Police is authorised to pursue the investigation of any related ML/TF offences during a parallel financial investigation.

473. **Recommendation 30 is rated largely compliant.**

Recommendation 31 – Powers of law enforcement and investigative authorities

474. Niue's 2012 MER rated the former R.28 largely compliant. The MER noted that some relevant powers were available in various legislation, but the effectiveness of the powers had not been tested. This situation is unchanged as there have been no legislative amendments of relevance, nor any ML/TF investigations or prosecutions undertaken. General police powers have been used since the 2012 MER to investigate predicate crimes of theft and dishonestly obtaining property by deception.

475. *Criterion 31.1(a)* - Section 47 of POCA empowers Niue Police to obtain production and inspection orders in relation to property tracking documents, on application to a judge in Chambers, where a person has been convicted or the Constable has reasonable grounds for suspecting that a person has committed a serious offence and has possession and control of a property-tracking document.

476. Section 61 of POCA provides that the Solicitor General may direct the person in charge of any government department or statutory body to disclose a document or information in the possession or under the control of that person or to which that person may reasonably have access if it is relevant to establishing whether a serious offence is being or has been committed or if the information is relevant to the making of a forfeiture, confiscation or restraining order under Part 2 or 3 of POCA.

477. Section 21 of the FTRA empowers NFIU to assist a law enforcement agency (inside or outside Niue) or a supervisory body (outside Niue), in relation to the investigation of ML/TF offences or the enforcement of the POCA. NFIU's powers to obtain information are set out in subsection 21(2) and section 25 of the FTRA. NFIU can gather any information it considers relevant to ML/TF and other serious offences, whether public or not and whether on a Government database or not (s.21(2), FTRA). Information gathering orders can also be issued by direction of the Solicitor General to a person in charge of an FI, a government department or a statutory body where the Solicitor General is satisfied the information is relevant to the enforcement of the FTRA or the detection, investigation or prosecution of ML/TF or a serious offence (s.25, POCA).

478. *Criterion 31.1(b)* - Section 27 POCA permits a police officer to apply for a warrant to search premises for tainted property on the same conditions as would apply to a warrant under the Niue Act. General search warrant powers are set out in sections 170 and 171 of the Niue Act and apply to any offences but do not extend to searches of persons.

479. Under sections 52 and 53 of POCA, a police officer may apply for a search warrant if a person is convicted of a serious offence, or reasonably suspected of having committed a serious offence, and there are reasonable grounds for suspecting there is in any premises a property-tracking document in relation to the offence.

480. Section 23 of the FTRA allows the FIU to apply for a search warrant to enter premises of FIs and seize documents, materials or things where there are grounds to believe the FI has failed to keep a transaction record or report a suspicious transaction or where there are reasonable grounds to believe an officer or employee of the FI is committing, has committed or is about to commit a ML offence.

481. Customs have extensive powers to examine goods (s.203, Customs Act); board ships and aircraft and search same (ss.205 and 206, Customs Act); secure goods (s.209, Customs Act); question and search persons (ss.212 and 213, Customs Act); search vehicles or boats (s.215, Customs Act); enter and search under a warrant (s.217, Customs Act); and requisition and impound documents (ss.218 and 220, Customs Act).

482. The Income Tax Act 1961 permits Tax authorities to inspect books and documents (s.139), request production of information (s.140) and bring inquiries before the Financial Secretary or the High Court.

483. *Criterion 31.1(c)* - Niue has not provided information to demonstrate that competent authorities are empowered to take witness statements under compulsion.

484. *Criterion 31.1(d)* - During a search under a warrant conducted under section 27 of POCA, any property that the constable believes, on reasonable grounds, to be tainted property in relation to any serious offence, and "anything that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence" may be seized (s.28, POCA).

485. Under subsection 52(6) of POCA, a police officer with a search warrant may seize and retain any document which is likely to be of substantial value to the investigation and anything the police officer believes on reasonable ground will afford evidence of the commission of a criminal offence.

486. Section 23 of the FTRA allows the FIU to apply for a search warrant to enter premises of FIs and seize documents, materials or things where there are grounds to believe the FI has failed to keep a transaction record or report a suspicious transaction or where there are reasonable grounds to believe an officer or employee of the FI is committing, has committed or is about to commit a ML offence.

487. *Criterion 31.2(a)* - Competent authorities in Niue conducting investigations are not empowered to use undercover operations. This deficiency has not been weighted heavily given Niue's very small population makes undercover operations impractical.

488. *Criterion 31.2(b)* - Competent authorities in Niue conducting investigations do not have powers to intercept communications.

489. *Criterion 31.2(c)* - Competent authorities conducting investigations in Niue do not have powers to access computer systems other than by obtaining monitoring orders under section 54 of the POCA which relate to provision of information from FIs about transactions occurring on accounts in real time.

490. *Criterion 31.2(d)* - Under section 26 of the TSTCA, controlled deliveries are permitted in relation to terrorism and people smuggling related offences but there is no such power for ML and associated predicate offences.

491. *Criterion 31.3(a)* - Competent authorities in Niue can identify if accounts are held or controlled by natural or legal persons. The relevant authorising provisions do not provide for a time limit for obtaining or providing information regarding accounts, but if this information is provided under a production order, provision may be immediate (s.47(5), POCA).

492. The FTRA empowers NFIU to obtain information as stated in criterion 31.1. Under the POCA, Niue Police may obtain a document for inspection through a production order (s47, POCA), and is also entitled to require FIs to provide information about transactions upon a monitoring order (s54, POCA).

493. *Criterion 31.3(b)* - Production orders under section 47 of the POCA and monitoring orders under section 54 of the POCA are made *ex parte*, and there are explicit prohibitions regarding the disclosure of information concerning the existence of a monitoring order (s55, POCA)

494. *Criterion 31.4* - Subsection 21(1)(b) of the FTRA broadly permits NFIU to disseminate information based upon the reports it receives to the Office of the Secretary of Government, the police and LEAs, which appears to cover spontaneous disseminations and disseminations upon request (however, disseminations to the police and LEAs may only occur if the Solicitor-General considers it appropriate). Subsection 21(1)(d) gives the NFIU a function of “otherwise assisting” the Office of the SOG and LEAs with detecting, investigating or prosecuting a ML offence, TF offence, or a serious offence, or enforcing POCA, which appears broad enough to include disseminating analysis. As part of the general process of government, any agency may request information of any other (including to the NFIU), with requests detailing reasons and purpose of the request. A request for information based on reports under STR obligations or other information obtained by the NFIU would be handled in accordance with the FTRA.

Weighting and Conclusion

495. Competent authorities in Niue have essential powers to investigate ML/TF and other serious crime. Niue Police and the FIU can obtain the productions of records and undertake search and seizure. Competent authorities are not empowered to intercept communications, and the accessing of computer systems, and controlled delivery are only available in limited circumstances. Competent authorities are also not empowered to conduct undercover operations. These deficiencies have not been weighted heavily given Niue’s risk and context. There are mechanisms in place to identify account ownership and to identify assets without prior notification. Niue Police and LEAs can ask for all relevant information held by NFIU, noting that dissemination by NFIU to the police and LEAs is dependent upon Solicitor General consideration.

496. **Recommendation 31 is rated partially compliant.**

Recommendation 32 – Cash Couriers

497. In 2012, former SR.IX was rated partially compliant. The MER concluded that while there was an obligation to declare, there were no forms available during the on-site. The MER also noted the lack of a legal provision to empower authorised officers to request for information about the origin and the intended use and destination of the currency, and no policy and procedure or regulation regarding the seizure process of any currency under the FTRA. There was also the lack of proper coordination and sharing of information amongst local authorities regarding cross-border movement of currency, and no formal agreement between the Niue authorities and New Zealand to share information on currency movement although the only weekly flight was from and to New Zealand. Further, there was a lack of sanctions for making false declaration or disclosure and no legal provision to seize currency pursuant to the UNSCR list. The 2012 MER found limitations due to the non-inclusion of other vehicles or methodologies for moving currency such as air mails or unaccompanied cargo and a limitation for the non-capturing of the

distribution of currency, with other persons travelling together or in a team to avoid the reporting requirement.

498. *Criterion 32.1* - Niue has a written declaration system for incoming and outgoing cross-border transportation of currency and BNIs carried on the person or in their luggage (ss30(1), FTRA). Declarations must detail the nature and amount of the currency or BNI, and the total amount (ss30(3), FTRA). The declaration system under the FTRA does not apply to cross-border transportations of currency or BNIs by cargo or mail.

499. *Criterion 32.2* - Section 30 of the FTRA requires all persons to declare, in writing, any cash or BNI over NZD 10,000 (USD 6,000), or any equivalent foreign currency, to a customs officer, when entering or departing Niue. A BNI (or negotiable bearer instrument as they are known in Niue) is defined under subsection 31(1) of the FTRA as a document representing ownership of debts or obligations, and includes bills of exchange, promissory notes, or certificates of deposit, whether made payable to the bearer or not. A completed form seeks the full passenger's details, identification documents, details of the owner of the funds if they are being carried by the passenger on behalf of another, along with related travel information and the amount of the cash or BNI.

500. *Criterion 32.3* - Niue adopts a written declaration system.

501. *Criterion 32.4* - There is no express provision that empowers any authorised officer to request information about the origin and intended use of the currency or BNI upon discovery of a false declaration or a failure to declare.

502. *Criterion 32.5* - There is no offence provision for making a false declaration. Section 30 of the FTRA establishes an offence for failing to declare the cross-border physical transportation of the prescribed sum of NZD 10,000 (USD 6,000) cash or BNI. Any person who is found guilty of an offence under this section is punishable on conviction by a fine of not more than 20 penalty units (s30, FTRA). There is no sanction for making false declarations.

503. *Criterion 32.6* - The FTRA provides that if cash or BNI is seized the NFIU must be informed (subsection 33(2), FTRA). The NFIU has the power to require Customs and Immigration Officers to provide them with all border cash report information under subsection 21(2) of the FTRA.

504. *Criterion 32.7* - Three separate Memoranda of Agreement exist for information sharing and cooperation between NFIU, Police, Treasury (including Customs and Revenue) and Justice. Individual government departments and agencies can also share information under the executive authority of the Cabinet under Article 62 of the Constitution. In practice, government agencies are required to disclose the reason and purpose for requesting information from another agency for the agency receiving the request to consider. Any significant issues or differences of view would be escalated to SOG and the subject of advice from CLO as required.

505. *Criterion 32.8(a)* - Section 33 of the FTRA empowers an authorised officer to seize or detain cash or BNI found in the course of an examination or search under subsection 31(3) or (4) if the officer believes, on reasonable grounds, that the cash or BNI may be evidence of the commission of a ML offence, a TF offence, an offence for failure to make a declaration, or a serious offence. The cash or BNI may not be detained for longer than 48 hours without an order from the High Court for continued detention for no longer than three months from the date of seizure (s34,

FTRA). The Court may once further make an order for the continued detention of the currency or BNI, but the total period of detention under a later order must not exceed two years from the date of the order.

506. *Criterion 32.8 (b)* - The FTRA does not make provision for seizure of currency and BNIs in relation to the making of a false statement.

507. *Criterion 32.9* - NFIU is empowered to share information internationally (s22, FTRA), and there is an MOU with New Zealand and open communication with Australia. The FTRA provides that if cash or BNI is seized the NFIU must be informed (ss 33(2), FTRA). The NFIU also has the power to require Customs and Immigration Officers to provide them with all border cash report information under subsection 21(2) of the FTRA.

508. However, there is no legislative coverage for false declarations and the ability to share information internationally is constrained. The FTRA also makes no provision for retention of declarations, false declarations or information regarding suspicion of ML/TF in the declaration process.

509. *Criterion 32.10* - Section 24 of the FTRA sets out the obligations imposed on current and former officers, employees, and agents of the NFIU, Office of the Secretary of Government or the police to protect the confidentiality of NFIU information. There is no equivalent explicit obligation for customs officers, however Niue public servants are bound by the Code of Conduct and are accordingly required to keep information confidential (ss.1.15, Niue Public Service Code of Conduct). There is no requirement for competent authorities' use of information collected through the declaration system to not restrict trade payments between countries for goods or services, or the freedom of capital movements.

510. *Criterion 32.11* - There are no civil or administrative penalties for making a physical cross-border transportation of currency or BNI related to ML/TF or predicate offences, other than a financial penalty of no more than NZD 2,000 (USD 1,200) for failing to make a declaration, a criminal sanction may apply if an ML/TF or other serious offence is prosecuted.

511. An authorised officer has the power under section 33 of the FTRA to seize or detain cash or BNI found during an examination or search under subsection 31(3) or (4) if the officer believes, on reasonable grounds, that the cash or BNI may be evidence of the commission of a ML offence, a TF offence, or a serious offence. The seizure must be reported to NFIU and, the cash or BNI may continue to be detained by order of the Court, where relevant to an investigation or prosecution for ML/TF or other serious offence (s33(2), and s34 and s35, FTRA). These measures would enable the confiscation of such currency or BNIs (see R.4).

Weighting and Conclusion

512. Niue has a written declaration system for incoming and outgoing cross-border transportation of currency and BNIs which only applies to cash or BNI on the person or in their luggage. While there are sanctions for the failure to declare, there are no sanctions for making false declarations. Authorised officers have the power to seize or detain cash or BNI found in the course of an examination or search if the officer believes, on reasonable grounds, that the cash or BNI may be evidence of the commission of a ML offence, a TF offence, or a serious offence, but do not have the power to request information on the origin and intended use of the currency or BNI

upon discovery of a false declaration, or a failure to declare, or seize currency and BNIs in relation to the making of a false statement.

513. The FIU is required to be informed if cash or BNIs are seized, and NFIU has the power to require Customs and Immigration Officers to provide them with all border cash report information. There are no provisions for the retention of declarations, false declarations or information regarding suspicion of ML/TF in the declaration process, so the ability to share such information internationally is constrained.

514. There are general secrecy and confidentiality provisions applicable to NFIU and the Niue Public Service which ensure proper use of information collected through the declaration system. However, there are no protections against restricting trade payments or freedom of capital movements. The sanction for making a physical cross-border transportation of currency or BNI related to ML/TF or predicate offence is a financial penalty of no more than NZD 2,000 (USD 1,200). Cash and BNIs seized at the border can be subject to confiscation proceedings.

515. **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

516. The former R.32 was rated partially compliant in the 2012 MER on the basis that Niue had no system for maintaining statistics.

517. *Criterion 33.1* - Niue has a Statistics office which sits within the Ministry of Finance and Planning and is staffed by two personnel, one of whom is a trainee. The Statistics office applies international standards to its work. The Statistics office compiles government data for most government agencies and undertakes Niue's census. The Statistics office does not compile data for Niue Police and only reports on trade for Customs. Niue has advised that the CLO produces an annual report including its statistics.

518. Niue Police maintain their own data and statistics on police activity which are published in their Annual Report. At the on-site visit Niue Police was able to demonstrate to the assessment team that it can draw on this data to provide details on the informal cooperation and coordination mechanisms it uses.

519. As Niue Police has not conducted any ML/TF investigations, prosecutions and convictions; frozen, seized or confiscated property related to ML/TF or predicate offences; or sent or received any MLA requests, it has not maintained any statistics in accordance with R.33.

520. Niue provided some statistics on STRs, however no STRs have been received pursuant to FTRA reporting obligations over the assessment period. NFIU does not currently have measures to capture data and report STR statistics, however it intends to adopt such measures following its recommencement of operations in September 2024.

Weighting and Conclusion

521. The annual report published by Niue Police is comprehensive and suggests that if AML/CFT investigations, prosecutions and confiscations occurred the data would be captured and able to be presented in statistical form.

522. The newly re-established NFIU intends to adopt measures to capture data and report statistics on STRs. Although this is yet to occur the assessment team notes NFIU has received no STRs pursuant to FTRA reporting obligations over the assessment period.

523. **Recommendation 33 is rated partly compliant.**

Recommendation 34 – Guidance and feedback

524. Niue was rated as partially compliant with the former R.25. The 2012 MER concluded there were no formalised processes and procedures to provide adequate and appropriate feedback to FIs on STRs filed, and no evidence of any general or specific feedback provided on a regular basis to reporting entities.

525. *Criterion 34.1 - Best Practice Guidelines for Financial Institutions* were prepared by NFIU in July 2009. These provide general information on ML and TF as well as detail on the reporting of suspicious transactions. NFIU has produced a ‘frequently asked questions’ factsheet on CTR and STR reporting. The guidelines and the fact sheets are not available on the government website.

526. There is no other guidance, and no feedback has been provided to assist reporting entities to apply AML/CFT measures.

Weighting and Conclusion

527. Niue has minimal guidance to assist reporting entities in applying national AML/CFT measures and it is not clear how reporting entities can access the guidance. No feedback has been provided to reporting entities.

528. **Recommendation 34 is rated non-compliant.**

Recommendation 35 – Sanctions

529. Niue was rated partially compliant with the former Recommendation 17 in its 2012 MER. The MER concluded that penalties for compliance breaches by FIs did not apply to all AML/CFT obligations. There were also no administrative sanctions available for compliance breaches, no sanctions applicable against directors or senior management and no effective use of formal sanctions powers.

530. *Criterion 35.1* - Niue did not provide the assessment team with details of all available sanctions applicable to Recommendations 6, and 8 to 23. As such, the assessment team was unable to assess the extent to which there are proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements of these Recommendations.

531. However, the FTRA does contain sanctions for failing to comply with certain AML/CFT requirements. These include failing to make a CTR (section 6(4)); structuring a transaction to avoid CTR reporting (section 7); and the unlawful disclosure of a STR (section 10(2)). These failures attract a sanction, on conviction, of up to 2,500 penalty units or 5 years imprisonment in the case of an individual and up to 10,000 penalty units in the case of a body corporate.

532. There are no powers of enforcement or sanction available against FIs for failing to comply with sections 13, 18 and 19 of the FTRA (namely failing to maintain procedures; failing to prepare and submit written statements, failing to monitor transactions; and failing to include originator information on funds transfers). There are no administrative sanctions available where a FI has contravened any of the provisions of the FTRA.

533. No sanctions have been imposed on any FI in relation to any obligation under the FTRA, so their dissuasiveness has not been tested.

534. *Criterion 35.2* - All sanctions specified in the FTRA are applicable against bodies corporate. There is no provision for sanctions against directors or senior management.

Weighting and Conclusion

535. The assessment team was unable to assess the full availability of sanctions applicable to Recommendations 6, and 8 to 23. The FTRA provides sanctions for failing to comply with some AML/CFT requirements, however there are gaps in enforcement or sanction powers available against FIs, and there is no provision for sanctions against directors or senior management.

536. **Recommendation 35 is rated partially compliant.**

Recommendation 36 – International instruments

537. In its 2012 MER, Niue was rated non-compliant with former R.35 and partially compliant with former SR.I. Niue had not ratified the Vienna and Palermo Conventions. The TF Convention had only been partially implemented, and the relevant criminalisation laws were deficient and did not cover ancillary offences. International cooperation was legally and practically limited due to the definition of criminal matters. UNSCRs were not implemented.

538. *Criterion 36.1* - Niue acceded to the Vienna Convention and the Palermo Convention on 16 July 2012. Niue acceded to the United Nations Convention Against Corruption (Merida Convention) on 3 October 2017 and the International Convention for the Suppression of Terrorism (TF Convention) on 22 June 2009.

539. *Criterion 36.2* - Niue has only partially implemented the relevant Articles of the Vienna, Palermo, Merida and TF Conventions through FTRA, Criminal Law Code, POCA, TSTCA, Mutual Assistance in Criminal Matters Act 1998 (MACMA), Extradition Act 2007 (Extradition Act), and Niue Bank Act 1994.

540. *Implementation of Palermo Convention:* Niue has partially implemented the Palermo Convention through the Misuse of Drugs Act, FTRA, Niue Act, POCA, TSTCA, MACMA, Extradition Act, and Niue Bank Act 1994. However, there are major shortcomings with the implementation of the requirements for cross-border movements of cash and BNIs (R.32), confiscation (R.37-38) and the ML offence (R.3).

541. *Implementation of the Vienna Convention:* Niue has partially implemented the relevant articles of the Vienna Convention through the Misuse of Drugs Act, FTRA, Niue Act, POCA, TSTCA, MACMA, Extradition Act, and Niue Bank Act 1994. There are deficiencies in Niue's implementation of Articles relating to the ML offence (see R.3), and minor gaps relating to implementation relating to MLA (see R.37-38), and confiscation (see R.4). Investigators only have the power to conduct controlled deliveries (see R.31) for terrorism and people smuggling

related offences. Niue can enter bilateral and multi-lateral agreements to exchange information internationally, as well as exchange information in the absence of such agreements under executive authority conferred by the Constitution.

542. *Implementation of TF Convention:* Niue has partially implemented the relevant Articles of the TF Convention under the TSTCA, Niue Act, POCA, MACMA, and Extradition Act. However, Niue has not fully criminalised TF in line with the TF Convention. The TSTCA sets out the TF offence but there are major shortcomings with the scope of the offence (R.5).

543. *Implementation of the Merida Convention:* The UNCAC report on the Cycle 1 review of Niue dated 8 November 2017 is noted.⁴² The review found that Niue has partially implemented the relevant Articles under Chapters III and IV of the convention under the FTRA Act, Niue Act, POCA, TSTCA, MACMA, Extradition and Niue Bank Act.⁴³ The report found deficiencies with the criminalisation of corruption; the criminalisation of ML (see R.3), freezing, seizing and confiscation (see R.4), cooperation between national authorities (see R.2) and international cooperation (see R.37-40). For the relevant Articles under Chapters II and V, there are deficiencies in: the regulatory and supervisory regime (see R.10, 11, 20, 22, and 26-28); the ability of competent authorities to cooperate and exchange information at the national and international level (see R.2, 20 and 29); the monitoring of the cross-border movement of cash and BNIs (see R.32); measures for wire transfers (see R.16); measures for international cooperation among judicial, law enforcement, and regulatory authorities (see R.40); and measures for asset recovery (see R.4, 10, 11, 12, 13, 15, 19, 22, 23, 29, 37, 38). Niue has not provided detailed information on the implementation of the Merida Convention.

Weighting and Conclusion

544. Niue has acceded to all international conventions, but there are gaps in the implementation of these conventions that represent moderate shortcomings.

545. **Recommendation 36 is rated partially compliant.**

Recommendation 37 – Mutual legal assistance

546. The 2012 MER report rated Niue as largely compliant with MLA requirements. The report found that, because of the dual criminality requirement, deficiencies identified with the ML and TF offence may limit MLA. There were also no clear and efficient policies or procedures for the execution of MLA requests, no mechanism for avoiding conflicts of jurisdiction, and a wide discretion for the Solicitor General to refuse MLAs, although this had not been tested. In addition, international cooperation was legally and practically limited due to the deficient definition of criminal matters in the TSTCA.

547. *Criterion 37.1* - The MACMA provides the legal basis for the provision of a wide range of MLA in criminal matters to all foreign countries, with no requirement for a treaty or any other agreement to be in place to render assistance. The Solicitor General can authorise the following assistance: identifying and locating a person; taking of evidence; the production of documents; search and seizure of property; extradition (see R.39); allowing prisoners in Niue to be

⁴² <https://www.unodc.org/corruption/en/country-profiles/data/NIU.html>

⁴³ The review of implementation of UNCAC articles 14, 50-55, 57-58 has not been finalised by the IRM and that the remaining assessment of the UNCAC portion of R.36 is based on the assessed jurisdiction's technical compliance with the corresponding FATF requirements.

transferred to a foreign country to give evidence; and, freezing and confiscation of proceeds of crime (see R.38) (ss.10B, 12, 14, 24, 25, and 30-35, MACMA). There is no provision in the MACMA that deals with the service of documents on behalf of a foreign country, although section 5 clearly states that the Act does not limit the provision or obtaining of international assistance other than assistance of a kind that may be provided or obtained under the MACMA, nor is the absence of any treaty a bar to the provision of assistance.

548. A prerequisite for MLA is the requirement that the request relates to a proceeding or investigation in respect of a 'criminal matter'. A criminal matter means an offence against a provision of any law of Niue that is a serious offence, or a law of a foreign country, in relation to acts or omissions, which had they occurred in Niue, would have constituted a serious offence (s.3, MACMA). A 'serious offence' for the purpose of the MACMA is an offence which attracts a penalty of more than 12 months imprisonment or death (s.3, MACMA). This covers ML offences, associated predicate offences, and TF offences. However, gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML, have a cascading effect here (see R.3 and R.5).

549. While there are no processes or policies in place regarding the timeliness of responding to MLA requests, Niue authorities indicated that, in practice, each request would be dealt with on a case-by-case basis and in accordance with required urgency. The assessment team considers this approach is reasonable given Niue's risk and context, the absence of MLA requests to date, and that it is unlikely Niue would have more than one request at any point in time. On this basis the lack of processes or policies have not been heavily weighted. The extent to which Niue can provide MLA 'rapidly' is not clear, but the approval process only requires authorisation from the Solicitor General. If an MLA was received, the Solicitor General would review the relevant legislation, determine a response and confirm powers to implement that response, and progress the response. In complex matters, the Solicitor General may need to seek outside advice (New Zealand). Niue provided an example of a matter involving the arrival of an alleged foreign offender in Niue, the Solicitor General was able to provide advice to Cabinet and secure a Cabinet decision to declare the offender a prohibited immigrant within 48 hours, allowing the offender to be deported quickly.

550. Dual criminality is a requirement for MLA.

551. *Criterion 37.2* - Section 10 of the MACMA provides that a request by a foreign country for international assistance in a criminal matter may only be made to the Solicitor General or a person authorised by the Solicitor General to receive requests by foreign countries. In practice such requests are received through diplomatic channels and transmitted to the Solicitor General in the CLO. Where a foreign country makes a request to a court in Niue for MLA in a criminal matter, the court must refer the matter to the Solicitor General (s.10(4), MACMA). The specific requirements for such requests are set out in the MACMA (s.10(2), MACMA). A request to a foreign country which is made by Niue can also only be done by the Solicitor General (s.9, MACMA). Niue has advised that MACMA requests would always be sent to CLO. To date, Niue has not authorised another person apart from the Solicitor General to receive requests for MACMA.

552. After receipt of a request, the Solicitor General is required to verify the *bona fides* of the requestor and determine what the request is in relation to. There are no set policies and procedures in place in Niue relating to MLA and no specific processes to expedite an urgent MLA request. The assessment team has not weighted these deficiencies heavily, as Niue has never received any MLA request. If an MLA request was received, Niue authorities indicated at the on-site visit that timeliness of the execution of the request would depend on the complexity of the

request, but the request is likely to be done quickly because there is no ongoing MLA workload. For complex requests, Niue would seek assistance from New Zealand. Niue does not have a case management system to record MLA requests and would record requests manually if they arose or were made. The assessment team considers this to be a minor deficiency given Niue's risk and context and the absence of MLA requests.

553. *Criterion 37.3* - The Solicitor General may only refuse a request for assistance if in his or her opinion, the assistance would: prejudice the national, essential or public interest of Niue; result in manifest unfairness or a denial of human rights; or it is otherwise appropriate, in all circumstances of the case, that the assistance requested should not be granted (s.7, MACMA). These are not unreasonable or unduly restrictive conditions. MLA provided to a foreign country may also be subject to any conditions the Solicitor General determines.

554. *Criterion 37.4(a)* - There are no explicit provisions under MACMA that specifically prohibit the Solicitor General from refusing an MLA request on the sole basis that the offence involves fiscal matters. However, the Solicitor General's broad discretion to refuse an MLA request 'as otherwise appropriate, in all circumstances of the case', could potentially be applied to refuse an MLA request on such grounds (s.7, MACMA).

555. *Criterion 37.4(b)* - Similarly, while there are no provisions under MACMA that specifically prohibit the Solicitor General from refusing an MLA request on the grounds of secrecy or confidentiality requirements, the Solicitor General's broad discretion to refuse an MLA request under section 7 of MACMA could potentially be applied to refuse an MLA request on such grounds. However, the TSTCA provides that a request for MLA in relation to TF or terrorist offences may not be declined solely based on bank secrecy (s.51). The extent to which a request for MLA could be refused on the grounds of other confidentiality requirements on FIs or DNFBPs is unclear. Niue does not have privacy legislation but there are provisions relating to the confidentiality of trust information that may have an impact (see R.25).

556. *Criterion 37.5* - A person with knowledge of the content of a MLA request, or the fact of the granting or refusal of a MLA request, is prohibited from intentionally disclosing those contents or that fact except if it is necessary to do so in the performance of his or her duties (s.51, MACMA). A person is also prohibited from intentionally using of all material related to an MLA request for any other purpose without the approval of the Solicitor General (s.51, MACMA). For a natural person, a penalty of a fine not exceeding 120 penalty units (NZD 12,000/USD 7,200) or imprisonment for a period not exceeding two years, or both, may apply to breaches of this requirement (s.50(4), MACMA). For a body corporate, the penalty is a fine not exceeding 600 penalty units (NZD 60,000/USD 36,000).

557. *Criterion 37.6* - Dual criminality is a requirement under the definition of a criminal matter under section 3 of the MACMA. There are no exceptions to the dual criminality condition for requests that do not involve coercive actions.

558. *Criterion 37.7* - The dual criminality test does not require the same category of offence, or to denominate the offence by the same terminology (s.3, MACMA). The requirement is that the conduct (the act or omission), had it occurred in Niue, would have constituted a serious offence (s.3, MACMA). However, gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML would impact Niue's ability to respond to MLA requests where dual criminality is required to facilitate the request and the conduct constituting the offence does not constitute a serious offence in Niue.

559. *Criterion 37.8* - As noted in criterion 37.1, MLA requests would be sent to the CLO to action. The CLO would review the applicable legislation, confirm competent authorities have the power to do what is being asked, pass on the request to the relevant competent authority and determine a response.

560. *Criterion 37.8(a)* - The powers and investigative techniques that are required under R.31 are available for relevant competent authorities to use for MLA requests, but there are some deficiencies identified under R.31 that have an impact here.

561. *Criterion 37.8(b)* - The MACMA provides specific powers for: identifying and locating a person of interest; the production, search and seizure of information, documents or evidence, including financial records; and the taking of witness statements (s.10B, 12 and 14). A prisoner or person in custody in Niue may also to be taken to a foreign jurisdiction to give evidence (s.24, MACMA).

Weighting and Conclusion

562. Niue has a legal framework for MLA that enables a wide range of MLA in criminal matters to all foreign countries and an official mechanism in place for the transmission and execution of requests, but there are moderate shortcomings. Gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML, impact on the ability of Niue to respond to MLA requests. There are no exceptions to the dual criminality condition for requests that do not involve coercive actions. Relevant domestic competent authorities can use specific powers and investigative techniques for MLA requests, as well as their general powers, but there are gaps (see R.31).

563. **Recommendation 37 is rated partially compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

564. The 2012 MER rated Niue as largely compliant with the MLA requirements for freezing and confiscation. The report identified some minor deficiencies, including a lack of coverage of instruments that are intended to be used in an offence by a person other than one convicted of the offence, and an inability to confiscate property of corresponding value. No substantial changes to the legal or operational framework for MLA related to freezing and confiscation have occurred since the 2012 MER, but the assessment team consider that POCA enables property of corresponding value to be confiscated (see R.4).

565. *Criterion 38.1* - The MACMA and POCA provide the legal framework for competent authorities to provide MLA related to freezing and confiscation.

566. The Solicitor General has the power to register foreign forfeiture, confiscation and restraining orders in the court (s32(1) and (2), MACMA; s18, POCA). This can occur where proceedings or an investigation relating to a criminal matter involving a serious offence has commenced in a foreign country, and some, or all, of the property is located in Niue (s.32, s.33, and s.34, MACMA). A serious offence includes ML, predicate and TF offences (s.3, MACMA). For the purposes of the registration of foreign forfeiture and restraining orders, property has the same definition as in the POCA (s.3, MACMA; s.4, POCA). Foreign orders registered in Niue will have the same effect as if they were for a domestic forfeiture, restraining or confiscation order in Niue at the time of registration (ss.32(4), (5) and (6), MACMA).

567. The scope of property covered for MLA covers (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, money laundering, predicate offences, or terrorist financing; or (e) property of corresponding value (see R.4). Section 32 of MACMA, specifically provides for the enforcement of a foreign confiscation order, made in respect of a serious offence, where some or all the property available to satisfy the order is believed to be in Niue. This is restricted to cases where there has been a conviction, and the conviction is not subject to an appeal. Search and seizure warrants can be executed against property of corresponding value in MLA and the High Court in Niue can register a foreign pecuniary penalty order and enforce that against property located in Niue of corresponding value (ss.88, 89, 90 and 95, Niue Act).

568. Foreign requests for search and seizure warrants in respect of tainted property may be actioned in Niue by application by the Solicitor General to a Commissioner under the POCA (s.33, MACMA). For foreign forfeiture orders related to terrorism and terrorism financing, the Solicitor General may apply to the court for a forfeiture order against terrorism property under MACMA where there has been a conviction and the conviction is not subject to an appeal (s.32).

569. The Solicitor General may also apply to the court for a restraining order under POCA upon request by a foreign country where a criminal proceeding has commenced, or there are reasonable grounds to believe that a criminal proceeding is about to commence, in a foreign country, in respect of a serious offence, and there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Niue (s.34, MACMA). Property for the purposes of the MACMA has the same meaning as in the POCA (s.3, MACMA; s.4, POCA).

570. Where requested by a foreign country, the Solicitor-General may also apply to a commissioner for a production order or search warrant under the POCA for access to a property tracking document relating to a criminal proceeding or an investigation commenced in the foreign country in respect of a serious offence (s.35, MACMA).

571. Niue officials indicate that requests would be facilitated on a case-by-case basis depending on the urgency and that while the court of Niue sits twice a year, in practice the judge is able to hear various applications by telephone if they are urgent. This would enable requests to be actioned in a timely way.

572. *Criterion 38.2* - Niue authorities can respond to requests for cooperation for non-conviction based confiscation proceedings and related provisional measures where a perpetrator absconds or dies. Where a person absconds in connection with a serious offence committed, the Solicitor-General may, within the period of 6 months after the person so absconds, apply to the Court for a forfeiture order under section 17 of POCA in respect of any tainted property (s.10, POCA). The term “absconded” also covers circumstances where the perpetrator has died (s.17(10(2), POCA). These domestic provisions also apply to foreign forfeiture orders (s.32, MACMA; s.17 and 18, POCA). However, sections 10 and 17 of POCA do not apply where the perpetrator is unknown.

573. *Criterion 38.3(a)* - Niue has no arrangements in place for coordinating seizure and confiscation actions with foreign countries. In practice, any requests from foreign countries to coordinate seizure and confiscation actions with Niue would be dealt with on a case-by-case basis and Niue would seek assistance from regional partners if required.

574. *Criterion 38.3(b)* - Niue's mechanisms for managing and disposing of property frozen, seized or confiscated, as part of providing MLA, occur through directions made by the Court (see R.4). There are no other provisions that relate to the custody of frozen or confiscated property and no mechanisms for managing and, when necessary, disposing of any seized, frozen or confiscated property, a deficiency the assessment team has given less weighting due to Niue's low ML/TF risk, and Niue's specific context which makes it difficult to hide or launder proceeds of crime in Niue.

575. *Criterion 38.4* - The Cabinet of Niue may approve proposals for sharing specified qualifying property with a foreign country that has assisted Niue under MACMA or POCA (s.35A(1), MACMA). The Solicitor General may also enter arrangements with the competent authorities of the foreign country to give effect to any sharing proposal approved by the Cabinet (s.35A(2), MACMA). While there are no operational measures set up for the sharing confiscated proceeds with other countries, Niue authorities advised during the ME on-site visit that, if such a circumstance occurred, a special account would be established, or the money would be deposited into the government consolidated account and then disbursed. The assessment team considers this contingency is appropriate to the risk and context of Niue.

Weighting and Conclusion

576. Niue has a reasonable legal framework to provide MLA in response to a request from a foreign jurisdiction to freeze and confiscate the proceeds of crime and instrumentalities related to ML, predicate offences, and TF, or property of corresponding value. There is a minor gap in the ability to assist based on non-conviction-based confiscation proceedings and related provisional measures where the perpetrator is unknown. Niue is also able to share confiscated property with other jurisdictions. Niue does not have any arrangements in place for coordinating seizure and confiscation actions with foreign countries, or managing and disposing of property frozen, seized or confiscated as part of providing MLA. The deficiencies relating to coordination and management of property in Niue have been given less weighting given the risk and context of Niue and noting the powers of the Court to make directions for management and disposal of property.

577. **Recommendation 38 is rated largely compliant.**

Recommendation 39 – Extradition

578. Niue was rated as partially compliant with the former R.39 in the 2012 MER. The report identified a range of deficiencies, including: a requirement for dual criminality that would impede extradition because of deficiencies in the ML and TF offence; an absence of legal provisions to allow prosecution in lieu of extradition other than specific offences under the TSTCA; very limited extradition treaties in place (only two jurisdictions); and, a lack of procedural and internal measures to respond to requests in a timely and effective way. No significant changes have been made to the extradition framework since 2012 MER.

579. *Criterion 39.1* - The Extradition Act 2007 (Extradition Act) provides the legal basis for Niue to execute extradition requests of Niuean and other nationals to New Zealand and any country with which Niue agrees to undertake to surrender the persons wanted by the authorities of that country (s.2, Extradition Act 2007). An 'extradition country' as defined in s 2 is not required to be a country with which Niue has an extradition treaty. 'Extradition country' covers New Zealand or any country with which Niue agrees to undertake to surrender the persons

wanted by the authorities of that country. If a country approached Niue on an extradition matter and Niue agreed to undertake to surrender the persons wanted by the authorities of that country, that country then becomes an “extradition country” without the need for a treaty.

580. Niue advises that such an approach to Niue regarding extradition would initially be handled by Foreign Affairs, advised by CLO. The case would then involve discussion between Niue, the extradition country and (if the extradition country is not New Zealand, but the extradition is though New Zealand), New Zealand. However, if the person subject to extradition is a New Zealand citizen (all Niueans are New Zealand citizens) and there is no extradition treaty between Niue and the extradition country or between New Zealand and the extradition country, which provides for the extradition of New Zealand citizens from Niue, then the Court may refuse the request (s.11(1)(iv), Extradition Act).

581. Where an extradition treaty operates between Niue and an extradition country, the Cabinet may, by regulation, provide that the Extradition Act does not apply to that extradition country, or applies subject to such limitations, conditions, exceptions, or qualifications specified in regulations (section 3, Extradition Act). Where the Extradition Act does apply to a treaty, the Extradition Act shall be read subject to the terms of the treaty and shall be construed to give effect to the treaty (s.3(2)). Niue has advised that the general basis for treaties is the executive power under the Constitution.

582. Under the Extradition Act, extradition requests can be executed with a jurisdiction that is an extradition country and must be based on an extraditable offence (s.9). New Zealand is an extradition country, noting that all Niueans are also New Zealand citizens. An extradition country also includes a country with which Niue has undertaken to surrender all persons wanted by the authorities of that country, before receipt of the extradition request. An extradition country also includes a country with which Niue has undertaken to surrender all persons wanted by the authorities of that country. An extradition offence is defined as: an offence against a law of an extradition country for which the maximum penalty is death, or imprisonment or other deprivation of liberty, for a period of not less than 12 months; or conduct which is required to be treated as an extradition offence under an extradition treaty between an extradition country and Niue (s2, Extradition Act).

583. Niue is highly motivated to deal with extradition requests in a timely way as it does not have the facilities to detain people subject to extradition proceedings. Niue authorities indicated at the on-site visit that it would likely use its immigration powers to deport any individual subject to extradition proceedings. Niue provided the assessment team with a case study demonstrating the successful deportation of a foreign national to New Zealand who was subject to an extradition request in 2014. New Zealand was then able to facilitate the return of the foreign national to the jurisdiction seeking extraction (see case study 3.4, IO.8).

584. Extradition requires a court process. While Niue’s High Court sits twice a year, in practice the judge can hear various applications by telephone. Under this system an application for extradition to New Zealand could be efficiently considered.

585. *Criterion 39.1(a)* - ML and TF are both extraditable offences under the Extradition Act as they meet the threshold for an extraditable offence (s.2, Extradition Act; s.64, POCA; and s.6, TSTCA). However, deficiencies in the criminalisation of ML and TF impact the ability of Niue to extradite for ML and TF offences (see R.3 and R.5).

586. *Criterion 39.1(b)* - Niue did not have a case management system or standard operating procedures, policies or clear processes for the timely execution of extradition requests including prioritisation at the time of the on-site visit.⁴⁴ In practice, extradition requests would be dealt with on a case-by-case basis by the Solicitor General, which the assessment team considers to be reasonable given Niue's risk and context. The Solicitor General is responsible for preparing a Cabinet Submission for a Cabinet decision on extradition requests, and any such submission is developed in accordance with the Cabinet Handbook. While it is not clear that the Cabinet submission process is timely, Niue has provided examples where a decision from Cabinet has been secured on an urgent matter within 48 hours (see R.37).

587. *Criterion 39.1(c)* - Discretionary grounds for refusing an extradition request are set out in section 11 of the Extradition Act. Most of these grounds do not place unreasonable or unduly restrictive conditions on the execution of requests. However, under the Extradition Act, a discretionary ground of refusal is that the person is a New Zealand citizen, and no treaty exists between Niue and the extradition country which provides for extradition of New Zealand citizens, or there is no treaty between New Zealand and the extradition countries which provides for the extradition of Niue citizens from Niue (s.11(iv)). This restriction also applies to an extradition request from a foreign country, which does not have an extradition treaty and with which Niue had an undertaking to surrender the persons wanted by that country. If Niue has undertaken to surrender all persons wanted by that country as in section 2, then a Niuean national (as a New Zealand citizen) could be extradited to that country, subject to subsection 11(iv) of the Extradition Act. As all Niue nationals are New Zealand citizens, the extent to which this ground for refusal as set out in subsection 11(iv) is unduly restrictive is not clear, as all Niue nationals would be captured under this provision (Extradition Act).

588. *Criterion 39.2(a)* - While Niue can extradite its own nationals, as per criterion 39.1(c), the Niue Court has a broad discretion to refuse a request to extradite Niuean nationals (who are all New Zealand citizens) where there is no treaty between Niue and the extradition country which provides for extradition of New Zealand citizens, or there is no treaty between New Zealand and the extradition countries which provides for the extradition of Niuean citizens from Niue, or where Niue has undertaken to surrender the wanted persons to that country (s.11(iv), Extradition Act).

589. *Criterion 39.2(b)* - There is no provision in the Extradition Act for prosecution in lieu of extradition. Under the TSTCA there is an obligation to refer the matter to the police for the purpose of prosecution if the Solicitor General refuses a request from another country to extradite, and the extradition request relates to an act or omission that may constitute a TF-related offence (s.50).

590. *Criterion 39.3* - Dual criminality is a requirement for extradition, but this does not appear to have legal or practical impediments to rendering assistance where both Niue and the requesting jurisdiction criminalise the conduct underlying the offence. For a person to be eligible to surrender for extradition, the court must be satisfied that if the conduct constituting the extradition offence had taken place within the jurisdiction of Niue, that conduct, or equivalent conduct would have constituted an extradition offence under the laws of Niue (s.9, Extradition Act). However, gaps in the criminalisation of ML and TF, and the scope of predicate offences for

⁴⁴ Niue finalised an Extradition Policy in June 2025.

ML would impact Niue's ability to facilitate extradition requests where there is no corresponding offence and the conduct underlying the offence is not similar.

591. *Criterion 39.4* - The Extradition Act provides for simplified measures when a person notifies the Court that he or she consents to surrender to the extradition country for the extradition offence for which surrender is sought (s.8(1)). Where the Court receives such notice, the Court is required to make a surrender order in respect of the person unless it is not satisfied that the person has freely consented to the surrender for the offence or offences in full knowledge of the consequences (ss.8(3) and (4), Extradition Act).

592. A procedure for issuing arrest warrants exists for extradition countries (ss.4-7, Extradition Act). The procedure permits the Court to issue a provisional arrest warrant, even where no request for surrender has been made, where the Court is satisfied that a warrant has been issued in the extradition country, the person is in Niue or on their way to Niue, there are reasonable grounds to believe the person is extraditable and an extraditable offence has been committed, and the matter is urgent. Additionally, the Niue Court has power to endorse arrest warrants made by an extradition country, when a request for surrender has been made.

Weighting and Conclusion

593. Niue has a legal framework to execute extradition requests in relation to ML/TF. Minor deficiencies in the criminalisation of ML and TF may impact the ability of Niue to extradite for these offences, and whilst there are no processes for prioritisation to facilitate the timely execution of requests for extradition, the ability of the Solicitor General and Cabinet to convene rapidly and to bring a matter before the Court urgently indicates that there is no restriction on dealing with extradition matters as a priority. There is a broad, untested discretion to refuse extradition requests, including requests to extradite a Niuean national however there are simplified mechanisms in place to arrest and surrender extraditable persons. There are no provisions for prosecution in lieu of extradition except for TF offences.

594. **Recommendation 39 is rated partially compliant.**

Recommendation 40 – Other Forms of International Cooperation

595. In the 2012 MER, Niue was rated as partially compliant with the former R.40 and SR.V. The report found that Niue conducted limited international cooperation with counterpart agencies and had no clear guidelines for handling information received from foreign agencies confidentially.

596. *Criterion 40.1* - All competent authorities have the power to provide a wide range of international cooperation and information exchange on operational matters, including ML, associated predicate offences and TF if the need arose, both spontaneously and upon request. This power to engage in international cooperation is derived from legislation, the executive authority of government under the Constitution and bilateral/multi-lateral agreements. Niue's close relationship with New Zealand enables cooperation and assistance to occur between foreign counterparts. However, the framework does not explicitly ensure that such cooperation is provided in a rapid, timely, or systematic manner, and there are generally no SOPs or procedures to support timely responses.

597. The NFIU, with the approval of the Minister for Finance, may enter into a bilateral or multi-lateral agreement to exchange information with an institution or agency of a foreign State

or an international organisation established by governments of foreign states that has similar powers and duties to the NFIU or with any other law enforcement agency or body outside Niue (s.22(2), FTRA). Any such agreement is restricted to information relevant to the detection, investigation or prosecution of ML, TF, a serious offence, or an offence substantially like those three offences (s.22(3), FTRA). NFIU has established an information-sharing agreement with New Zealand's FIU and participates in international cooperation through the Egmont Group and the Transnational Crime Unit, facilitating broader information exchange and collaboration under the executive authority of the government.

598. While Niue's competent authorities have the legal authority and participate in multiple regional cooperation mechanisms, there is no formalised procedure or timeframe to ensure that international cooperation is provided rapidly. The ability to respond in a timely manner is highly reliant on personal relationships and informal communications, particularly with New Zealand counterparts. There is no documented process to guide spontaneous exchanges or urgent requests. Consequently, while cooperation occurs in practice, Niue has not demonstrated that such cooperation is provided promptly or consistently across all competent authorities.

599. In practice, Niue often engages in informal agreements and collaborations with international partners, especially during mutual evaluations or specific cases, to facilitate information exchange and cooperation.

600. Competent authorities such as Customs and Niue Police exchange information under executive authority and using bilateral and regional arrangements. These platforms include the Pacific Transnational Crime Network, Pacific Island Law Officers Network, Pacific Transnational Crime Coordination Centre, Pacific Island Chiefs of Police, Pacific Immigration Development Community, Oceania Customs Organisation, Fisheries Forum Agencies, Pacific Prosecutors Association, Pacific Islands Tax Administration Association, Pacific Financial Intelligence Community and South Pacific Community. NFIU has a supervisory MOU with the RBNZ. Niue's Tax Division can exchange information under the Automatic Exchange of Information (AEOI) relating to tax matters. Niue exchanges information using Interpol's platform through New Zealand. Niue's Immigration Department has legislative powers that enable limited international cooperation.

601. *Criterion 40.2(a)* - NFIU has a lawful basis for providing international cooperation under the FTRA (s.22(2)). The TSTCA permits the Solicitor General to disclose a range of information relating to terrorism, to an appropriate authority of a foreign country, if the disclosure is not prohibited by the law and will not, in the Solicitor General's view, prejudice national security or public safety (s.27). This includes information relating to: the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts; the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts; traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts; and the use of communication technologies by terrorist groups (s.27, TSTCA). Other competent authorities can provide international cooperation under the executive authority established under the Niue Constitution (s.62). The deficiencies in Niue's criminalisation of ML and TF do not impact on the ability of competent authorities to engage in international cooperation.

602. *Criterion 40.2(b)* - There are no legal provisions that impede the FIU or the Solicitor General from using the most efficient means to cooperate. Other competent authorities undertake informal international cooperation and would be authorised to provide formal international

cooperation via an MLA request. MLA requests are handled via the Solicitor General. In addition, MOUs with foreign counterparts may be formalised by CLO and Foreign Affairs.

603. *Criterion 40.2(c)* - Competent authorities in Niue use secure channels/networks, including the Egmont Secure Web and the TAIPAN FIU database system, in the transmission and execution of requests between Niue and foreign counterparts. Niue competent authorities are also members of INTERPOL and regional multilateral platforms such as Pacific Transnational Crime Coordination Centre/Pacific Islands Chiefs of Police network, OCO and PILON. Other channels would be used on a case-by-case basis having regard to security considerations and the channels used by relevant counterparts.

604. *Criterion 40.2(d)* - Niue does not have clear processes for the prioritisation and timely execution of requests for international cooperation. The number of requests is extremely small and are dealt with on a case-by-case basis and according to urgency. This approach is consistent with Niue's risk and context.

605. *Criterion 40.2(e)* - Agencies have protective security and classification processes for sensitive information in place as part of the Public Service Regulations 2004 and other material instructions provide for confidentiality and restrictions on use and dissemination of official information. These would apply to any particular information received depending on the nature and sensitivity of that information. Section 24 of the FTRA sets out the obligations imposed on current and former officers, employees, and agents of the NFIU, Office of the SOG or the police to protect the confidentiality of NFIU information. Niue Public Service more broadly are bound by the terms of the Public Service Regulations which restrict unauthorised use and disclosure of official information (s.53). Niue public servants are also bound by the Code of Conduct and are accordingly required to keep information confidential (s.1.15, Niue Public Service Code of Conduct). However, the extent to which these processes have been implemented and enforced is not clear.

606. *Criterion 40.3* - NFIU is the only competent authority that can enter bilateral arrangements or with a foreign agency of state with similar powers and duties, and a law enforcement agency or supervisory body. The Government of Niue, including the NFIU established under the Niue AML Act, has an MOU with the New Zealand Department of Internal Affairs (DIA), the New Zealand Financial Markets Authority (FMA) and the RBNZ for each participant to provide, unilaterally or upon request, available compliance related information regarding AML/CFT matters that may assist an MOU participant in the performance or exercise of its functions, powers or duties under the laws of that other participant's jurisdiction. There are currently no formal agreements in place for the police or customs to share information with international bodies. NFIU and the Immigration Department are the only authorities with limited legislative provisions enabling international cooperation. When necessary, Niue engages in informal cooperation agreements, which are arranged swiftly in response to specific international cases.

607. *Criterion 40.4* - There is no legal restriction preventing competent authorities from providing feedback to foreign counterparts. However, Niue has not provided information to demonstrate that upon request, requesting competent authorities provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained.

608. *Criterion 40.5* - There are no provisions in law that prohibit or place unreasonable or unduly restrictive conditions on the provision or exchange of international information or assistance by the FIU or the Solicitor General. Other competent authorities do not appear to be authorised to provide formal international cooperation, a deficiency that cuts across sub-criteria (a)-(d).

609. *Criterion 40.5(a)* - There are no provisions that prevent the FIU or Solicitor General from responding to a request for assistance on the grounds that the request involves fiscal matters. However, the TSTCA is the only law where explicit permission exists to assist regardless of any involvement of fiscal matters (s.51).

610. *Criterion 40.5(b)* - There are no provisions that prevent the NFIU or Solicitor General from responding to a request for assistance on the grounds of FI and DNFBP secrecy or confidentiality laws.

611. *Criterion 40.5(c) - (d)* - Niue has not demonstrated that requests for assistance are not refused on the grounds there is an inquiry, investigation or proceeding underway in the requested country, or the grounds that the nature or status of the requesting counterpart authority is different from that of its foreign counterpart.

612. *Criterion 40.6* - Any agreement for international cooperation entered into by the NFIU with a foreign agency must restrict the use of the information to purposes relevant to the detection, investigation, or prosecution of ML/TF offences, serious offences and other similar offences (s.22, FTRA). Niue has not provided any information about controls and safeguards that apply to other competent authorities.

613. *Criterion 40.7* - Subsection 22(4) of the FTRA provides that any agreement that relates to the exchange of information between NFIU and any law enforcement agency or supervisory body outside Niue is required to stipulate that the information must be treated in a confidential manner and must not be further disclosed without the express consent of NFIU or the relevant law enforcement agency or supervisory body outside Niue. Niue does not have a dedicated Privacy Act, so there is no overarching legislation guiding information privacy. The Public Service Code of Conduct, the Public Service Regulations 2004 and related manual and other material instructions provide for confidentiality and restrictions on use and dissemination of official information. Internal practices within each agency govern the handling of sensitive information to ensure confidentiality. These are often in the form of SOPs. Niue has not provided information to demonstrate that other competent authorities maintain appropriate confidentiality for any request for cooperation and the information exchanged, consistent with both parties' obligations concerning privacy and data protection, if they are permitted to exchange information.

614. *Criterion 40.8* - Niue's legal framework allows some competent authorities to conduct enquiries on behalf of foreign counterparts and exchange information. MACMA specifically provides that it does not prevent the provision or obtaining of other forms of international assistance outside of the MLA legal framework (s.5). NFIU can receive information and "otherwise assist" a law enforcement agency outside Niue in relation to the detection, investigation or prosecution of a ML or TF offence, or a serious offence, or the enforcement of the POCA. This provides NFIU with a broad power to conduct enquiries on behalf of foreign counterparts. Niue Police can conduct enquiries on behalf of foreign counterparts for the purpose of exchanging information internationally under MACMA (ss.10B, 12, and 14). The Government of Niue has an MOU with the New Zealand supervisors to provide, unilaterally or upon request, available

compliance-related information. However, Niue has not provided information to demonstrate other competent authorities, including Customs, can conduct inquiries on behalf of foreign counterparts for the purposes of exchanging domestically available information.

Exchange of Information Between FIUs

615. *Criterion 40.9* - NFIU has an adequate legal basis for providing international cooperation on ML/TF (ss.21 and 22, FTRA).

616. *Criterion 40.10* - There is no legal restriction preventing competent authorities from providing feedback to foreign counterparts. However, Niue has not provided information to demonstrate that NFIU provides feedback to their foreign counterparts, upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided.

617. *Criterion 40.11(a)-(b)* - NFIU has broad powers to enter into agreements, with the Minister's approval, with foreign counterparts to exchange information with any law enforcement agency or supervisory body outside Niue (s.22, FTRA). There is no restriction on the scope of that information that can be exchanged.

Exchange of Information Between Financial Supervisors

618. *Criterion 40.12* - NFIU is the designated AML/CFT supervisor and has responsibility for ensuring compliance with the FTRA (s.21(1)(c)). Section 22 of the FTRA only enables NFIU to enter into agreements with foreign counterparts to exchange information to detect, investigate, or prosecuting an ML/TF or other serious offence. However, NFIU can enter into agreements with foreign supervisory counterparts on behalf of the Government of Niue under the Government's executive authority, subject to complying with internal processes for such matters and with appropriate Government authorisation. A significant international agreement may first be referred to the Cabinet for approval and authorisation.

619. *Criterion 40.13* - NFIU can provide any information received by NFIU to a supervisory body outside Niue, if the Solicitor General considers it appropriate (s.21(b), FTRA). Subsection 2(d) of the FTRA empowers NFIU to provide information to an LEA or supervisory body outside Niue to detect, investigate or prosecute ML, TF or a serious offence or to enforce POCA. Section 22 of the FTRA further provides that, with the Ministers approval, NFIU may enter into an agreement to exchange information with a supervisory body outside Niue to detect, investigate or prosecute ML, TF or a serious offence. The Government of Niue, including the NFIU, has an MOU with the New Zealand Department of Internal Affairs (DIA), the New Zealand Financial Markets Authority (FMA) and the RBNZ for each participant to provide, unilaterally or upon request, available compliance-related information regarding AML/CFT matters that may assist an MOU participant in the performance or exercise of its functions, powers or duties under the laws of that other participant's jurisdiction.

620. *Criterion 40.14(a)-(c)* - NFIU is empowered under the FTRA to exchange information internationally for AML/CFT purposes. Subsection 21(b) of the FTRA empowers NFIU, if the Solicitor General considers it appropriate, to disseminate information to a supervisory body outside Niue relating to STRs and any other information obtained by NFIU. Subsection 21(d) of the FTRA provides that the NFIU may receive information from and "otherwise assist" a supervisory body outside Niue in relation to the detection, investigation or prosecution of ML, TF

or a serious offence, or the enforcement of POCA. Section 22 of the FTRA further provides that, with the Ministers approval, NFIU may enter into an agreement to exchange information with a supervisory body outside Niue to detect, investigate or prosecute ML, TF or a serious offence. The process for dissemination of NFIU information to foreign supervisors in terms of requiring the Solicitor General's approval is untested and could impact on the ability of NFIU to share information freely.

621. *Criterion 40.15* - NFIU has broad powers as a supervisor under the FTRA to otherwise assist foreign counterparts (see criterion 40.14). However, the process for dissemination of NFIU information to foreign supervisors in terms of requiring the Solicitor General's approval is untested and could impact on the ability of NFIU to share information freely.

622. *Criterion 40.16* - NFIU does not have MOUs or SOPs that require the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes, unless the requesting financial supervisor is under a legal obligation to disclose or report the information. There is also no formal requirement for NFIU to promptly inform the requested authority of this obligation.

Exchange of Information Between Law Enforcement Authorities

623. *Criterion 40.17* - LEAs can exchange information with foreign counterparts under the executive authority is vested in Cabinet under the Constitution (s.62). LEAs advise that they are in regular contact with their New Zealand counterparts in Police, Immigration and Customs, and practically provide a wide range of assistance, including exchanging information. Niue law enforcement authorities engage in a range of regional and global law enforcement networks such as the Pacific TCU network, Oceania Customs Organisation, and Interpol (via New Zealand police). Through these networks they can meet and communicate with counterpart agencies in, and provide assistance to, other Pacific jurisdictions, and potentially with other jurisdictions around the world.

624. The Solicitor General may disclose to the appropriate authority of a foreign country any information in his or her possession relating to terrorism activities if the disclosure is not prohibited by any provision of law and will not, in the Solicitor General's view, prejudice national security or public safety (s.27, TSTCA). This power has never been exercised, which is consistent with Niue's risk and context. If a situation did arise, the matter would be handled by the Office of the SOG, Niue Police and other relevant officials, with CLO providing formal advice to the Solicitor General under section 27 of TSTCA and conferring with Ministers if appropriate.

625. Niue Police may also exchange information with New Zealand counterparts in police, immigration and customs (Niue Act 1966 (Criminal provisions), Transport Act 1965, Wildlife Act 1972, Mutual Assistance in Criminal Matters Act 1998, Family Relationships Act 2022, Arms Act 1975).

626. Niue law enforcement authorities are members of INTERPOL and regional multilateral platforms such as Pacific Transnational Crime Coordination Centre/Pacific Islands Chiefs of Police network, and PILON, which allow them to cooperate and exchange information with foreign counterparts. Customs can directly exchange information with foreign counterparts through the Oceania Customs Organisation under the general executive authority of the Government under the Constitution (s.62). Niue has used these platforms and can generally share information under its executive authority subject to any applicable statutory restrictions or

policies in place. Niue has collaborated with Korea, Australia, New Zealand and the United States on cases involving financial crime and cybercrime which all remained active at the time of the on-site visit.

627. *Criterion 40.18* - Niue has not provided information to demonstrate that law enforcement authorities are able to use their powers, including any investigative techniques available in accordance with their domestic law, to conduct inquiries and obtain information on behalf of foreign counterparts.

628. Niue has collaborated with the Republic of Korea, Australia, New Zealand, and the United States on cases involving financial crime and cybercrime. Examples include embezzlement through phishing schemes involving cooperation with New Zealand Police and Australian Federal Police and cases where the U.S. was consulted due to links with U.S.-based entities. These investigations are ongoing, but Niue emphasised its effective informal networks and strong working relationships with international partners.

629. *Criterion 40.19* - The Government of Niue has executive authority to form joint investigative teams to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations.

Exchange of Information Between Non-Counterparts

630. *Criterion 40.20* - NFIU is authorised to exchange information indirectly with foreign non-counterparts (see 40.1) (ss.21 and 22, FTFA). Other authorities exchange information either under MACMA or the executive authority of the Government, but it is unclear if this provides for exchange of information with non-counterparts.

Weighting and Conclusion

631. Niue has a framework for other forms of international cooperation. The NFIU, is empowered under sections 21 and 22 of the FTFA to exchange information with domestic and foreign counterparts, including sharing financial intelligence and assisting law enforcement. However, Niue is not able to share information it obtains, including STRs, without the approval of the Solicitor General. Niue participates in the Egmont Group, Interpol (via New Zealand), and other regional networks, with no legal barriers to cooperation. The executive authority under the Constitution (s.62) supports all competent authorities to engage in international cooperation. There are some gaps, such as the absence of provisions for foreign supervisory access (criterion 40.15). There is also limited evidence of the extent of international cooperation across all competent authorities occurs. However, for NFIU and LEAs, the level of international cooperation appears to be consistent with Niue's risk and context and occurring at a level of regularity that is consistent with Niue's risk and context.

632. **Recommendation 40 is rated partially compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> The 2017 NRA did not involve a full and comprehensive assessment of risk, and the threat assessment is limited. There are gaps in the coverage of risks assessed, some of which were assessed in the 2024 NRA update, and some gaps in the methodology for the 2017 NRA and 2024 NRA update (c.1.1 and c1.3) Niue designates the NSC as the authority to coordinate government action and activities with respect to AML/CFT, although the terms of reference for NSC only includes policymaking, considering policies, procedures and legislative requirements relating to national security prior to Cabinet approval, and information sharing (c.1.2) There are some gaps in the 2017 NRA which have not all been addressed in the 2024 update (c.1.3) There is no mechanism to provide the results of risk assessments to all relevant competent authorities and reporting entities. The NRAs have not been published and the extent to which the 2017 NRA was disseminated to all relevant competent authorities and reporting entities is unclear. No awareness raising sessions were conducted to communicate the results of the NRA. The results of the 2024 NRA update have yet to be published (c.1.4) The action plans to respond to the results of the 2017 NRA have no timeline for the implementation and most actions are still pending. There are no specific action plans yet to address risks identified in the 2024 NRA (c.1.5) Exemptions from conducting CDD in certain circumstances for FIs and DNFBPs allow the exemptions to be applied in some higher risk scenarios, including where the customer is a PEP (c.1.6) Reporting entities regulated under the FTRA do not have obligations to take enhanced measures to manage and mitigate any higher risk identified (c.1.7(a)) FIs and DNFBP regulated under the FTRA do not have an obligation to incorporate the information on higher risks in their risk assessments (c.1.7(b)) Niue does not permit simplified due diligence in low-risk scenarios (c.1.8) The AML/CFT supervisor has yet to commence supervisory processes to ensure that FIs and DNFBPs regulated under the FTRA are implementing their obligations to take a risk-based approach under R.1 (c.1.9) Reporting entities regulated under the FTRA have no obligations to identify, assess, and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). Likewise, there is no requirement for FIs and DNFBPs to: (a) document their risk assessment; (b) consider all relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied; (c) keep these assessments up to date; and (d) have

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>appropriate mechanisms to provide risk assessment information to competent authorities (c.1.10)</p> <ul style="list-style-type: none"> Reporting entities regulated under the FTRA have no obligations to: (a) have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified (either by the country or by the financial institution or DNFBP); (b) monitor the implementation of those controls and to enhance them if necessary; and (c) take enhanced measures to manage and mitigate the risks where higher risks are identified (c.1.11)
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> Niue does not have a national AML/CTF policy based on identified risks (c.2.1). The role of the NSC in ensuring cooperation and coordination among competent authorities to combat PF is not formalised (c.2.4).
3. Money laundering offence	PC	<ul style="list-style-type: none"> It is not clear to what extent conversion and transfer are covered (c.3.1) The scope of the ML offence is limited as several designated categories of offences are not criminalised or are only partially criminalised (c.3.2) A prior conviction of a predicate offence is not specifically required to prove property is proceeds of crime, however, there is no specific provision that authorises the prosecution of an ML offence in the absence of a conviction for a predicate offence (c.3.5) Gaps in the range of predicate offences for ML under POCA would impact on the ability of the Niue authorities to prosecute for ML in some cases where the proceeds of crime were derived from conduct that occurred outside Niue (c.3.6) Niue does not have appropriate ancillary offences to the ML offence (c.3.11)
4. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> Minor gaps in the range of predicate offences for ML impact c.4.1(b). The power to apply for a restraining order is confined to “realisable property” held by the defendant or “specified realisable property” held by a person other than the defendant. The definition of “realisable property” limits the property which may be subject to a restraining order (c.4.2(b)) Niue has no provisions that set out the steps that may be taken to prevent or void actions that prejudice its ability to freeze, seize or recover terrorist property that is subject to confiscation (c.4.2(c)) Deficiencies identified under R.31 impact c.4.2(d) The interaction of sections 22 and 20 of the TSTCA may impact on the ability of the court to make an order for third party relief.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There are limited processes and procedures setting the mechanisms for managing and, when necessary, disposing of any seized, frozen or confiscated property (c.4.4)
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> There are no specific provisions to criminalise participation, organisation, direction or contribution to terrorist act and an attempt to commit TF is not criminalised (c.5.1) There is no offence that applies to financing a terrorist organisations or terrorist entities as the responsible Minister has not given notice of a list of terrorist entities in the Gazette in accordance with s6(2) of the TSTCA (c.5.2). There is no criminalisation of providing or collecting funds for an individual terrorist unless it is for a terrorist act (c.5.2) Niue does not specifically criminalise the financing of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training (c.5.2^{bis}) The only available sanction for the TF offence is imprisonment, which cannot be applied to a legal person. On that basis, the sanction for the TF offence for a legal person is not proportionate or dissuasive (c.5.7) Attempting to commit the TF offence is not criminalised (c.5.8(a)) Participating as an accomplice in a TF offence or attempted offence is not criminalised (c.5.8(b)) Organising or directing others to commit a TF offence or attempted offence is not criminalised (c.5.8(c)) Contributing to the commission of one or more TF offences or attempted offences by a group of persons acting with a common purpose is not criminalised (c.5.8(d))
6. Targeted financial sanctions related to terrorism & TF	NC	<ul style="list-style-type: none"> Niue has not identified a competent authority or court responsible for proposing persons or entities to the 1267/1989 Committee or the 1988 Committee for designation (c.6.1(a)) Niue does not have mechanisms in place for identifying targets for designation based on the designation criteria set out in the relevant UNSCRs (c.6.1(b)) There are no procedures for identifying targets for designation to the UN, so there are no specified standards of proof of "reasonable grounds" or "reasonable basis" when deciding whether to make a proposal for designation (c.6.1(c)) Niue does not have an explicit requirement for authorities to comply with the UN Sanctions Regime procedures and standard forms for listing adopted by the relevant UN Committee (c.6.1(d))

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There are no requirements for Niue authorities to provide as much relevant information as possible when proposing a designation (c.6.1(e)) Niue has not identified a competent authority or court as having responsibility for designating persons or entities that meet the specific criteria for designation under UNSCR 1373 (c.6.2(a)) Niue does not have mechanisms for identifying targets for designation based on the designation criteria set out in UNSCR 1373 (c.6.2(b)) Niue has no mechanisms for designating a person or entity in line with UNSCR 1373 upon prompt consideration of requests from other countries (c.6.2(c)) There are no requirements to apply an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” when deciding whether to make a designation. There are no measures in place to designate under UNSCR 1373 (c.6.2(d)) There are no provisions explicitly empowering Niue authorities to provide as much relevant information as possible to another country in support of a request to that country to designate an entity (c.6.2(e)) Niue has no legal authority, procedures or mechanisms which empower competent authorities to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation (c.6.3(a)) There is no procedure or mechanism in place to operate <i>ex parte</i> against a person or entity who has been identified and whose (proposal for) designation is being considered (c.6.3(b)) There is no legal framework to implement TFS under UNSCR 1373 (c.6.4) The legal basis for the Solicitor General to apply to the court for an order to take control of property of UN designated persons or entities is ineffectual in the absence of any gazettal of listed terrorist entities by the responsible Minister and the ability for such an order to be made without delay is unclear (c.6.4) The <i>de facto</i> freezing obligation implementing UNSCR 1267 does not apply to Islamic State and all its affiliates (c.6.5(a)) The obligation to freeze does not extend to funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities (c.6.5(b)) The <i>de facto</i> freezing obligation does not prohibit simply providing funds (Regulations 5 and 6, UN Sanctions Regulation). It also does not clearly extend to making financial or other related services available for the benefit of, entities owned or controlled, directly or indirectly, by designated persons or entities, or persons and entities

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>acting on behalf of, or at the direction of, designated persons or entities (c.6.5(c))</p> <ul style="list-style-type: none"> There are no mechanisms for communicating designations to the financial sector and the DNFBPs immediately upon taking such action and providing clear guidance to FIs and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in acting under freezing mechanisms (c.6.5(d)) Deficiencies with the scope and application of the freezing obligation impact on the reporting obligation (c.6.5(e)) There are no provisions protecting the rights of <i>bona fide</i> third parties acting in good faith to implement the <i>de facto</i> freezing obligation relating to UNSCR 1373 (c.6.5(f)) Niue does not have procedures to submit de-listing requests to the relevant UN sanctions committee in the case of persons and entities designated pursuant to the UN Sanctions Regime, that in the view of the country, do not or no longer meet the criteria for designation (c.6.6(a)) Specified entities are limited to designations under UNSCR 1267. Niue does not have procedures or mechanisms to delist and unfreeze the funds or assets of persons and entities designated pursuant to UNSCR 1373 that no longer meet the criteria for designation (c.6.6(b)) Niue does not have procedures to follow, upon request, for the review of the designation decision before a court or other independent competent authority for designations under UNSCR 1373 (c.6.6(c)) Niue does not have procedures in place to facilitate review by the 1988 Committee in accordance with the applicable guidelines or procedures (c.6.6(d)) Niue does not have a procedure in place for informing designated persons of the availability of the United Nations Office of the Ombudsman pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions (c.6.6(e)) Niue does not have publicly known procedures for the unfreezing of funds or assets for false positives (c.6.6(f)) There are no mechanisms to communicate a de-listing and unfreezing to the FIs and DNFBPs immediately after the Minister has published de-listings by Gazette. There is also no guidance for FIs or other persons or entities that may be holding targeted funds or other assets on their obligations to respect a de-listing or unfreezing action (c.6.6(g)) Niue has no legal provisions that authorise access to funds or other assets frozen under UNSCR 1452 or 1373 which have been determined to be necessary for basic expenses, payment of fees, expenses and service charges or extraordinary expenses (c.6.7)
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> There is no criminal offence of WMD proliferation consistent with UNSCR 1540, and the TF offence does not enable freezing without delay (c.7.1)

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Niue has not established any of the necessary legal authority or identified competent authorities to assume the responsibility for the implementation and enforcement of TFS related to PF (c.7.2(a)-(f)) FIs and DNFBPs have no obligations to comply with any TFS that relate to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. There are no measures for monitoring and ensuring compliance by FIs and DNFBPs, or sanctions for non-compliance (c.7.3) Niue has not developed or implemented any publicly known procedures to submit de-listing requests to the Security Council in the case of designated persons and entities that, in the view of Niue, do not or no longer meet the criteria for designation. There are also no procedures to unfreeze funds or assets in the case of false positives, or authorise access to funds to assets in accordance with the relevant provisions under the UNSCRs, no mechanisms for communicating a de-listing or unfreezing, and no guidance for entities that may be holding targeted funds or other assets (c.7.4(a) – (d)) Niue does not have any measures in place that permit the addition of interest or other earnings due under a contract entered prior to designation. There are also no provisions to enable a designated person or entity to make any payment due under a contract entered prior to the listing of such person or entity (c.7.5(a) – (b))
8. Non-profit organisations	NC	<ul style="list-style-type: none"> Niue has not considered and identified which subset of NPOs fall under the FATF's definition or identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse (c.8.1(a)) The 2017 NRA did not specifically examine the nature of threats posed by terrorist entities to NPOs likely to be at risk of TF abuse, as well as how terrorist actors abuse those NPOs (c.8.1(b)) Niue has not reviewed the adequacy of measures, including laws and regulations that relate to the subset of NPOs that may be abused for TF purposes, to take effective actions to address the risks identified (c.8.1(c)) Niue has not periodically reassessed the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures (c.8.1(d)) Registered NPOs must provide an annual financial statement to the Registrar but NPO registration is voluntary, and non-registered NPOs are not subject to any requirements to promote transparency. There are no other policies to promote accountability, integrity, and public confidence in the administration and management of NPOs (c.8.2(a)) Niue has not undertaken outreach and educational programs to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to TF abuse, and the measures that

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>NPOs can take to protect themselves against such abuse (c.8.2(b))</p> <ul style="list-style-type: none"> Niue has not worked with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from TF abuse (c.8.2(c)) Niue has not specifically encouraged NPOs to conduct transactions via regulated financial channels (c.8.2(d)) Niue has not applied risk-based measures to NPOs at risk of TF abuse, noting that Niue has not considered and identified a subset of NPOs likely to be at risk of TF abuse (c.8.3) Niue has not conducted any supervision or monitoring of the NPO sector and has not applied risk-based measures to mitigate risk of TF abuse (c.8.4(a)) Penalties apply to registered NPOs for failing to provide annual reporting to the Registrar and an incorporated society can be wound up if the Court or a judge is of the opinion that it is just and equitable, but there are no other risk-based measures that apply to NPOs at risk of TF abuse (c.8.4(b)) Information sharing on NPOs is not occurring to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs (c.8.5(a)) Niue Police has not received formal training on TF investigations or developed SOPs, so it is not clear that the Niue Police has the capability to coordinate a response to such activity (c.8.5(b)) Any person may inspect any documents lodged with the Registrar for NPOs that choose to register but registration is voluntary and the required information does not include information relating to administration and management of particular NPOs, including programmatic information (c.8.5(c)) Niue does not have appropriate mechanisms to ensure that suspicious activities related to NPOs are promptly shared with competent authorities, to take preventive or investigative action (c.8.5(d)) There are points of contact for international requests for information regarding particular NPOs, but most do not have specific procedures for responding to such requests (c.8.6)
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> The Recommendation is fully met.
10. Customer due diligence	PC	<ul style="list-style-type: none"> There is no explicit requirement for CDD to be conducted for occasional transactions above the threshold where the transaction is carried out in several operations that appear to be linked (c.10.2(b)) FIs can waive the verification of identity for an occasional transaction not exceeding NZD 100,000 (USD 60,000) but

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		<p>this limit exceeds the USD 1,000 requirement for wire transfers (10.2(c))</p> <ul style="list-style-type: none"> There is no requirement for CDD where there are doubts about the accuracy or veracity of previously obtained customer identification data for occasional transactions not exceeding 1,000 penalty units (NZD10,000/USD 6,000) or its equivalent in foreign currency (10.2(e)) It is not clear that 'documents or evidence that are reasonably capable of verifying the identity of a person' constitute independent documents, data or information (c.10.3) There is no requirement to verify that any person purporting to act on behalf of the customer is so authorised unless the customer is a legal entity (c.10.4) FIs are not explicitly required to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner to ensure that the FI is satisfied that it knows who the beneficial owner is (c.10.5) There are no requirements for FIs to understand and, as appropriate, obtain information on the intended nature of the business relationship (c.10.6) There is no explicit requirement for FIs to conduct ongoing due diligence, including to scrutinise the transactions undertaken throughout the course of the relationship in line with the customer's business, risk profile, and source of funds (c.10.7(a)) There is no requirement for FIs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customer or business relationships (c.10.7(b)) There are no requirements for reporting entities to understand the nature of the customer's business for legal persons and legal arrangements. For legal persons, FIs are not required to identify ultimate beneficial owners. There are no requirements for FIs to understand the nature of the customer's business, and its ownership and control structure for legal arrangements (c.10.8) There are no requirements for FIs to identify and verify the customer's name, legal existence and structure, including information relating to person's name, and legal form for legal arrangements (10.9(a)) There is no provision for an FI to identify and verify a legal person's identity through the names of the relevant persons having a senior management position. There are no requirements for identification of customer and verification of identification for legal arrangements (c.10.9(b)) For legal persons, it is unclear whether the verification of address pertains to the address of the registered office and, if different, the principal place of business. There are no requirements for FIs to verify the address for legal arrangements (c.10.9(c))

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		<ul style="list-style-type: none"> It is not clear that reporting entities are required to identify the natural person(s) who ultimately have a controlling ownership interest in a legal person (c.10.10(a)) There are no requirements for FIs to identify and take reasonable measures to verify the identity of the natural person exercising control of the legal person or arrangement through other means (c.10.10(b)) There are no requirements for FIs to verify a senior managing official where no natural person is identified (c.10.10(c)) There are no requirements for FIs to identify and take reasonable measures to verify the identity of beneficial owners of customers for any type of legal arrangements (c.10.11) There is no requirement for FIs to apply CDD requirements to existing customers based on materiality and risk, or due diligence on existing relationships (c.10.16) There is no requirement for FIs to perform enhanced due diligence where ML/TF risks are higher (c.10.17) There is no requirement for FIs to terminate the business relationship or not open any account if satisfactory evidence of the customer's identity is not produced or obtained (c.10.19(a)) There is no requirement for FIs to consider submitting an STR in relation to the customer in cases where the FI is unable to comply with relevant CDD measures (c.10.19(b)) There is no requirement permitting FIs to not pursue CDD where it may tip-off the customer and instead file a STR (c.10.20)
11. Record keeping	LC	<ul style="list-style-type: none"> FIs are not required to maintain records of any result of any analysis undertaken on the account following the termination of business relation or after the date of occasional transactions (c.11.2) There is no requirement for FIs to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority (c.11.4)
12. Politically exposed persons	PC	<ul style="list-style-type: none"> There are deficiencies in the definition of PEPs, which is circular - if a person is a PEP, FIs are required to have appropriate risk management systems in place to determine whether the customer is a PEP. There is no requirement to identify whether the beneficial owner is a PEP (c.12.1(a)) There is no requirement to obtain senior management approval for continuing relationship with an existing customer who has subsequently been identified as a PEP (c.12.1(b) and 12.2(b)) Gaps in the definition of a foreign PEP cascade to this criterion (c.12.1(b), (c) and (d).

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		<ul style="list-style-type: none"> There is no requirement to identify if a beneficial owner is a domestic PEP. Gaps in the definition of a domestic PEP cascade to this criterion (c.12.2(a) – (b)) FIs are not required to apply the relevant requirements of c.12.1 and 12.2 to family members or close associates of all types of PEPs (c.12.3)
13. Correspondent banking	N/A	<ul style="list-style-type: none"> The Recommendation is not applicable.
14. Money or value transfer services	PC	<ul style="list-style-type: none"> Sanctions for engaging in business without a business licence are not proportionate or dissuasive (c.14.2) While NFIU has powers to monitor the MVTs agent, the MVTs agent has not been subject to monitoring for compliance with AML/CFT requirements under the FTRA (c.14.3).
15. New technologies	NC	<ul style="list-style-type: none"> The 2017 NRA did not identify and assess the ML/TF risks that may arise in relation to the development of new products and practices, or the use of new or developing technologies for both new and pre-existing products. The 2024 NRA update also did not identify or assess these risks. There is no requirement for FIs to identify and assess the ML/TF risks associated with developing new products and practices or using new or developing technologies (c.15.1) FIs are not required to (a) undertake risk assessments prior to the launch or use of new products, practices and technologies, and (b) take appropriate measures to manage and mitigate those risks (c.15.2) The 2024 NRA update notes the absence of VASPs in Niue and rates the overall risk of “new technologies” as low solely on this basis. Niue does not prohibit VASPs from operating in Niue. Niue does not have the capability to identify whether a VASP is operating from Niue (c.15.3(a)) Niue does not apply a risk-based approach to ensure measures to prevent or mitigate ML/TF are commensurate with identified risks relating to VASPs (c.15.3(b)) The only obligations that apply to VASPs under the legislation are the obligations to report CTRs and STRs and any obligations prescribed by the relevant supervisory authority (c.15.3(c)) The business licensing process does not cover the beneficial owner, or a person with a significant or controlling interest, or holding a management function in, a VASP (c.15.4(b)) Niue authorities have not formally taken action to identify natural or legal persons that carry out VASP activities without a business license. Sanctions for conducting a VASP business without a license are not proportionate or dissuasive (c.15.5) VASPs are not subject to any regulation or risk-based supervision (c.15.6(a)) There is no legal framework that ensures that supervisors have the adequate powers to supervise or monitor and

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		<p>ensure compliance by VASPs on ML/TF prevention (c.15.6(b))</p> <ul style="list-style-type: none"> There are no guidelines for the VASP sector, or a framework for providing feedback, to assist VASPs in applying AML/CFT measures, including in detecting and reporting suspicious transactions (c.15.7) VASPs are only subject to STR and CTR reporting obligations. Sanctions for non-compliance with this obligation are proportionate and dissuasive (c.15.8(a)) There are no sanctions that apply to directors and senior management for breaches of the STR reporting obligation (c.15.8(b)) VASPs are not required to comply with any preventive measures except for CTR and STR reporting (c.15.9(a)) VASPs have no wire transfer obligations under the FTRA as they do not meet the definition of a MVTs (c.15.9(b)) Niue has not implemented TFS related to TF or PF, so there are no requirements imposed on VASPs (c.15.10) FIU and LEAs have legal basis for formal and informal cooperation with foreign counterparts on VASPs. However, there is also no designated VASP supervisor, so no mechanism for exchanging information with foreign supervisory counterparts (c.15.11)
16. Wire transfers	NC	<ul style="list-style-type: none"> The legislation does not define “originator information” and therefore does not include the requirement for specific and accurate details. No minimum threshold for wire transfer obligations is included (c.16.1(a)) The legislation does not define or require beneficiary information and does not include a minimum threshold for wire transfer obligations (c.16.1(b)) FIs are not required to ensure that the batch file of several individual cross-border wire transfers from a single originator for transmission to beneficiaries should contain required and accurate originator information. There is also no requirement to provide full beneficiary information that is traceable within the beneficiary country or the originator’s account number or unique transaction reference number (c.16.2) Niue has not applied a threshold and the analysis for criterion 16.1 applies here (c.16.3) There is no requirement to verify customer information, and no specific reference is made to FI’s obligations where it holds a suspicion of ML/TF (c.16.4) There is no requirement for ordering FIs to maintain all originator and beneficiary information collected (c.16.7) Ordering FIs are not prohibited from executing the wire transfer if it does not comply with the requirements specified by criteria 16.1-16.7 (c.16.8) There is no requirement for an intermediary FI to ensure that all originator and beneficiary information that

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		<p>accompanies a wire transfer is retained with it for cross-border wire transfers (c.16.9)</p> <ul style="list-style-type: none"> Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary FI is not required to keep a record, for at least five years, of all the information received from the ordering FI or another intermediary FI (c.16.10) There are no requirements for intermediary FIs to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack required originator information or required beneficiary information (c.16.11) There are no requirements for intermediary FIs to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action (c.16.12) There are no requirements for beneficiary FIs to take reasonable measures to identify cross-border wire transfers that lack required originator information or required beneficiary information (c.16.13) For cross-border wire transfers of USD/EUR 1,000 or more, there are not requirements for a beneficiary FI to verify the identity of the beneficiary, if the identity has not been previously verified, and to maintain this information (c.16.14) Beneficiary FIs are not required to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action (c.16.15) There are no requirements for MVTs providers to comply with the relevant requirements of R.16 in the countries in which they operate, directly or through their agents (c.16.16) There are no requirements for a MVTs provider that controls both the ordering and the beneficiary side of a wire transfer to consider the information to determine whether an STR must be filed, or to file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU (c.16.17(a) & (b)) There are no measures in place to require FIs to take freezing action and comply with prohibitions from conducting transactions with designated persons and entities in the context of processing wire transfers. Niue has not demonstrated the implementation of measures to comply with this sub-criterion, particularly concerning freezing actions and prohibitions on transactions with designated persons and entities (c.16.18)
17. Reliance on third parties	N/A	<ul style="list-style-type: none"> The Recommendation is not applicable.

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18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> There is no requirement for the compliance officer to be at management level (c.18.1(a)) There is no requirement for the employees' ML training to be ongoing. FI internal employee training does not cover TF (c.18.1(c)) There are no requirements for FIs to have an independent audit function in place to test internal policies, procedures and controls (c.18.1(d)) There are no requirements in place for financial groups to implement group-wide programs against ML/TF, which are applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. There are no safeguards on the confidentiality and use of information exchanged (c.18.2) Niue has no requirements in place for FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements where the minimum AML/CFT requirements of the host country are less strict than those of the home country, to the extent that host country's laws and regulations permit. However, Niue has no FIs with the parent entity in Niue which have subsidiaries or branches in foreign jurisdictions (c.18.3)
19. Higher-risk countries	NC	<ul style="list-style-type: none"> There is no provision requiring FIs to apply EDD, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries for when called upon to do so by the FATF (c.19.1) There is no requirement for FIs to apply countermeasures when called upon to do so by the FATF or independently of any call by the FATF to do so (c.19.2) Niue does not have measures in place to advise FIs about concerns in weaknesses in the AML/CFT systems of other countries (c.19.3)
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> Before forwarding an STR to the FIU, the FI is required to have reasonable grounds that the transaction may be relevant to the investigation or prosecution of a person for a serious offence. This requirement may mean that some transactions are excluded from STR reporting if the FI considers there is insufficient information for an investigation or prosecution. There is also a cascading effect from deficiencies identified with criminalisation of ML and TF and a lack of coverage of all predicate offences (see R.3), and gaps in the coverage of FIs required to report (c.20.1 and 20.2)
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> It is not clear whether directors are covered by the broad legal protection protecting officers and employees from criminal and civil liability for breach of any restriction on disclosure of information (c.21.1) While FIs are prohibited from disclosing the fact that an STR has given or may be given to the FIU, that prohibition is not expressly extended to directors, officers, employees or agents (c.21.2)

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22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> The FTRA definition of an FI does not include the activities of creating, operating or management of legal persons or legal arrangements (c.22.1(d)) The terms 'trust' and 'company service provider' are not defined so it is unlikely that all activities required to be regulated under this criterion are captured (c.22.1(e)) The moderate shortcomings identified in the analysis under R.11 above apply to DNFBP obligations. The gap in coverage of DNFBPs under c.22.1 also impacts this criterion (c.22.2) There are moderate shortcomings with the requirements for PEPs (see R.12). The gap in coverage of DNFBPs under c.22.1 also impacts this criterion (c.22.3) The FTRA does not include requirements for DNFBPs covering new technologies, new products and new business practices (see R.15). The gap in coverage of DNFBPs under c.22.1 also impacts this criterion (c.22.4)
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> DNFBPs are subject to the same STR reporting obligation as FIs under section 8(1) of the FTRA, and the same moderate shortcomings apply (see R.20). There is also a gap in coverage of DNFBPs (see c.22.1) (c.23.1) DNFBPs have some limited requirements to appoint a compliance officer, screen prospective officers and employees, and have an ongoing employee training program, but no enforceable obligations to implement all the required internal controls in line with c.18.1(d), c.18.2 and c.18.3 (c.23.2) There are no requirements for DNFBPs to comply with the higher risk country requirements (c.23.3) DNFBPs have the same requirements in relation to tipping off and confidentiality as FIs. The minor shortcomings under R.21 are also applicable to this criterion (c.23.4)
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> No beneficial information of legal persons is collected. (c.24.1) The ML/TF risks associated with all types of legal persons operating in Niue were not assessed in the 2017 or 2024 update NRA (c.24.2) There are no requirements in the Companies Act for overseas companies to maintain a list of shareholders. General partners in limited liability partnerships are not required to maintain information set out in criterion 24.3 at a location within Niue that is notified to the registry (c.24.4) Many of the obligations to provide documents to the Registrar where changes occur do not include timeframes. The information provided is only verified where an irregularity is apparent on the face of it. There are no provisions requiring incorporated societies to provide the registrar with details of any changes to information (c.24.5) Registration requirements focus on collecting basic information, not on beneficial ownership. There are no

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		<p>requirements for domestic or foreign companies, partnerships or incorporated societies to obtain and hold up-to-date information on beneficial ownership. (c.24.6(a) and (b))</p> <ul style="list-style-type: none"> Companies are not required to identify and hold information on beneficial owners. There are deficiencies with FI's obligations to identify and verify beneficial ownership as part of CDD. Cabinet does collect some beneficial ownership information relating to foreign companies as part of the registration process, but it is not clear that this information is verified (c.24.6(c)) There are no measures in place that require beneficial ownership information to be accurate and as up to date as possible (c.24.7) Niue does not use any of the mechanisms outlined in Criterion 24.8 (a) and (b) to ensure companies cooperate with competent authorities in determining the beneficial owner (c.24.8) Niue does not have any requirements for companies to maintain information and records for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the FI (c.24.9) The ability of competent authorities to access beneficial ownership information in a timely manner is constrained by the absence of any requirement for legal persons to record this information or verify it and keep it up to date and make it accessible (c.24.10) Niue does not expressly prohibit the issuing of bearer shares and bearer share warrants, but requirements of the Companies Act functionally operate to prevent the use of bearer shares and mitigate the risk of bearer warrants (c.24.11) Niue has not provided information to demonstrate that there are any mechanisms in place to prevent the misuse of nominee directors (c.24.12) Niue has not demonstrated that there are proportionate and dissuasive sanctions for failure by legal persons other than domestic and foreign companies to comply with the relevant provisions (c.24.13) No beneficial ownership information is collected or available on the Companies Register. Deficiencies in the requirements to collect and verify beneficial ownership information would impact on the availability of such information and the ability to provide it rapidly (c.24.14) It is not clear that Niue has measures in place to monitor the quality of assistance received from other countries relating to basic and beneficial ownership information (c.24.15)

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25. Transparency and beneficial ownership of legal arrangements	NC	<ul style="list-style-type: none"> Trustees of trusts governed under either the Trusts Act or the Trustee Act, are not required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (c.25.1(a)) Trustees of trusts governed under either the Trusts Act or the Trustees Act are not required to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors (c.25.1(b)) There are no specific requirements for trustees to maintain the trust-related information required under criterion 25.1(a) and (b) for at least five years after their involvement with trusts ceases (c.25.1(c)) There is no requirement for trustees to keep information held pursuant to R.25 accurate and as up to date as possible and also updated on a timely basis (c.25.2) There are no obligations on trustees in Niue to disclose their status to FIs and DNFBP's regulated under the FTTRA when forming a business relationship or carrying out an occasional transaction above the threshold in the Recommendations (c.25.3) Confidentiality requirements may limit the ability of trustees to provide competent authorities with information of the beneficial ownership and assets of the trust (c.25.4) Information available to be gathered by competent authorities is, generally limited to basic information. Information held by FIs and DNFBPs may include additional beneficial ownership information, and details of assets held by the FI or DNFBP in response to the obligations set out in sections 14 and 15 of the FTTRA (as referred to in c.25.4). It is not clear that access to information would be timely (c.25.5) Niue has not demonstrated that it could rapidly provide international cooperation in relation to information, including beneficial ownership, on trusts and other legal arrangements (c.25.6) The Trustee Act does not provide for fines or other civil or administrative measures to address breaches of obligations imposed upon trustees (c.25.7) There are deficiencies about the information required to be kept under R.25.1 which impact upon the applicability of sanctions. There are no obligations on trustees to disclose their status to FIs and DNFBPs regulated under the FTTRA and hence no sanctions apply to trustees for failing to provide this information (c.25.8)
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> There are no statutory provisions expressly prohibiting the establishment and operation of shell banks in Niue. However, a person who is not registered as a bank is prohibited from carrying on banking business in Niue (c.26.2)

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		<ul style="list-style-type: none"> The FTRA empowers the supervisory authority of a DNFBP to adopt any necessary measures to prevent any unsuitable person from controlling or participating, directly or indirectly, in the directorship, management or operation of a FI but this power does not extend to the beneficial owners of a significant or controlling interest in a DNFBP (c.26.3) The NFIU has no systems for supervision or monitoring, of the two FIs, having regard to ML/TF risks, for ensuring compliance with AML/CFT obligations, having only been appointed as the AML/CFT supervisor two months prior to the on-site visit (c.26.4(b)) Niue has not demonstrated that the frequency and intensity of its on-site and off-site AML/CFT supervision of FIs is determined based on identified ML/TF risks, the size of FIs, and the nature of their activities (c.26.5) Niue does not review the assessment of the ML/TF risk profile of an FI periodically, and when there are major events or developments in the management and operations of the FI (c.26.6)
27. Powers of supervisors	PC	<ul style="list-style-type: none"> There is no legal power for AML/CFT supervisors to compel the production of records by FIs (c.27.3) No competent authority has the power to withdraw, restrict or suspend an FI's license. There are no sanctions for breaching obligations relating to internal controls, including appointing a compliance officer, monitoring transactions; and including originator information on funds transfers. There are no sanctions that apply to directors or senior management, or any administrative or non-criminal sanctions against FIs failing to comply with provisions of the FTRA. NFIU does not have the power to impose disciplinary and financial sanctions, including for a failure of FIs and DNFBPs to respond to the NFIU's exercise of information gathering powers (c.27.4)
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> There is a gap in the definition of FIs as outlined in c.22.1, with lawyers, notaries, independent legal professional and accountants not requiring to be regulated when they create, operate or manage legal persons or legal arrangements. The single lawyer provides these services and is only captured for the provision of limited TCSP services (c.28.2) There are no systems in place in Niue for monitoring the compliance of other DNFBPs with AML/CFT requirements, (c.28.3) There are some gaps in DNFBPs categorised as FIs (and therefore subject to supervision), as outlined in c.22.1 (c.28.4(a)) The sole DNFBP operating in Niue is not subject to any professional accreditation. The FTRA empowers the supervisory authority of a DNFBP to adopt any necessary measures to prevent any unsuitable person from controlling or participating, directly or indirectly, in the directorship, management or operation of the DNFBP but this power does not extend to the beneficial owners of a significant or controlling interest in a DNFBP (c.28.4(b)).

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		<p>DNFBPs must hold a current business licence and only a basic fit and proper person text is applied as part of this process.</p> <ul style="list-style-type: none"> The deficiencies outlined in c27.4 apply here and include: no powers of enforcement or sanction available against DNFBPs for failing to maintain procedures; prepare and submit written statements; monitor transactions. There are no administrative sanctions available where a DNFBP has contravened any of the provisions of the FTRA, and lack of sanctions for directors or senior management (c.28.4(c)) Niue has not conducted any risk-based supervision of DNFBPs as at the time of the on-site visit, and there is no supervision framework in place for ensuring DNFBP's compliance with AML/CFT requirements (c.28.5)
29. Financial intelligence units	PC	<ul style="list-style-type: none"> The Solicitor-General can direct a person in charge of a FI, a government department or a statutory body to disclose relevant information to the Solicitor-General or a nominated police officer (ss23 and s25, FTRA) but there is no sanction for failure to comply (c.29.3(b)). NFIU has limited capacity to conduct strategic analysis to identify ML/TF related trends and patterns, due to insufficient resources (c.29.4(b)) Disseminations to LEAs can only be made if the Solicitor General considers it is appropriate (c.29.5) Dissemination of information based on STRs and other reporting to the police, a LEA or a foreign supervisory body is subject to approval by the Solicitor General. NFIU's independence from undue influence or interference is constrained by a requirement for the Minister of Finance to approve the NFIU entering into an agreement or arrangement with foreign agencies for the exchange of information (c.29.7(a)) NFIU may only enter into agreements for the exchange of information with foreign LEAs or supervisory bodies, with the Minister of Finance's approval (c.29.7(b))
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> There is no legal provision indicating which agencies are authorised to implement the ML/TF investigation during a parallel financial investigation. In practice, the only agency equipped to undertake a ML/TF investigation is Niue Police, applying general policing investigation skills and seeking assistance from regional counterparts where required (c.30.2)
31. Powers of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> Niue has not provided information to demonstrate that competent authorities are empowered to take witness statements under compulsion (c.31.1(c)) Competent authorities in Niue conducting investigations are not empowered to use undercover operations. Niue's very small population makes undercover operations impractical (c.31.2(a)) Competent authorities in Niue conducting investigations do not have powers to intercept communications (c.31.2(b))

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Competent authorities conducting investigations in Niue do not have powers to access computer systems other than by obtaining monitoring orders for provision of information from FIs about transactions occurring on accounts in real time (c.31.2(c)) Controlled deliveries are not permitted in relation to ML and associated predicate offences (c.31.2(d)) Competent authorities in Niue can identify if accounts are held or controlled by natural or legal persons. However, the relevant authorising provisions do not provide for a time limit for obtaining or providing information regarding accounts (c.31.3(a)) Disseminations to the police and LEAs may only occur if the Solicitor-General considers it appropriate (c.31.4)
32. Cash couriers	PC	<ul style="list-style-type: none"> Niue's declaration system does not apply to cross-border transportations of currency or BNIs by cargo or mail (c.32.1) There is no express provision that empowers any authorised officer to request information about the origin and intended use of the currency or BNI upon discovery of a false declaration or a failure to declare (c.32.4) There is no offence provision and no sanction for making a false declaration (c.32.5) Cash or BNI may not be detained for longer than 48 hours without an order from the High Court for continued detention for no longer than three months from the date of seizure. The Court may once further make an order for the continued detention of the currency or BNI, but the total period of detention under a later order must not exceed two years from the date of the order (c.32.8(a)) There is no provision for seizure of currency and BNI in relation to the making of a false statement (c.23.8(b)) There is no provision for retention of declarations, false declarations or information regarding suspicion of ML/TF in the declaration process, so the ability to share such information internationally is constrained (c.32.9) There is no requirement for competent authorities' use of information collected through the declaration system to not restrict trade payments between countries for goods or services, or the freedom of capital movements (c.32.10) There are no civil or administrative penalties for making a physical cross-border transportation of currency or BNI related to ML/TF or predicate offences, other than a financial penalty of no more than NZD 2,000 (USD 1,200) for failing to make a declaration. A criminal sanction may apply if an ML/TF or other serious offence is prosecuted. (c.32.11)
33. Statistics	PC	<ul style="list-style-type: none"> No STRs have been filed by reporting entities over the assessment period. NFIU does not currently have measures to capture data and report STR statistics, however it intends to adopt such measures following its

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		<p>recommencement of operations in September 2024 (c.33.1(a))</p> <ul style="list-style-type: none"> As Niue Police has not conducted any ML/TF investigations, prosecutions and convictions; frozen, seized or confiscated property related to ML/TF or predicate offences; or sent or received any MLA requests, it has not maintained any statistics in accordance with R.33. (c.33.1(b), (c) and (d))
34. Guidance and feedback	NC	<ul style="list-style-type: none"> Niue has minimal guidance to assist reporting entities in applying national AML/CFT measures and it is not clear how reporting entities can access the guidance. No feedback has been provided to reporting entities (c.34.1)
35. Sanctions	PC	<ul style="list-style-type: none"> Niue did not provide the assessment team with details of all available sanctions applicable to Recommendations 6, and 8 to 23. As such, the assessment team was unable to assess the extent to which there are proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with the AML/CFT requirements of these Recommendations (c.35.1) There are no powers of enforcement or sanction available against FIs for failing to maintain procedures, failing to prepare and submit written statements, failing to monitor transactions; and failing to include originator information on funds transfers. There are no administrative sanctions available where a FI has contravened any of the provisions of the FTRA. No sanctions have been imposed on any FI in relation to any obligation under the FTRA, so their dissuasiveness has not been tested (c.35.1) All sanctions specified in the FTRA are applicable against bodies corporate. There is no provision for sanctions against directors or senior management (c.35.2)
36. International instruments	PC	<ul style="list-style-type: none"> Niue has only partially implemented the relevant Articles of the Vienna, Palermo, Merida and TF Convention. There are gaps in the implementation of these conventions that represent moderate shortcomings (c.36.2)
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> There is no provision in the MACMA that explicitly deals with the service of documents on behalf of a foreign country (c.37.1) A prerequisite for MLA is the requirement that the request relates to a proceeding or investigation in respect of a 'criminal matter'. Gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML, have a cascading effect here (c.37.1) There are no processes or policies in place regarding the timeliness of responding to MLA requests. The extent to which Niue can provide MLA 'rapidly' is not clear, but the approval process only requires authorisation from the Solicitor General (c.37.1) There are no policies and procedures relating to MLA or to expedite an urgent MLA request. There is no case management system to record MLA requests. Niue has never received any MLA request (c.37.2)

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		<ul style="list-style-type: none"> There are no explicit provisions under MACMA that specifically allow the Solicitor General to refuse an MLA request on the sole basis that the offence involves a fiscal matter. However, the Solicitor General's broad discretion to refuse an MLA request 'as otherwise appropriate, in all circumstances of the case', could potentially be applied to refuse an MLA request on such grounds (c.37.4(a)) The Solicitor General's broad discretion to refuse an MLA request under section 7 of MACMA could be applied to refuse an MLA request on such grounds. (c.37.4(b)) Niue does not have privacy legislation but there are provisions relating to the confidentiality of trust information that may have an impact (c.37.4(b)) There are no exceptions to the dual criminality requirement for requests that do not involve coercive actions (c.37.6) Gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML would impact Niue's ability to respond to MLA requests where dual criminality is required to facilitate the request and the conduct constituting the offence does not constitute a serious offence in Niue (c.37.7) Relevant domestic competent authorities can use specific powers and investigative techniques for MLA requests, as well as their general powers, but there are some deficiencies identified under R.31 that have an impact (c.37.8(a))
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Section 32 of MACMA, specifically provides for the enforcement of a foreign confiscation order, made in respect of a serious offence, where some or all the property available to satisfy the order is believed to be in Niue. This is restricted to cases where there has been a conviction, and the conviction is not subject to an appeal (c.38.1) Niue authorities cannot provide assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings and related provisional measures where the perpetrator is unknown (c.38.2) Niue has no arrangements in place for coordinating seizure and confiscation actions with foreign countries (c.38.3(a)) Niue's mechanisms for managing and disposing of property frozen, seized or confiscated as part of providing MLA occur through directions made by the Court. There are no other provisions that relate to the custody of frozen or confiscated and no mechanisms for managing and, when necessary, disposing of any seized, frozen or confiscated property (c.38.3(b))
39. Extradition	PC	<ul style="list-style-type: none"> ML and TF are both extraditable offences under the Extradition Act. However, deficiencies in the criminalisation of ML and TF impact the ability of Niue to extradite for ML and TF offences (c.39.1(a)) Niue did not have a case management system or standard operating procedures, policies or clear processes for the

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		<p>timely execution of extradition requests including prioritisation at the time of the on-site visit (c.39.1(b))</p> <ul style="list-style-type: none"> • A discretionary ground of refusal for extradition is that the person is a New Zealand citizen. As all Niue nationals are New Zealand citizens and captured under this provision, the extent to which this ground for refusal is unduly restrictive is not clear (c.39.1(c) and c.39.2(a)) • There are no provisions for prosecution in lieu of extradition except for TF-related offences (c.39.2(b)) • Gaps in the criminalisation of ML and TF, and the scope of predicate offences for ML would impact Niue's ability to facilitate extradition requests where there is no corresponding offence and the conduct underlying the offence is nor similar (c.39.3)
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> • Niue's cooperation framework does not explicitly ensure that international cooperation is provided in a rapid, timely or systematic manner, and there are generally no SOPs or procedures to support timely responses (c.40.1) • Niue does not have clear processes for the prioritisation and timely execution of requests for international cooperation (c.40.2(d)) • The Public Service Regulations restrict use and disclosure of official information, and the public service Code of Conduct also includes confidentiality requirements. There are legislative obligations for NFIU, Office of the Secretary of Government and Police to protect NFIU information. However, the extent to which these processes have been implemented and enforced is not clear (c.40.2(e)) • The FIU and immigration departments are the only authorities with limited legislative provisions enabling international cooperation. There are currently no formal agreements in place for the police or customs to share information with international bodies (c.40.3) • Niue has not provided information to demonstrate that upon request, requesting competent authorities provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained (c.40.4) • There are no provisions in law that prohibit or place unreasonable or unduly restrictive conditions on the provision of exchange of international information or assistance by the FIU or the Attorney-General. Other competent authorities do not appear to be authorised to provide international cooperation (c.40.5(a), (c) and (d)) • Niue has not demonstrated that requests for assistance are not refused on the grounds there is an inquiry, investigation or proceeding underway in the requested country, or the grounds that the nature or status of the requesting counterpart authority is different from that of its foreign counterpart (c.40.5(c) and (d)) • Niue has not provided any information about controls and safeguards that apply to competent authorities other than the FIU (c.40.6)

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Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> Niue has not provided information to demonstrate that competent authorities other than the FIU maintain appropriate confidentiality for any request for cooperation and the information exchanged, consistent with both parties' obligations concerning privacy and data protection, if they are permitted to exchange information (c.40.7) Niue has not provided information to demonstrate competent authorities, other than NFIU, can conduct inquiries on behalf of foreign counterparts and exchange all domestically available information (c.40.8) Niue has not provided information to demonstrate that NFIU provides feedback to foreign counterparts, upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided (c.40.10) NFIU is able to enter into agreements with foreign supervisory counterparts on behalf of the Government of Niue under the Government's executive authority, subject to complying with internal process for such matters and with appropriate Government authorisation, However, a significant international agreement may first be referred to Cabinet for approval and authorisation (c.40.12) NFIU can provide any information received by NFIU to a supervisory body outside Niue, if the Solicitor General considers it appropriate. With the Ministers approval, NFIU may enter into an agreement to exchange information with a supervisory body outside Niue to detect, investigate or prosecute ML, TF or a serious offence (c.40.13) The process for disseminations of NFIU information to foreign supervisors in terms of requiring the Solicitor General's approval is untested and could impact on the ability of NFIU to share information freely (c.40.14(a)-(c)) The process for disseminations of NFIU information to foreign supervisors in terms of requiring the Solicitor General's approval is untested and could impact on the ability of NFIU to share information freely (c.40.15) NFIU has does not have MOUs or SOPs that require the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes, unless the requesting financial supervisor is under a legal obligation to disclose or report the information. There is also no formal requirement for NFIU to promptly inform the requested authority of this obligation (c.40.16) Niue has not provided information to demonstrate that law enforcement authorities are able to use their powers, including any investigative techniques available in accordance with their domestic law, to conduct inquiries and obtain information on behalf of foreign counterparts (c.40.18) Authorities other than NFIU exchange information either under specific legislation or the general authority of the

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		Government, but it is unclear if this provides for exchange of information with non-counterparts (c.40.20)

GLOSSARY

AFP	Australian Federal Police
AML	Anti-Money Laundering
AMLOC	AML/CFT Officials Committee
BCR	Border Cash Reports
BLA	Business Licence Act (1997)
BNI	Bearer Negotiable Instruments
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CLO	Crown Law Office
CPF	Countering Proliferation Financing
CPFI	Core Principles Financial Institution
CSP	Cyber Safety Pasifika
CTR	Cash Transaction Reports
DIA	New Zealand Department of Internal Affairs
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
EEZ	Exclusive Economic Zone
EFTR	Electronic Funds Transfer Reports
ESW	Egmont Secure Website
FATF	Financial Action Task Force
FFA	Forum Fisheries Agency
FI	Financial Institution
FMA	New Zealand Financial Markets Authority
FTRA	Financial Transactions Reporting Act (2006)
GON	Government of Niue
ISA	Incorporated Societies Act (1908)
IUU	Illegal, Unreported and Unregulated Fishing
JCPC	Judicial Committee of the Privy Council
LEAs	Law Enforcement Agencies
MACMA	Mutual Assistance in Criminal Matters Act (1998)
MER	Mutual Evaluation Report
ML/TF	Money Laundering/Terrorist Financing
MLA	Mutual Legal Assistance
MoU	Memorandum of Understanding
MVTS	Money Value Transfer Services
NCEL	Niue Commercial Enterprises Limited

NDB	Niue Development Bank
NFIU	Niue Financial Intelligence Unit
NOW Trust	Niue Ocean Wide Trust
NPO	Non-Profit Organisation
NRA	National Risk Assessment
NSC	National Security Committee
NSS	National Security Strategy
NZD	New Zealand Dollars
OCO	Oceania Customs Organisation
PEP	Politically Exposed Persons
PF	Proliferation Financing
PFIC	Pacific Financial Intelligence Community
PICP	Pacific Islands Chief of Police
PICD	Pacific Immigration Development Community
PIF	Pacific Islands Forum
PILON	Pacific Island Law Officers Network
PIPP	Pacific Island Prevention Policing
POCA	Proceeds of Crime Act (1998)
PPA	Pacific Prosecutors Association
PTAA	Pacific Islands Tax Administration Association
PTCCC	Pacific Transnational Crime Coordination Centre
PTCN	Pacific Transnational Crime Network
RBNZ	Reserve Bank of New Zealand
SOG	Secretary of Government
SOP	Standard Operating Procedures
STRs	Suspicious Transactions Reports
TBML	Trade-Based Money Laundering
TBS	Transactional Banking Services
TCU	Transnational Crime Units
TFS	Targeted Financial Sanctions
TSTCA	Terrorism Suppression and Transnational Crimes Act (2006)
UNSCR	United Nations Security Council Resolutions
VASP	Virtual Asset Service Provider
WU	Western Union



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Anti-money laundering and counter-terrorist financing measures – Niue

3rd Round APG Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML)/countering the financing of-terrorism (CFT) measures in place in Niue as at December 2024. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Niue's AML/CFT system, and provides recommendations on how the system could be strengthened.